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SOCIAL FUNCTION OF POSSESSION: BREAKDOWN OR EXTENSION OF CAPITALIST USE OF LAND?

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ABSTRACT

The defense of the social function of land tenure, widely acclaimed by the progressive camp, is a fundamental issue for Latin American social movements, especially those representing indigenous populations, Afro-descendants, and the peasantry. Given the region's strong history of land concentration, the agrarian issue has emerged as a central challenge for overcoming social inequalities and building a more just future. Although the social function of land tenure is also crucial in urban areas, which are marked by significant rates of slum formation, this article will focus on the dimension of agrarian territory, given its historical and social relevance for Latin America. Land concentration, land conflicts, and precarious living conditions in rural areas highlight the urgent need for public policies that promote agrarian reform and guarantee the territorial rights of traditional communities. We do not intend to ignore the equally important social function of ownership in urban spaces, given the severe degree of slumming that affects the largest cities in Latin America, but we do emphasize the priority focus on the issue of ownership in agrarian environments.

Keywords: Social Function. Ownership. Latin Americans.

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INTRODUCTION

The social function of ownership, although present in various legal systems, reveals different nuances and interpretations over time and in different contexts. In Latin America, the persistence of unproductivity, underexploitation and land speculation contrasts with the transformation that occurred in England during the Industrial Revolution, where the need to optimize resources to meet industrial demand shaped a new relationship with property.

Capitalism, by conceiving land as a means of production essential for the accumulation of capital, put pressure on traditional models of ownership, such as the aristocratic one. This perspective, which finds an echo in Marxist theories, emphasizes the importance of the social use of land and its incompatibility with waste or speculation.

However, the incorporation of the social function of ownership into positive law raises important questions: to what extent do the theories that underpin this concept serve to reinforce capitalist logic, adapting it to new social demands, or do they offer a path to building fairer and more equitable relationships with land?

The historical evolution of the concept in Brazil demonstrates this complexity. While the 1916 Civil Code did not explicitly consider the social function of possession, the 2002 Code incorporated it, recognizing the value of the possessor's work and the need to fulfill a social purpose. This change reflects the influence of a context marked by social inequalities and the search for greater distributive justice.

Therefore, this article aims to analyze the theories of the social function of possession, highlighting the contributions of Raymond Saleilles, Hernandez Gil, and Silvio Perozzi, to understand to what extent these theories respond to the challenges of the land issue in Latin America.

THEORIES OF THE SOCIAL FUNCTION OF POSSESSION: THE “SOCIAL” AS A REAFFIRMATION OF LIBERAL IDEOLOGY

All Constitutions since 1934 have aimed to provide for the fulfillment of the social function of property, but the most precise determination came with the Land Statute, sanctioned on November 30, 1964, which encompasses the requirements that lead to the fulfillment of the social function of property.

Regarding the subject of possession, the Civil Code of 2002 brought the social function and labor as elements in favor of the possessor:

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Art. 1,228. The owner has the right to use, enjoy, and dispose of the thing, and the right to recover it from the power of whoever unjustly possesses or holds it.

[...]

§ 4. The owner may also be deprived of the property if the property claimed consists of a large area, in uninterrupted and good faith possession for more than five years, of a considerable number of people, and these people have carried out, jointly or separately, works and services considered by the judge to be of relevant social and economic interest.

§ 5. In the case of the preceding paragraph, the judge shall determine the fair compensation due to the owner; once the price has been paid, the judgment shall be valid as a title for the registration of the property in the name of the possessors.

Art. 1,238. Anyone who, for fifteen years, without interruption or opposition, has possessed a property as his own, acquires ownership thereof, regardless of title and good faith; and may request the judge to so declare by judgment, which shall serve as a title for registration in the Real Estate Registry Office.

Sole paragraph. The term established in this article shall be reduced to ten years if the possessor has established his habitual residence in the property, or carried out works or services of a productive nature therein.

Art. 1,239. Anyone who, not being the owner of a rural or urban property, has owned, for five uninterrupted years, without opposition, an area of land in a rural area not exceeding fifty hectares, making it productive through his or her work or that of his or her family, and having his or her home there, shall acquire ownership thereof.

Art. 1,240. Anyone who has owned, for five uninterrupted years, an urban area of up to two hundred and fifty square meters, without opposition, using it for his or her home or that of his or her family, shall acquire ownership thereof, provided that he or she is not the owner of another urban or rural property.

§ 1. The title of ownership and the concession of use shall be granted to a man a woman, or both, regardless of marital status.

§ 2. The right provided for in the preceding paragraph shall not be recognized by the same possessor more than once.

Art. 1,242. Ownership of the property shall also be acquired by anyone who has owned it continuously and uncontestedly, with just title and in good faith, for ten years.

Sole paragraph. The term provided for in this article shall be five years if the property has been acquired, for consideration, based on the registration in the respective

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registry office, which was subsequently canceled, provided that the possessors have established their residence there or made investments of social and economic interest.

It is interesting to note that, as Ihering said in the aforementioned quotations, possession is the economic basis of the property right. Property. However, it gains almost legitimacy when exercised with productive work. The Civil Code brought with it, by reducing the terms of acquisitive prescription, the social function of possession as a paradigm. Work, the social and economic purpose of the thing, as well as the simple occupation of housing, are factors that qualify possession for usucaption, which is good news about the Civil Code of 1916.

Section IV

Usucaption

Art. 550. Whoever, for 30 (thirty) years, without interruption or opposition, possesses a property as his own, will acquire ownership thereof, regardless of title and good faith, which, in such a case, are presumed; and may request the judge to so declare by sentence, which will serve as a title for registration in the real estate registry. Art. 551. Ownership of the property shall also be acquired by the person who, for 10 (ten) years between those present, or 20 (twenty) years between those absent, has possessed it as his own, continuously and uncontested, with just title and in good faith.

Sole paragraph. Residents of the same municipality shall be deemed present, and those who live in different municipalities shall be deemed absent.

Art. 552. To count the time required by the preceding articles, the possessor may add to his possession that of his predecessor, provided that both are continuous and peaceful.

Art. 553. The causes that prevent, suspend, or interrupt the statute of limitations also apply to usucaption (art. 619, sole paragraph), just as the provisions regarding the debtor extend to the possessor.

Legal dogma has observed this new perspective of the theoretical-legal aspects of possession with the wording of the aforementioned normative statements, mainly regarding its effects ad usucapionem, as Venosa (2014, p. 216) highlights:

Usucapion must henceforth be viewed from a more dynamic perspective, which will necessarily add some of the basic principles that we took as dogma in the 1916 system. This Code assumes a new perspective on property, that is, its social meaning. Since usucapion is the most effective original instrument for assigning housing or streamlining the

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use of land, there is a new focus on the institute. In addition to this, there is the guidance of the 1988 Constitution, which highlights the institute and includes simpler modalities of the institute.

That being said, dogmatics and studies on possession pointed to a duality between the theoretical options presented by Ihering and Savigny, which have as a point of contact the centrality of studies based solely on the thing and the individual. The 2002 Civil Code, by maintaining Ihering's concept of possession as a de facto relationship over the thing, innovated by introducing the social function of possession in usucaption. This perspective values the effective destination of the asset, work, and housing, aligning the right to property with social interests, that is, it chose to maintain Ihering's concept for the figure of the possessor, but adopted in usucaption of the figure of the social function of possession, due to the effective destination of the asset that is the object of possession:

[...] it is worth noting that the 2002 Civil Code missed the opportunity to expressly introduce a more advanced theory regarding possession, one that considers its social function, a thesis that has as its exponents Raymond Saleilles, Silvio Perozzi, and Antonio Hernandez Gil. De lege ferenda, the adoption of the social function of possession is expressly provided for in Bill 699/2011, by which art. 1,196 would have the following wording: “Art. 1,196. Anyone who has the de facto power of socioeconomic interference, absolute or relative, direct or indirect, over a certain asset of life, which is manifested through the exercise or possibility of exercise inherent to property or another real right susceptible to possession, is considered a possessor”. (TARTUCE, 2018, p. 992)

In terms of normative statement, it should be noted that usucaption pro misero, provided for in the 2002 Civil Code in its article 1,239 and article 191 of the Constitution of the Republic, was already provided for in the 1934 Constitution, with the only difference being that the usucaptionable area was a maximum of ten hectares, according to the wording of article 125 of that repealed constitutional text.

It should be noted that while the social function of possession and social theories of possession is a relatively new reality in Civil Law, arising with the Civil Code of 2022, Agrarian Law already had the social function of possession as one of its founding principles, and national agrarian doctrine had long assimilated the social conceptions of possession. In the aforementioned work by Paulo Torminn Borges (1995, p. 139), the new perspective of possession is presented with criticism of the unlimited content of property rights:

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Agrarian law, which changed the civil perspective from which domain and possession were defined, changed the importance of these two institutes, above all else, over the use of land.

Land exists to be used, to obtain sustenance from it, primarily for man, and for other animals, in a secondary position.

Fertile land is no longer allowed to remain unproductive. This would be a crime against humanity.

In the past, the right to use, which was contained in the property right, was a simple verbal expression. Because not using was one of the ways of disposing of the thing. Just as much as using.

Whoever owned it could use it. And could not use it. He would always be acting as an owner.

This is also the case today, but non-use typifies the misuse of property. Worse, only predatory use.

In the Brazilian Civil Code, the only loss through non-use is the real right of servitude (CC, art. 710, III).

Dominion, which is perpetual, is not lost.

In agrarian law, dominion is also not lost through non-use.

However, the non-use of rural property subjects it to progressive Rural Land Tax, subjects it, in the event of expropriation for social interest, in areas declared priority for Agrarian Reform, to payment of the price of bare land in public debt bonds, if it is a large estate, and, according to constitutional precept, prevents the owner from receiving incentives and aid from the Government[2].

The agrarian doctrine realized that the theoretical meaning of agrarian possession requires its social function, even though the legislative technique in the drafting of the Land Statute, Federal Law 4,947 of April 6, 1966 (which establishes Agrarian Law Norms and provides for the Organization and Operation System of the Brazilian Institute of Agrarian Reform) and Presidential Decree 59,566 of November 14, 1966, which regulates provisions of the Land Statute and Federal Law 4,947/1966. Thus, just as the Consolidation of Labor Laws (CLT) stipulates mandatory clauses in employment contracts in favor of employees, the Land Statute was based on the prerogative of the vulnerability of the possessor (lessee and partner-grantor) about the landowner. The Land Statute is for the possessor who exploits the property, as the CLT is for the worker in an employment contract.

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The presumption of the vulnerability of the non-owner possessor in typical agrarian contracts is verified when the Land Statute determines a series of prohibitions on the lessee and the partner-grantor in its article 93 and also establishes in §7 of article 92 that "any simulation or fraud by the owner in lease or partnership contracts, in which the price is paid in agricultural products, will give the lessee or partner the right to pay the minimum rates in force in the region for each type of contract".

The Land Statute, to ensure the continuity of the economic exploitation of the land, guarantees the lessee or partner-grantor the right of preference in the acquisition of the property, in §3 of article 92. It also establishes, in item XII of article 95, the maximum amounts that the owner can charge as a lease, as well as in item VI of article 96 the maximum share of the landowner in the agricultural partnership. Also, given the peculiarity of agrarian explorations, the minimum terms of the contract, being three years for the agricultural partnership, according to item I of article 96 and article 37 of Decree 59.566 of 1966; as well as minimum terms for the lease, according to item "a" of item II of article 13 of the aforementioned decree. The presumption of vulnerability is also due to an express limitation of the contractual autonomy of the parties, since Federal Law 4,497/1966 establishes the following general principles of Agrarian Law, in clear state intervention in favor of those who possess, but are not the owner:

Art. 13 - Agrarian contracts are regulated by the general principles that govern common law contracts, about the agreement of will and the object, observing the following precepts of Agrarian Law:

I - articles 92, 93, and 94 of Law No. 4,504, of November 30, 1964, regarding the use or temporary possession of land;

II - articles 95 and 96 of the same Law, regarding rural leasing and agricultural, livestock, agro-industrial, and extractive partnerships;

III - mandatory irrevocable clauses, established by IBRA, that aim at the conservation of natural resources; IV - prohibition of waiver, by the lessee or non-owner partner, of rights or advantages established in laws or regulations;

V - social and economic protection for direct and personal cultivator lessees.

§ 1º - The provisions of this article shall apply to all contracts about Agrarian Law and shall inform the regulation of Chapter IV of Title III of Law No. 4,504, of November 30, 1964.

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§ 2º - Official technical and credit assistance agencies shall give priority to agrarian contracts that comply with the provisions of this article.

Since the special agrarian usucaption, also known as pro misery, to the Land Statute, Federal Law 4,947/1966, and Decree 59,566 of 1966, the construction of legal norms originally aimed at honoring possession through work, the fulfillment of the social function, has been observed. The Land Statute gives prestige to possession over property, and the new rules that emerged with the Civil Code of 2002 support this understanding. Therefore, Lima (1992, p. 89, 90) states:

When considering agrarian possession from this perspective, from the understanding of the social purpose, of fulfilling the natural destination of things, aiming to meet the social and economic needs of its owner and humanity, one conclusion is immediately drawn: since land is not essentially a valuable asset in itself, but because of the extraordinary purpose it has of producing other assets for the comfort of humanity, the title of ownership over it merely legalizes the formal polarization of the active subject of this legal relationship.

The legitimacy of its figure, however, is tied to the fulfillment of the social function of property, which, is the fulfillment of the social function of land. Failure to do so will subject the owner to various sanctions, on a progressive scale, culminating in the characterization of the property subject to the right of ownership as a large estate, which puts it in the line of fire for expropriation in the interest of society, for agrarian reform, with ownership being transferred to someone else who is more aware of the true social purpose of the property. This is not to mention agrarian usucaption.

The conclusion is irrefutable: agrarian possession is what legitimizes agrarian property.

Yes, because, unlike what happens in Civil Law, the title of ownership, in Agrarian Law, does not safeguard its holder.

Possession, especially in the context of Agrarian Law, transcends the mere holding of a property. It becomes a paradigm, fundamental for the fulfillment of the social function of property. Possession-labor, which links the occupation of property to its economic exploitation, emerged as a response to the crises of liberal capitalism in the 19th century.

The neglect of the Liberal State, by privileging individual freedom and private property to the detriment of social needs, has generated profound inequalities and land concentrations. From this context, the idea of the social function of property gains strength,

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requiring that possession be exercised in a way that meets the interests of the community. Unlike the classical theories of Ihering and Savigny, which center on the analysis of possession of property, possession-labor places latent the importance of human labor in the valorization of land and in guaranteeing its social destination.

Raymond Saleilles' theoretical perspective considers possession as the element of physical apprehension, the corpus, but conditioned on the effective economic appropriation, that is, by the appearance of the use and enjoyment of the thing. Thus, Saleilles distinguishes his theory from the conceptions of Savigny and Ihering in the following way:

Done, je puis définir la possession : LA RÉALISATION CONSCIENTE ET VOULUE DE L'APPROPRIATION ÉCONOMIQUE DES CHOSES. It will be constituted by the fact that the holder appears at a time when it is economical with the maitre de la chose, and the aura lieu de prendre en consideration le titre d'entrée en possession en tant seulement que ce titre will be in contradiction with the appearances that reveal the fact of the detection, et tant qu'il donnerait à la possession du détenteur un caractère de dépendance économique exclusif de toute idée de possession juridique.

So that there are no ones who can do it next to be able to sort out a classification between three possessor theories that exist in celles-ci:

1st Celle d'Ihering qui fonde la possession sur le RAPPORT D'EXPLOITATION ÉCONOMIQUE : ici tout détenteur est possesseur, sauf exception expresse de la loi;

2º A l'extrême opposé, la théorie de Savigny, devenue la théorie dominant, qui fonde la possession sur le RAPPORT D'APPROPRIATION JURIDIQUE, et pour qui il n'y a de possesseurs que ceux qui prétendent à la proprieté ;

And finally 3rd on the first place between these two théories, et comme formant un degré intermédiaire, la théorie que je viens d'exposer et qui fonde la possession sur le RAPPORT D'APPROPRIATION ÉCONOMIQUE, et qui déclare possesseur quiconque au point de vue des faits apparaît comme ayant une jouissance indépedente, et comme It's important, of all ceux between which there is a rapport of fact with the chosen one, which is considered to be the right title with the maître de fait of the chosen one.

The recognition of the autonomy of possession highlights the importance of the actual or potential use of the thing. The destination given to the asset must meet the desires of a social group that expects it to become its owner. The appearance of regular exercise of use and enjoyment of the thing is the fact that guarantees possession, since at

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first glance, nothing distinguishes the owner, the usufructuary, or the usurper when he finds himself with the thing, for those who are unaware of the legal relations that lie behind it (SALEILLES, 1894, p. 81). Therefore, the existence of possession does not reveal the requirement of an effective right over the thing, as explained by Oliveira (2006, p. 90):

The basis of the autonomy of possession and property can be found in the conception of Saleilles's theory of possession, which identified the economic element of possession.

The factual nature of possession contrasts with the idea of individual appropriation of goods inherent to property. Taken as a fact, possession preserves the use value. For the property right, the exchange value regulated by the market is relevant.

Saleilles's theory is considered social or sociological because it starts from possession as a fact, through the externalization of enjoyment, which is independent of a right that assists. Or as Moreira Alves (1997, p. 237) explains, “the criterion for distinguishing possession from detention is the observation of social facts; there is possession where there is a sufficient factual relationship to establish the economic independence of the possessor”. The primacy of economic appropriation is the fact, but based on the autonomy of the individual, as it considers ownership based on the singularity of the subject who exercises it:

La possession c’est donc le domaine de l’appropriation individuelle au sens le plus large du mot, en dehors des cadres étroits du dominium; elle a été protégée pour la défense des intérêts économiques de tous ceux qui jouissent d’une appropriation jugée suffisante, sans qu’il y ait eu la moindre référence au dominium, quelquefois même em vue d’obtenir une plus large extension de la proprieté ou encore pour en atténeur lariguer; It is the revenge of the fact against the law, or, if it is not, the terrain of the outbreak of new individual rights in the direction of formation, in the encounter with the absolute, inflexible and inextensible right of old Roman property. (SALEILLES, 1894, p. 213)

In this way, the prism of possession as a general theory, applied to land spaces, focuses on the prism of the individual, and whether his power with the thing externalizes the economic enjoyment that the possessor is expected to make.

There is a theoretical approximation with the writings of Hernandez Gil, mainly regarding his conception of social function as a structuring element of Law:

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As a presupposition, the social is data represented by relations of interaction or interdependence. Every relationship of this class is social in the basic sense of referring to a human plurality. The social factor constitutes the constant infrastructure of every legal order, as it rightly cannot be thought of as based on relationships of interdependence. The right does not empathize with the State that imposes norms that need to adjust these relationships, it puts the relationship of interdependence that incorporates at least incipient normativity. This normativity (incipient in contrast to full state normativity) is constituted by the consciousness of one's conduct, which is not the mere knowledge that acts, but the transcendent knowledge of its irradiation. Envuelve because he is willing to accept the acceptance of others. It also implies that the aspiration has some conformity. Conduct, sociologically, is not reduced to pure action. This is movement, happening, which becomes conduct insofar as it is susceptible to measurement. Conduct is part of a set of interactions capable of translating some mode of coexistence. (GIL; 1969, p. 72, 73).

Thus, possession becomes a social function, since legitimacy is given by the social group that understands that seizure to be legitimate. Possession is guaranteed and assured by this social interaction, which in a given social, economic, and historical context understands the fact that a person has a given thing as legitimate. Thus, Gil (1969, p. 83, 84) ensures complete autonomy of possession of the law:

Possession is presented as autonomous as long as it is not considered dependent on a right that can be attributed to it, such as ownership, usufruct, transfer, etc. Autonomy does not consist in knowing that dependency does not exist, but in not having to ask the question to be protected by possessory protection. Therefore, the possession is likely to produce legal effects outside of any expressive title of a right that confers it. To estimate that this legal effectiveness rests on the probability that the title exists is, in my opinion, to diminish the scope of the possession.

The concept of “social” in theories of the social function of property, often associated with a community and common good perspective, proves, in practice, to be quite liberal. When analyzing the case law and doctrine, it can be observed that the social function, to a large extent, is limited to guaranteeing the economic exploitation of property, without necessarily promoting the equitable distribution of the benefits of this exploitation. Initially, the idea of the social function of property, driven by social movements such as agrarian reform, evoked a more collectivist conception, in which land would be used for the common good. However, the predominant interpretation, both in doctrine and jurisprudence, adopted

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a more individualistic view, linking the social function of property to private investment and production.

The Federal Constitution I, although it establishes criteria for the social function of property, such as the appropriate use of natural resources and compliance with environmental requirements, prioritizes productivity and economic exploitation. Article 185, section II, which protects productive property from expropriation for agrarian reform purposes, is a clear example of this trend.

In short, the social function of property, as conceived in most interpretations, is not aimed at the socialization of the means of production, but rather at ensuring their economic use. The promise that economic activity, in itself, would generate social benefits, underpins the liberal conception of social function. However, this perspective ignores social inequalities and the concentration of wealth, which are inherent to the capitalist system.

SILVIO PEROZZI'S CONCEPT OF POSSESSION AND DECOLONIAL PERSPECTIVES FOR UNDERSTANDING LAND SPACES.

In contrast to the theoretical perspectives associated with production and social function, Silvio Perozzi (1906, p. 529, 530) conceptualizes possession not as a right, but as a social phenomenon called custom[3], which, in the escalation of organization in social groups by humanity, reached a point where people began to abstain from arbitrarily intervening in things that are not free, where it is visibly perceived that someone intends to have rights over it, presenting a perspective of the erga omnes content of possession: where there is a negative side, where the collective abstains from the thing, and a positive side where a person has full action over it.

Possession was a reality before capitalism, and therefore also well before the idea of the State, which developed as we understand it from Modernity. Unlike the other so-called social or sociological theories of Saleilles and Hernandez Gil, Perozzi rejects the nature of ownership rights, and even the participation of the State:

The possession is not a relationship to rights (for which it is said that it constitutes a disposition “de facto”); The State's volontà does not enter infatti per nulla in its constitution. It is unfair to have an ethical-social rapport, as long as there is a custom based on it, apart from social morality.

This is a “real” potere, perchè è potestà sulla thing, but in the sense già veduto parlando I diritti reali. Veramente anche il possesso à rapporto tra uomini; The possessor is

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available in the sense that he does not intervene in anything other than his consensus, where he remains free for the day to return to this. Your libertà d'azione is a "social" libertà d'azione.

Perozzi (1906, p. 533) reaffirms that taking office is an act of liberality, without State intervention, which is why Perozzi states (ob. cit., p. 538, 539):

Giuridically può non possedere chi socially possiede, and vice versa. This question, however, does not mean that it is difficult to prove, it is not a disturbing element of the idea of possession. The disturbance occurs for another reason. Il connetere azioni, advantage, responsabilità al mero facto del possesso nei casi dove, secondo gli accennati criteria, il diritto lo riconosce presente, impoterebbe spesso um sovvertimento dell'ordine giuridico. Il diritto no può porre la streza a servigio di uno frenato individualismo. This must always aim at the scope of social order. Di qui un serie di provvedimenti legislativi per i qual ile azioni, i advantage, possesso, som attribute in realtà invece a chi non possiede, o distribute tra chi possiede e chi non possiede, o negate al possessore senza che siano date ad altri. Molti dessumono da ciò che il possesso es un rigito. The affermazione is not erroneous for another question regarding the situation giuridica fatta al possessore, but denies a certi possessori e accordata a certi non possessori, not è a situazione giuridica unititária. Il possesso one fact remains.

Perozzi (1906, p. 535) that physical control does not necessarily characterize possession, except for the visible conditions that demonstrate someone's control over the thing. In this, the theorist draws attention to the fact that possession can be determined based on cultural criteria:

Simili sleep conditions ad es. The aspect of culture presents a background, i.e. custody, the light, sees things happen, etc. This variano infinitely eoll' indole delle cose, col diverse pregio loro. colle abitudini e le usanze sociali, colle varie occasioni d'uso delle cose, e persino coi momenti di tempo. Ad es., the fence with a fanciullo gioca is apparently not libero anche se giace a terra in a public garden in which I see itself and the fanciullo is long: it is not a più tale if it is found in this condition, trascorsa l'ora del gioco.

Although Perozzi calls possession a fact and, for now, considers a fact as if it were a custom, here he presents an important contribution to the study of possession. The variation in ownership depends on culture, location, and subjects. In a very similar way, despite diverging from the terminology "fact", Thompson (1998, p. 90) also presents this variability when addressing agrarian custom:

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The agrarian custom was never fact. It was ambiance. It is perhaps best understood with the help of Bourdieu's concept of habitus — a lived environment that includes practices, inherited expectations, and rules that not only impose limits on uses but also reveal possibilities, norms, and sanctions both from the law and from neighborhood pressures. The profile of common law uses would change from parish to parish according to numerous variables: the economy of harvesting and livestock, the extent of common land and uncultivated land, demographic pressures, employment in the region, the vigilant presence or absence of landowners, the role of the Church, the strict or lax functioning of the courts, the contiguity of forest, marshes or hunting grounds, the balance of large and small landowners. In the context of this habitus, all groups sought to maximize their advantages.

Thus, Perozzi presents his theory on possession as not a question of State Law, but rather as before it, allowing us to recognize the normative nature of relations outside the State environment. If possession is natural to the human condition, there are instruments of social order that are not related to the norms codified by State Law. This recognizes the autonomy of collective subjects who resisted colonization. And this is reflected in Thompson's words, when analyzing the variability of the element of possession in English customs, in the period before and after the hegemony of the capitalist mode of organization in England.

Possession precedes this, because it is in fact, in the sense of recognizing the existence of the seizure of the thing, which is independent of any right. Perozzi's understanding of possession as a sociological phenomenon of an ethical-social nature is necessary to understand the diverse realities of collective and individual subjects, integrated or not, in the socioeconomic dynamics of capitalism.

The English experience before the Industrial Revolution demonstrated that ownership was collective, for the use of communal lands by groups that organized themselves and standardized themselves through the permanence of customs of collective use. Thompson (1998, p. 144, 145) states that the experience of recognizing rights over communal lands implied practices that recognized the rights as collective, rather than individual, especially of the poorest, who found their subsistence and freedom there.

The property right comes after possession and possession of hostage. Enclosures on common lands attacked the collective exercise of possession, and possessory theories

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then began to dress it up with the appearance and purposes of property. And this occurred with the development of English capitalism. Thompson (1998, p. 149) states that:

Seen from their perspective, communal forms expressed an alternative notion of possession, through trivial and private rights and uses that were transmitted by custom as the property of the poor. Common law, which in vague terms was a neighbor of the residence, was local law. Therefore, it was also a power to exclude strangers. By taking communal lands from the poor, enclosures transformed them into strangers on their land.

Possession is a phenomenon that predates the law, shapes customs, and organizes social relations, often challenging state impositions. Traditional communities such as indigenous peoples and quilombolas exemplify forms of social organization based on relations of possession that diverge from the capitalist model. Law, with its liberal roots, juridicized possession, transforming it into a legal institute. This juridicization, by conditioning possession to state and commercial legality, contributes to the exclusion of various social groups, especially those who occupy land spaces informally. The Land Law, by institutionalizing this legal vision of possession, consolidates a historical process of social and territorial exclusion. It was this concept, adopted since the Land Law, that has aided and facilitated social exclusion from landholdings:

The so-called Land Law of 1850 in Brazil is a good example of the use of modernizing and reformist legislation to expropriate peasants and indigenous people. In several regions of long-standing occupation, under traditional forms of land use, the imperial government of Rio de Janeiro demands the presentation of titles and establishes purchase as the only legal form of access to land. However, for immense illiterate contingents of the population, most of the time seriously attached to traditional forms of cooperation in agricultural work, the legislation issued by Rio de Janeiro makes no sense whatsoever. How imperial orders are viewed, for example, in the backlands of the São Francisco River is extremely significant: the local priest responds to a letter from the Ministry of the Empire stating “I find out know any landowner De Voluta since all lands are occupied in common here". We thus understand the perplexity of the local populations in the face of the requirement to clearly define the unoccupied areas of the region. For them, like many others, the notion of occupied land is much broader than that of land with a property title. (LINHARES; SILVA, 1999, p. 61, 62)

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Perozzi's above-transcribed statement that the manifestation of the State's will does not participate in any way in the composition of possession takes on a serious factual contour: when the State begins to determine the concept of possession, its action serves to exclude the real possessors, the subjects who have control and seizure of the thing, in favor of the subjects that the State aims to protect. This was the case in England, with the transition from the customary law of communal use in favor of future economic rights of exploitation, and it was the case in Brazil, especially after the enactment of the Land Law.

It is admitted that these were completely different processes, but the link Between them is the hegemony of capital transforming land into a production asset, at the expense of all the cultural, historical, religious, and social burdens that social groups had over their domains: be they peasants, indigenous people, quilombolas or traditional populations.

For these reasons, the concept of possession is excessively associated with the perspectives of economic exploitation. Whether in the liberal conception of Ihering or Savign or in the “social” content that meets the dictates of liberalism presented by Salleiles and Hernandez Gil. Perozzi’s conception of a possessory theory that recognizes possession beyond State Law allows for an objective expansion of the legal situation of various subjects that are parallel to or beyond the boundaries of capitalist relations of production. A varied range of collective subjects whose possession is a fact that the Law, when it denies it, does so in favor of those who never actually possessed it. There is recognition of State Law regarding this category of possession, based on the concept of territory, as explained by Tárrega and Oliveira (2017, p. 224):

The right to territory, protected by ILO Convention 169, transcends the idea of “land” as private property, that is, it breaks with the legal tradition of appropriable and tradable real estate, pointing to the understanding that the territory occupied by traditional communities constitutes a special space for cultural promotion and identity value to be guaranteed and protected by the States. However, in Brazil, the aforementioned document was only incorporated into the national legal system in 2002, through Legislative Decree No. 143 and, later, enacted by Decree 5051/2004 by the then president, Luiz Inácio Lula da Silva.

The legal content of agrarian possession is sociality, as we have seen. Now, from a decolonial perspective, it is necessary to recognize a legal status for other forms of possession of agrarian space, by subjects who develop collectively in an autonomous

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manner and sideways to the market economy. The right that is mentioned is that of territory, which must be recognized as distinct from possession.

Whether they are entirely legal concepts or concepts of the social function of possession as presented, they are all from the perspective of individuality. Sociological theory presents a turning point that is the recognition of possession as a custom, as a fact, independent of the Law. And the custom is tempered according to each region, community, social group, etc.

CONCLUSION

The territory enunciates in its conceptual conception a metapatrimonial nature, not serving the sources of Property Law, Civil Law, and even Agrarian Law classically conceived from the social function of possession. The conceptualization of possession on the bases established by Civil Law and Agrarian Law was exclusive. There is a conceptual expansion to include situations that are not new but have been historically neglected by State Law, which adopted formulas and concepts imported from Europe, ignoring the centuries-old struggles and resistance of various peoples who resisted, formed, and conceived themselves in Latin America, alongside the capitalist economy.

Agrarian Law must recognize possession as a fundamental element in the organization of the land system, but not the only one. Nor should it be considered that land should only be used for financialized exploitation according to the dictates of the city and the market. In other words, possession and property are just two types of forms of legally organizing land spaces. Today, we recognize the diversity of collective subjects who claim the territory as a central element of their social organizations. It is necessary to strengthen the regulatory framework to guarantee the autonomy and rights of these groups, such as Indigenous peoples, quilombolas, and traditional communities, who have legitimately and historically occupied these spaces.

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