


## PROPERTY RIGHTS AND THE KALUNGA COMMUNITY: AN ANALYSIS OF THE PHILOSOPHICAL ROOTS AND SOCIAL FUNCTION OF LAND

 <https://doi.org/10.56238/arev6n4-210>

Submitted on: 13/11/2024

Publication date: 13/12/2024

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### ABSTRACT

This article examines the concept of private property and its social function, contrasting it with collective ownership practices adopted by traditional communities, especially the Kalunga quilombola community in Goiás. Private property, historically consolidated as an inalienable individual right in classical liberal thought, especially in John Locke, became one of the pillars of capitalist development. However, the idea of property as an absolute right faces criticism from scholars such as Carlos Frederico Marés, who proposes the concept of the social function of land as a means of promoting social justice and respect for collective ways of life. The Kalunga community exemplifies this social function by managing the land collectively, ensuring the subsistence of all without the need for individual property titles. This collective model preserves cultural identity, respects the environment and resists the exclusionary logic of private property. Inspired by Bruce Gilbert's theory, the article reflects on the possibility of making property rights more flexible to include mutual recognition and collective responsibility, promoting more inclusive and sustainable land use. The analysis concludes that, in the face of contemporary demands for sustainability and inclusion, the future of property rights must incorporate practices that serve collective well-being and respect traditional ways of life. This model challenges the individualistic paradigm and proposes a vision where land serves not only economic development, but also social justice and cultural and environmental preservation.

**Keywords:** Private property, Social function of land, Kalunga Community.

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## INTRODUCTION

Private property is a fundamental concept in Western societies, historically seen as an inalienable and absolute right, essential for individual autonomy and economic development. This understanding finds its roots in thinkers such as John Locke, who, in his *Second Treatise on Civil Government* (1689), defends private property as an extension of natural law, derived from labor and the individual appropriation of natural resources. According to Locke, the individual's work confers on him the legitimate right of ownership over the resource used, as long as this appropriation respects the provision of resources for others (Locke, 1994). This Lockean vision consolidated private property as one of the pillars of classical liberalism, establishing it as an individual right that drove capitalist development in Western society.

However, the conception of property as an absolute right has been the target of criticism by several scholars, especially in the context of traditional communities and from the perspective of collective rights. Carlos Frederico Marés de Souza Filho, a Brazilian jurist, argues that property cannot be seen as an absolute individual prerogative, especially in territories occupied by indigenous and quilombola communities. In his work *The Myth of Private Property: Human Rights and Common Goods* (2014), Marés discusses the social function of property, arguing that land use must serve the collective good and respect the way of life and subsistence of these communities. For Marés, the concept of the social function of property represents an essential counterpoint to individual rights, emphasizing the need for land and natural resources to be used in a way that ensures social justice and sustainability (Marés, 2014).

The Kalunga community, made up of descendants of quilombolas in the state of Goiás, is a practical example of this conception of land as a collective good. The Kalunga use the land in a communal way, without the need for individual titles, with a management model that guarantees the livelihood of the families and preserves cultural and environmental integrity. This form of organization, in which land is shared and used collectively, resists the individualistic logic of private property and reflects the principle of social function, provided for in article 186 of the Brazilian Constitution, which establishes that rural property must fulfill its social function through criteria of productivity, respect for the environment, compliance with labor standards, and promotion of community well-being (Brasil, 1988). Marés observes that this collective model of land management, adopted by communities such as the Kalunga, offers a sustainable alternative to the individualistic

conception of private property, promoting a land use that values cultural and environmental preservation.

In addition, authors such as Manuela Carneiro da Cunha, a Brazilian anthropologist, highlight the importance of land for traditional communities, emphasizing that it is not only an economic resource, but an essential part of the cultural identity and social organization of these groups. In *Cultura com Aspas* (2009), Cunha discusses how collective property is a central element for the survival of indigenous and quilombola communities, being a form of resistance to exploitation and a means of preserving their traditions and ways of life (Cunha, 2009).

This article aims to analyze the concept of private property and its social function, in the light of Carlos Marés' reflections and the community practice observed in the Kalunga community. It seeks to explore how the concept of property can be reinterpreted in a context of collective use, as in the case of the Kalunga, aligning with the principles of social justice and sustainability defended in the Brazilian Constitution. The analysis of Marés and Cunha's ideas, together with the study of the collective practice of the Kalunga, offers a critical perspective on the traditional conception of private property, demonstrating that property can be adapted to meet the collective well-being and preserve the environment and traditional cultures.

## **PRIVATE PROPERTY AS A SOCIAL CONSTRUCTION**

Property has always occupied a central place in society, appearing in different philosophical theories with connotations that acquired political importance in different historical moments. Social, economic, and political changes influenced the evolution of property rights, leading to the creation of new legal paradigms for its regulation (Pereira; Walnut; Dantas, 2019).

Private property stands out in modern political philosophy, especially in liberal thought. John Locke was one of the first thinkers to philosophically justify private property, arguing in his *Second Treatise on Civil Government* (1689) that the right to property derives from a natural right, based on the relationship between individual labor and natural resources. His theory became a landmark for classical liberalism and remains influential in contemporary debates about the legitimacy of private property.

For Locke, land and natural resources initially belong to everyone in a state of "community." This scenario changes when a person applies their work to a specific

resource, making it their private property. As Locke puts it: "the work of his body and the work of his hands, we can say, are properly his" (Locke, 2014, p. 134). Thus, work transforms the common good into individual property. However, Locke sets limits to this appropriation: the principle of necessity, according to which appropriation is legitimate only if the good is not wasted, and the principle of sufficient, which requires the individual to leave "sufficient and equally good to others" (Locke, 2014, p. 135). These limits show that, for Locke, private property is not an absolute right, but must be exercised responsibly in relation to the common resources and the needs of others.

Locke also relates private property to natural rights, such as life and liberty, arguing that property is essential for individual subsistence and prosperity. This conception underlies the Lockean view of property as a moral right, prior to the State. However, his theory generated criticism, notably from Karl Marx, who saw private property as a source of inequality and exploitation. For Marx, the private appropriation of the means of production inevitably leads to the alienation of the worker (Marx, 2011). In "Towards the Critique of Political Economy", Marx challenges Locke's idea that work justifies private property, arguing that this logic favors the concentration of wealth and social inequality (Marx, 2011, p. 145).

Private ownership of land, as it is known today, did not emerge naturally, but was historically imposed and consolidated by the State in a process that began in the transition from feudalism to capitalism, between the sixteenth and eighteenth centuries. With the rise of absolutist states and the process of Enclosures in England, common lands were fenced off and privatized, forcing peasants to migrate to the cities in search of work (Polanyi, 2001).

With the advent of capitalism, the State began to legitimize and regulate private property, consolidating it through laws that guaranteed the right to own, inherit and trade land. Marx (1867), in "Capital", describes this appropriation as "primitive accumulation", stating that the privatization of land allowed capitalist owners to control labor power, establishing a structure of inequality characteristic of modern capitalism. Although liberals such as Locke justified private property as an extension of natural law, the State became the main defender of these rights, protecting them against possible resistance from the popular classes (Brenner and Wright, 2006).

The consolidation of private property has also met with resistance, especially among peasants, indigenous people, and traditional communities. James C. Scott (2009), in "The

Art of Not Being Governed", observes that the imposition of private property was faced by populations that developed ways of life based on the common use of resources. The modern state has used private property as a means of social control, instrumentalizing land for the benefit of the capitalist economy.

Private land ownership is thus a historical construct backed by the state and, although defended as a natural right, it has been consolidated through legal and social processes that have mainly benefited economic elites. In contemporary times, this system is criticized for perpetuating inequalities and excluding vulnerable populations.

For many scholars, private property is a cultural construction that can be reviewed in collectivist contexts. Quilombola and indigenous communities in Brazil, for example, have different conceptions of land use and tenure, based on principles of collective use and community protection. Pierre Clastres (1989) and Manuela Carneiro da Cunha (2009) point out that these communities see land as an essential asset for cultural and environmental preservation, and not as an economic resource.

The Federal Constitution of 1988 and Decree No. 4,887/2003 recognize and protect the territorial rights of these communities, understanding land as a fundamental collective right for the maintenance of specific ways of life. This recognition reflects a vision of ownership that values collective well-being and sustainability.

Therefore, private property, although seen as an innate necessity in capitalist societies, is a historical and cultural construction that can be adapted according to social needs. Collective land tenure practices in traditional communities demonstrate that alternative systems are viable and sustainable. Protecting these practices is essential for cultural diversity and social justice.

## **BRUCE GILBERT'S THEORY AND THE POSSIBILITY OF COLLECTIVE LAND USE**

In a speech given at the Federal University of Paraíba in 2015, Bruce Gilbert argues that private property is not an absolute right, but rather a form of common property sustained by collective recognition. For Gilbert, property goes beyond "things that belong to someone" and represents a social right that depends on an agreement between the members of a community (Gilbert, 2015).

He states that private property exists only with the permission of the community, which guarantees the individual the right to exclude a certain asset. However, this exclusivity does not transform property into an absolute right, since its validity and

maintenance depend on the collective apparatus, such as the legal system and the police force. For Gilbert, private property is essentially an extension of collective law and would not exist without community recognition (Gilbert, 2015).

Gilbert also questions the idea of universal and unquestionable foundations for property, such as John Locke's state of nature. Without universal bases, he argues that the right to property must emerge from a social and democratic agreement, where each individual participates in the decision about the distribution of goods. Inspired by Hegel, Gilbert proposes a distributive justice based on "mutual recognition", considering that property should serve as a means of fair distribution of common goods and not as an untouchable prerogative of individuals (Gilbert, 2015).

Finally, Gilbert argues that the social function of property should be a principle applicable to all forms of property, and not just to agricultural land, as provided for in the Brazilian Constitution. He argues that property that does not fulfill a social function loses its legitimacy, because the notion of property is linked to collective benefit. Gilbert argues that democratic dialogue is essential to define the fair distribution of resources, ensuring that everyone participates in defining what constitutes property and its proper use (Gilbert, 2015).

This view contrasts with John Locke's theory, which sees private property as a natural consequence of individual labor. In the "Second Treatise on Civil Government", Locke argues that, by mixing his labor with the land, the individual acquires the legitimate right of appropriation, provided that he leaves "sufficient and equally good to others". For Locke, private property is a pre-social natural right, conferred by labor and limited only by the principle of non-waste (Locke, 2014).

While Locke sees property as the result of individual effort, Gilbert proposes a more collective view, where private property is a social construction dependent on the recognition of the community. For Gilbert, land and other resources should be understood as common goods, and the right to usufruct should respect the principle of "mutual recognition", where the right to use is guaranteed by the collectivity and not by absolute individual property (Gilbert, 2015; Locke, 2014).

Gilbert presents a perspective close to models of collective land use, such as those practiced by indigenous and quilombola communities in Brazil. The Kalunga community, in the state of Goiás, for example, organizes the use of land in order to guarantee the subsistence of all, respecting community norms and prioritizing collective well-being. This



model of organization reflects Gilbert's conception, in which private property is subordinated to the interests of the collectivity and mutual recognition (Gilbert, 2015).

This system is in line with the principle of the social function of property provided for in article 186 of the Brazilian Constitution, which requires that the land meet the criteria of productivity, environmental respect, observance of labor standards, and community well-being. In the Kalunga communities, this practice of land use demonstrates that a model of ownership based on collective usufruct is possible, promoting social justice and sustainable development (Brasil, 1988).

In addition, the social organization of the Kalungas and other traditional communities challenges the Western conception of absolute private property. For these communities, the territory is part of the collective identity and culture. The use of land goes beyond economic exploitation, involving care and environmental preservation, which protects the environment and ensures the survival of the next generations. This community model of management reflects Gilbert's proposal of a functional property for collective well-being and the preservation of natural resources (Gilbert, 2015).

In conclusion, the model of collective land usufruct practiced by Kalunga and other communities in Brazil demonstrates that it is possible to combine individual needs with an organization based on solidarity and sustainability. This model offers a valuable alternative to absolute private ownership, showing that collective land use can meet demands for social justice, inclusion, and environmental preservation.

## **THE KALUNGA COMMUNITY AND THE SOCIAL FUNCTION OF THE LAND**

The adoption of private property, originated in liberal thought with John Locke and driven by capitalism, consolidated land as a good whose individual possession must be safeguarded by the State. In modern societies, private ownership of land has become an absolute value, an institutionalized and irrevocable guarantee. In this scenario, the collective use of land remained invisible until the Federal Constitution of 1988, when Brazil recognized this right for quilombola communities, including the Kalunga Community, in northeastern Goiás.

The Kalungas represent an alternative to the capitalist and individualistic model of land use. With principles that reject the accumulation of wealth and the search for property titles, this community understands land as a common good, where each one extracts only what is necessary for their survival and where respect for shared use is essential (Dias,

2019, p. 52). In 1991, the Kalunga territory was qualified as a historical site and cultural heritage by the State of Goiás, with legal support in Law No. 11,409/1991 and Complementary Law No. 19/1996, guaranteeing the Kalungas collective possession of the area and establishing the inalienability of the lands, transferable only by inheritance.

The Kalunga territory, which covers about 253.2 thousand hectares distributed among the municipalities of Cavalcante, Monte Alegre and Teresina de Goiás, is organized into four main nuclei: Vão do Moleque, Vão das Almas, Ribeirão dos Bois and Engenho II, subdivided into 62 villages. Each village is inhabited by nuclear families who maintain the land according to tradition, without the need for fences or formal demarcations. Land tenure is defined by a logic of mutual use and respect, where each family knows and respects the space occupied by the other (Marinho, 2019).

The spatial organization of the community takes place in three spheres, as observed by sociologist Thaís Alves Marinho: the domestic sphere (house and garden), where nuclear families carry out their work and coexistence; the sphere of sharing (the villages), where solidarity and mutual help predominate between close relatives; and the public sphere (sacred spaces), where the community gathers in festivities and religious rituals (Marinho, 2019, p. 180). Thus, the Kalunga territory, although collective, is structured to preserve individual and family spaces, according to a system that reflects respect and cooperation.

The Kalunga collective system also expresses the social function of land, a concept that recognizes land as an essential good for humanity and for the exercise of cultures, values and community sustenance. This model promotes an alternative that goes beyond the rigidity of private property: land is an asset that everyone uses according to their needs, ensuring that all members of the community have the right to work and subsistence in the territory.

Despite its current collective character, the Kalunga territory has been pressured by the private property system, especially in the process of land regularization. Before the 1988 Constitution, the state of Goiás granted individual titles to some Kalunga families, such a measure that aimed to protect the quilombola territory --- which had been suffering a broad process of invasion---, ended up introducing the exclusionary logic of private property and generated internal conflicts in the community, this individual titling, carried out in the 90s, happened because at the time, there was no normative provision for collective land titling, which was only inserted into national legislation with the Magna Carta of 1988. With



the competence of regularization transferred to the Union, new individual titles were suspended, but the problem of titles already issued remains, revealing the clash between the collective model of the Kalungas and the individualistic system of the State.

The existence of the Kalunga territory and its mode of use challenge the notion of private property as an absolute right, showing that land can be collective and fulfill its social function effectively. For the Kalungas, the land is sacred and provides what is necessary for community life, without the need for formal delimitations or possession documents. This reality reinforces Bruce Gilbert's (2015) view, according to which private property is an "illusion" that hides our responsibility for participation and justice in communities, where everyone should have the right to access the goods essential to life.

The Kalunga community demonstrates that the ownership model can be based on dialogue and mutual agreement, with an intrinsic respect for the space of the other. This way of life developed due to the isolation of the Kalungas from the rest of society and the escape from slavery, making it possible to preserve a structure of land use that challenges the individualistic and exclusionary bases of the modern state.

## **CONCLUSION**

The Kalunga community illustrates an alternative form of land use that contrasts with the classical conception of private property, by demonstrating that collective ownership and use can effectively promote social justice and sustainability. This model challenges the understanding of private property as an absolute and individualistic right, defending, on the contrary, land as a common good, essential for life and collective identity. The Kalunga practice reflects the principle of the social function of the land, as provided for in the Brazilian Constitution, meeting community needs without compromising the environment or the dignity of those who inhabit it.

Bruce Gilbert's theory, which proposes property as a right based on "mutual recognition" and social responsibility, finds an echo in the collective practice of the Kalungas. Gilbert argues that private property is, in essence, a social construct that depends on the consent of the collective and democratic dialogue, and is therefore flexible and adaptable to collective needs. This understanding opens space for more inclusive and sustainable modes of ownership, where the right to property can be exercised in a way that benefits not only the individual, but the entire community. Gilbert's view suggests that property, rather than being a rigid and exclusionary imposition, can and should be shaped

to reflect social commitment, promoting equity in access to resources and respect for traditional ways of life.

The future of property rights and the social function of land will increasingly depend on the ability to harmonize development demands with the imperative of sustainability and the valorization of community and cultural practices. As pressures for natural resources increase, property rights need to be made more flexible to include approaches that respect the rights and knowledge of traditional communities, such as quilombolas and indigenous people, who see land not only as an economic resource, but as a pillar of their identity and culture.

In the face of growing demands for sustainability, social inclusion and respect for cultural diversity, the social function of land becomes essential to reassess the role of property rights. Models such as the Kalungas and Gilbert's theory encourage the creation of an agrarian right that not only recognizes, but also protects the forms of collective and sustainable organization of the land, contributing to the preservation of the environment and the strengthening of social cohesion. This flexibility of property rights offers a vision of the future where land use is governed by social justice and ecological balance, enabling a coexistence that values both individual needs and collective well-being.

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