COMMODITY, PROPERTY, OR RIGHT: WHAT IS THE LEGAL NATURE OF LAND IN BRAZIL?

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ABSTRACT

Objective: To point out the nature of land in Brazil from the duration of the Law of the Land of 1850, passing through the Statute of the Land of 1964, to the Federal Constitution of 1988. The issue is represented by the following question: What is the legal nature of land in Brazil?

Theoretical framework: This research is based on the historical approach of Smith (1990) and Martins (2015) aiming to understand the social transformation of the land. In the scope of the legal understanding, this research is supported by the perspective of Souza Filho (2021), who sees the land as the right to life, combined with the view of Hespanha (2009), who perceives the law as a result of interpretation.

Method: This research is based on the analysis of content (Bardin, 2011) and, complementarily, the bibliographical research of authors who have dedicated themselves to studying the historical period covered by the analyzed legislation.

Results and conclusion: Depending on the historical context and the legislative intent, land in Brazil have three different natures. The Law of the Land of 1850 saw the land as a commodity, whereas the Constitution of 1988 understood it as the nature of property and rights.

Research implications: This study implies legal and social reflections regarding the process of the land grant to vulnerable groups.

Originality/value: This research contributes to the understanding of the legal nature of land to those who might claim the subjective rights inherent to it, in addition to the social planning, distribution, and management of the lands in Brazil.

Keywords: Law of the Land, Statute of the Land, Federal Constitution, Rights.

MERCADORIA, PROPRIEDADE OU DIREITO: QUAL A NATUREZA JURÍDICA DA TERRA NO BRASIL?

RESUMO

Objetivo: Apontar as naturezas que a terra assumiu no Brasil durante a Lei de Terras de 1850, passando pelo Estatuto da Terra de 1964, até a Constituição Federal de 1988. A problemática se apresenta na forma da pergunta: qual a natureza jurídica da terra no Brasil?

Referencial teórico: A pesquisa se utilizou da abordagem histórica de Smith (1990) e de Martins (2015) para entender a transformação social da terra. E para a compreensão jurídica, a pesquisa se utilizou da perspectiva de Souza Filho (2021), que enxerga a terra como direito à vida somado a visão de Hespanha (2009), que percebe a lei como resultado da interpretação.

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INTRODUCTION

Human societies in general have interconnected with the land since the dawn of civilizations, either for its use or to establish a given occupation. There is an explicit reason: land has become the means to provide livelihood and satisfy human needs. Thus, “land” societies are not only about the practices of germinating seeds but also the right to life, which materializes in their conditions to provide mineral, raw, and iron materials for human beings (Souza Filho, 2021).

However, before the contemporary and ontological ideas about the land, which vested it with peculiar right-to-life binding characteristics, it is worth mentioning that in the early conceptual development, the land was seen as a gift granted by God to human beings for labor and the harvest of subsistence. Such a conception emerged from the thought praised in the Encyclical Rerum Novarum, published on May 15, 1891, according to which the intelligence of humans holds a multitude of present objects and things that combine with future things by command and through the universal governance of providence (Xiii, L,1966).

Thereby, humans should prevail over all things, including those best suitable for their domain, as in the case of property. Thus, humans must not be denied the legitimacy of private property since God has gifted them with the land to be enjoyed privately and not in confusion, that is: the desire of God was not to grant the land for the mistake of many owners, on the contrary, God granted the land to humans and allowed them to demark it as private properties for the common good of all to materialize (Xiii, L, 1966).

In this sense, the Encyclical consolidated the land as a good of enjoyment for humanity; a universal provider of natural goods for the maintenance of human life and private property allowed by the sacred, so that humans are seen as “lords of the land”, ruling it and holding in the core of their intelligence various objects, including the land itself in the form of property. Thereby, the Christian conception is supported by the perspective of domination, that is, human beings not only live by the fruit of the land but are their owners, in addition to producing and fulfilling the common and social welfare.

In line with the Christian thought, Locke (1978) developed his theory based on property and its limits, according to which, the management labor employed by men in the land offers acquisition possibilities; even better, it justifies their domain. Thus, when God...
commands, through the sacred scripture, that humans prevail over the land and all that is on the land, appropriation is allowed. Hence, human beings working on the land can appropriate it and provide it with the title of private property. Therefore, in Locke, labor is understood as a fundamental principle to redefine the land as someone’s property. The limits of such land are demarked by employed work so that wherever there is labor, there is also the boundary of a given property. Thus, the notion of “land” in Locke necessarily crosses the conceptions of “property” and “appropriation” of the agricultural space.

In a historical leap, the Brazilian Constitution of 1988, specifically in article 5, items XXII, XXIII, and Title VII, article 170, items II and III, guaranteed the land from the advent of social function, which, in the constitutional text, is linked to the concept of property, being evident that its social function must be interpreted as a condition of protection and existence for property delimitation. Therefore, the Magna Carta of 1988 reduced the land to the delimitation standards of property and, differently from both the Christian and Locke’s conceptions, the social function referred by the higher law is a wide consequence and guarantor covering the rights to life, to equality, to an ecologically balanced environment, and of traditional peoples to exist (Souza Filho, 2021).

In this sense, it is emphasized that the Law has the legitimacy to effectively regulate social institutes in their various forms of protection. In the same way, the State holds power with the Law, because it executes the means employed by it, in order to guarantee protection of the environment by the owner. However, in practice the protection of land by law and the state does not occur as guaranteed by law (Rovani, 2010).

In light of these conceptions and contexts about the land, this research aims to reveal the nature associated with the land in Brazil for the duration of the Law of the Land of 1850, the Statute of the Land of 1964, and the Federal Constitution of 1988. Based on this, our goal is to answer the following question: What is the legal nature of land in Brazil? For such a purpose, we resorted to the analysis of content (Bardin, 2011) complemented with a comprehensive approach to the text of the law as a result of interpretation (Hespanha, 2009); in addition to the bibliographical research of authors who have dedicated their efforts to the historical understanding of legislative texts.

2 THEORETICAL FRAMEWORKS

2.1 The Law of the Land of 1850: Land as Commodity?

In the pre-independence scenario, more precisely in July 1822, the Prince Regent’s Resolution finished the sesmaria system, thus consolidating the first expressive landmark of the new State concerning the land issue, prohibiting the grant of lands in Brazil (Silva, 2008). On the contrary, lands given compliant with the previous laws that had been measured, demarcated, and titled by the sesmeiro were considered legitimate and upheld by the Court (Souza Filho, 2021).

Two years after the end of the sesmaria system, there was a rise of rights, including the right to private property, later confirmed in the Constitution of 1824, known as the “Imperial Constitution”, whose caput of article 179 established the “inviolability da property”, that is, limited state power for direct interventions so that the State should no longer intervene unless to ensure the full property right. Additionally, if the State needed any private property, it should resort to expropriation by paying compensation in the value of the property.

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3 Sesmarias were abandoned land belonging to Portugal and given for occupation, first in Portuguese territory and then in the colony, Brazil, where it lasted from 1530 to 1822. The system was used from the 12th century on common, communal or community lands. The name sesmaria derives from sesmar, to divide.

4 Former Portuguese magistrate elected to divide and distribute sesmarias.
Nonetheless, the absence of a law that regulated the original acquisition of lands rises as a problem for the time since the Imperial Constitution did not encompass the situation of those who worked in empty lands and fought with the government for the title of the property. Thereby, the time lapse between 1822 and 1850 was known for its successive land ownerships that favored the formation of the latifundium in its fullest, that is, the small land tenure was defied by the latifundium, and the small settler was expelled by the process of displacement to open and boundary lands (Smith, 1990).

Thereby, between 1822 and 1850, ownership became the only actual manner of acquisition and domain over lands, representing the so-called “settler’s golden phase” (Silva, 2008), which featured a kind of “ownership system”, if one can say so since there was no “ownership” per se but illegitimate and clandestine occupation (Souza Filho, 2021). Therefore, the Brazilian State faced two problems: on the one hand, the sesmeiros, who claimed the free acquisition of property, and, on the other, preventing free and disordered occupation.

These problems subdivide into three contexts: I) sesmeiros who had been granted the land before 1822 and were fully confirmed as property, without the ownership of any other person, expropriation, or any other government act; II) those who were granted with sesmarias before 1822; however, due to the lack of requirements like occupation, production, or demarcation, did not have their ownership legitimated, and III) lastly, those who simply occupied the land for household and labor (Souza Filho, 2021).

In such a narrative, the Imperial Constitution of 1824 needed rethinking since many previous classes, situations, and systems, including the system of sesmarias, had not been covered by the Imperial Constitution. It means that Imperial Brazil lacked specific legislation that confirmed the issue of original land acquisition. Likewise, there was also neither the legalization of possession areas nor the management of these areas with the sesmarias, which, despite demands, had not been upheld. This whole scenario culminated in both the actual and rhetorical conflicts between the interests of small properties, small producers, and settlers (Smith, 1990).

As a result, illegal and disordered occupations grew, leading the Empire to establish a rule that could increase land demands. This culminated in the promulgation of the Eusébio de Queiroz Law, on September 4, 1850, prohibiting the slave trade in Brazil as a strategy to reduce the capital invested in the activity and increase the referred demand for lands. This law transformed the relationship with the land since, at the time of slavery, it was not restricted to purchasing but to the grant of use and the domain of the Crown; therefore, the land was not addressed as property but as “plots”, which would be later confirmed by the Law of the Land of 1850 (Martins, 2015).

On September 18, 1850, the Law of the Land passed introducing a preamble that addressed the matter of vacant lands belonging to the Empire, granting acquisitive destination with the title of sesmaria and meeting the legal requirements. Thus, it was the first possibility of acknowledging land acquisition in the mere title, followed by a calm and peaceful possession of the property. Finally, the legislator could choose whether the lands were acquired through the heritage of sesmarias or ownership, but exclusively by purchasing.

Article 1 of the Law of the Land supported the prohibition of acquiring vacant lands by any other means other than by purchasing, the exclusive form of land acquisition chosen by the legislator. Additionally, those who had socioeconomic conditions to exchange money for land might rely on this means for acquisition, thus becoming a landowner (Brazil, 1850).

Subsequently, article 5 of the Law of the Land considered legitimate calm and peaceful land tenure provided it derived from primary occupation and sesmarias or had been used as a habitual household. Paragraph 1 of article 5 established the division of property, by introducing, in addition to previously appropriated or purchased land, an additional delimitation concerning the vacant contiguous land, as long as it was destined to raise or grow
some kind of culture and the total stretch did not exceed the account of one *sesmarias* (Brazil, 1850).

Paragraph 2 of article 5, in turn, established that land tenure on the edge of legitimation that was recognized as *sesmarias* or any other form of government grant non-revalidated by the Law of the Land could only enjoy the compensations referent to improvements, with the following exceptions: 1) final judgments; 2) the consolidation of property five years before the measuring of the *sesmaria* or grant, or 3) in case the delimitation of the land remained for ten years (Brazil, 1850).

The period of promulgation of the Law of the Land supported that the land area of such a nature was sold and reduced to a known amount of use in the form of rent (Polanyi, 2000). The income then capitalized in the farmer-land invader relationship now materialized by purchasing. Private property, in turn, advanced toward vacant lands, which were recognized by the courts through titles, like in the case of coffee culture, for an eventual objection not to favor the loss of coffee crop harvest. Thereby, the whole transformation of the land into private property was subjected to the judgment of the land invader before converting it into capitalized income. In such a process of transforming the land into private property, what was once restricted to the image of the enslaved person dealer, at that point in history was especially expressed in the illegal activity of land invaders (Martins, 2015).

Thus, we might infer that the duration of the Law of the Land was influenced by capitalist ideas of land market nature, and what was once considered the source of livelihood and life would now be interpreted by the legislator as the value of currency exchange. Not only that but also the ontological concept of land (value-in-use, sentimental, and cultural) gave space to economic and market values.

### 2.2 The Statute of the Land and the Capitalist Transformation

The Coup of 1964 had been designed to oppose the rise of social movements based on the transformation of society and government policies of President João Goulart, hence, the agrarian transformation was desired by the military but feared by the capital in the scope of the growth of field movements. Therefore, among the workers at that time, the leaders of those who lived in field organizations were persecuted and violently repressed, like in the case of Gregório Bezerra, who was arrested and dragged through the streets of Recife in 1964 (Souza Filho, 2021).

It was in such a context that the Statute of the Land consolidated the contradictions of classes that arise between 1950 and 1960 seeking to synthesize the emergence of peasant leagues in 1955, until the agrarian antireform demands of the military system of 1964 (Moreira, 1986). Thereby, the Coup rises as an opposite attempt to the social movements of land struggle, which is why no other interpretation is considered other than the strategy of the military to silence the dissatisfaction of the field and elaborate a law that covered the military class to oppose the socialist movements.

Article 1 of the Statute of the Land soon introduced in its caput the consolidation of a new agricultural policy, which was to be established in the late 1960s, so that the agrarian reform in § 1 met the productivity demands and purposes of capitalism (machinery, fertilizers, agrochemicals, etc.). In turn, § 2 addressed the land as a byword to property or the substrate of agricultural and livestock activities that should necessarily be in line with the industrialization processes (Brazil, 1964).

In this perspective, the land was subjected to modernization by absorbing vast amounts of agricultural credit through the incorporation of modern supplies in the rural production process. Production was modernized, mechanized, and industrialized through modern circuits that directly favored commercialization. Hence, productivity was enhanced, as well as the
concentration of products to support the market of exportations, which transformed rural complexes into agro-industrial complexes (Palmeira, 1989).

Marx (2015) highlights that the revolution takes place in the field in a more revolutionary manner than in the city since peasants were replaced with employed workers. Along with it, all social needs were mixed, from the controversies of the field to the dynamics of the city, thus leading the methodology of manual labor in the land to be replaced with integrated field technologies and to a rupture with the family bond that unite land and men.

Likewise, the author adds that the unbridled growth of the urban population greatly developed during capitalism since, on the one hand, industrialization accumulated and, on the other hand, the primary and ontological relationship between humans and the (Marx, 2015). Therefore, what was once an irrational activity became a rational activity since the land was no longer regarded as a means of livelihood supported by the paternalistic grant relationship from the mill master to the peasant (Silva, 2008).

All these events culminated in the rural exodus, called by Palmeira (1989) the “expropriation of the peasantry”. The author considers that the information shows that from 1940 to 1980, the percentages of rural and urban populations inverted, so that the former dropped from 70% to around 30% of the total population, whereas the latter increased from 30% to 70% (Palmeira, 1989). Thus, in the face of the growth of the urban population and decrease of the rural population, Palmeira (1989) class "rural exodus" the period before the process of agriculture modernization since the routine and continuous population flows figured in the numbers did not express the actual situation of the problem.

The author still highlights that the rural exodus in that period was followed by a systematic process of evictions from rural workers, that is, even though there had already been evictions of workers, some peculiarities were involved since the evicted worker could find conditions to restore their labor relations in a similar property. In turn, it was the contrary in the post-Statute of the Land eviction since leaving the property allowed no substitutions, and those who were evicted were forced to work in different conditions from previously established.

In this overview, capitalism in Brazil was supported by the following three plans: starting from the origin of the uneven city x field combination, followed by the union of the ruling classes in both the city and field, which was the very essence of such an opposite combination, and lastly, the perpetuation of the latifundium-smallholding binomial as rural support for the city x field complex (Moreira, 1986).

Thereby, the expropriation of the peasantry should be understood in its expansion of general nature, which reached the agricultural boundaries and became larger than a mere search for a stretch of land through the eviction of settlers (Palmeira, 1989). In this process, it is worth noting that, in addition to peasants, indigenous conflicts in the boundary and migrant or recent residents were also involved. These two classes were the target of violence by the landowners and had their villages and houses destroyed, in addition to having suffered violent evictions.

Add to that the murder of 600 peasants in the Amazon region between 1964 and 1985 in land conflicts organized by landowners, who, along with those classes, claimed some stretch of land (Martins, 1996). Therefore, the rural exodus of that time consolidated as a violent process implicating indigenous persons, peasants, and migrants, that is, all those expelled from their traditional production conditions and prohibited from social integration as householders, residents, or settlers (Palmeira, 1989). Additionally, other two problems were also addressed by Palmeira (1989): the “early urbanization” of cities and the “closing of boundary” for rural workers (Palmeira, 1989).

Before establishing a policy on the future of the human-field relationship, the new legislation imposed normative categories that stratified the land into properties. Article 4 lists
the concepts of latifundium, smallholding, rural enterprise, lease, partnership, and colonization, among others. Thus, the State concentrated on the instruments of intervention, and mediators were no longer required, and neither was the action of social groups (Palmeira, 1989).

These classifications allowed vast landowners to organize agriculture as a latifundium-smallholding binomial aiming at a continued reinvention, as it currently is. Thus, both the latifundium and the smallholding were allowed to accumulate capital that later would direct agriculture in Brazil toward the so-called “formal subsumption phase”, hegemonized by the agricultural market capital (Moreira, 1986).

Subsequently, paragraph 1, article 2 of the Statute of the Land, defined the actions that were supposed to fulfill the social function of the land, including a) to favor the welfare of workers, landowners, and family members working in the land; b) to produce in satisfactory levels; c) to guarantee the preservation of natural resources, and d) to observe the legislations that regulate labor. Article 10, in turn, provides for the policy of public lands by emphasizing that the public power could exploit any rural property for agricultural development for purposes of either direct or indirect research (Brazil, 1964). Thus, the first paragraph enlarged the object of the caput from the possibility of granting the land for several purposes (not defined in the law) and in transitory nature.

In this sense, Palmeira (1969) warns that this policy presents some excluding effects, especially those employed in the view of certain governments and materialized in development programs, which, through more general actions, cannot cover those who are excluded. Such a scenario reflects not only in the price for those who fought for the development but also in the incapacity of traditional mediators, who lost their mediation function in the field, disfavored by the rise of the legitimate farmer by law and by the State, which had favored this class before.

Because of this, Moreira (1986) reports that capitalism in Brazil developed in two phases, and the second one is the one currently in force. The first phase is called ‘formal subsumption’ and was hegemonized by the agricultural market capital, whereas the second one is known as the ‘real subsumption phase’, hegemonized by the financial capital, in addition to land, bank, and industrial monopolies.

The formal subsumption phase must be understood for the essence of the Statute of the Land to be seized since the transition to capitalism only effectively starts with the rise of formal subsumption (Moreira, 1986). At that phase, agriculture is redefined by the suffix “industrial”, derived from the word “agro-industrial”; hence, it is mentioned according to the production developed, namely the industry and the archaic, which means manufacture.

Thus, it is understood that most of the farmers of this phase did not have control over their tasks and that the property where they resided was not their own. Therefore, the land plowed by the farmers actually belonged to other landowners who left their land in the hands of the farmers. And the latter received salary in return (Delai, I., & Takahashi, S., 2008).

Further about this phase, it is worth highlighting that despite capitalist interests being allowed to be included in the field, hence in the legislation itself, the relationship between capital and labor should not be seen as direct since the vast masses of workers were mostly peasants, who saw the land as an asset for their livelihood. Thereby, based on their primary relationship with the land, the peasantry was not expected to have any proletarian conduct of exploitation; therefore, a direct relationship with capitalism could not be claimed (Moreira, 1986).

Still, in this perspective, the rural property remained exclusively under the rule of the vast landowners with the rise of capitalism, when agriculture had suffered economic losses. On the contrary, the popularity policy of farmers, mostly land monopolists, had grown absurdly, something that emerged in a contradictory situation (Moreira, 1986). Thereby, although the Statute of the Land introduced clear content and possibilities for agrarian reform,
the legislation was not enough since the legal system of the time kept the protection of the property over the right to land (Souza Filho, 2021).

Thus, we might infer that the period kept the monopolist culture of land unchanged, that is, landowners of vast tracts of land lingered in the power and the modern culture of agricultural development favored the ruling class. Thereby, we should not consider a mistake to associate the agricultural development embedded in the Statute of the Land with an exclusivist policy that gave the land to landowners.

2.3 The Land as Right in the Federal Constitution of 1988

In the scope of the Constituent, the agrarian reform no longer should pay attention to the development policies of the previous period, consolidated by the promulgation of the Statute of the Land, but to a social policy of agrarian reform. That is why between 1984 and 1990, it was established the first quadrennium for the development of the 1st National Plan of Agrarian Reform. The Plan aimed at the redistribution of lands to peasants, around 7.2 million hectares, within 15 years, divided into four quadrennia. For such a purpose, financial resources should derive from governmental sources, with 20% corresponding to compensations in money resulting from improvements, and 80% corresponding to compensations paid by expropriated lands to be redistributed (Moreira, 1986).

Thus, peasants were the first to be benefited from the Plan, and not at random, since it answered the peasant struggles that claimed an agrarian reform, marked by several matters opposite to the capitalist reform, which, in turn, merely addressed the field modernization. Furthermore, covering the peasant class per se represented the central bias of its struggles of returning the land to what they once were, that is, the source of life and culture of each people (Souza Filho, 2021).

Moreira (1986) comments on the plan and highlights the following compiled objectives: a) the retrieval of agricultural and food raw materials to meet the demands of the Brazilian internal market; b) the return of employment; c) the pause in constant rural exodus, d) and the spread of local conflicts around the land. As a general objective, the Plan establishes the provisioning of land distribution by redefining the systems of ownership and use to adequate the development of Brazil and favor the elimination of latifundia and smallholdings.

Data from the Agricultural Census of 1980 show that between 1975 and 1980 the number of small establishments decreased, whereas the stretches of over 1,000 hectares increased, figuring a growth of 0.8% of 0.9 of the total establishments, and 42.6% of 45.0% of the controlled areas, generating a larger mean size of the property (Moreira, 1986).

In such a context of obstacles to the rise of the peasantry by the right to land, the Federal Constitution of 1988 emerges proposing an integration between environmental and agrarian reform issues. Article 225 of the Federal Constitution addressed the right to an ecologically balanced environment as a matter of belonging to all and destined to present and future generations by entrusting the public power with the legal duty of preservation and non-violation of the environment. The content of article 225 consolidated the implicit limitation of environmental preservation to the detriment of the full enjoyment of the right to private property, thus imposing conceptual redefinitions regarding the property. From that moment, the landowner must abandon their absolutism for the policy of environmental conservation to be included. Thus, the Magna Carta did not address the right to property in abstraction but the land as a concrete legal property, linked to the environment, which, in turn, changed the manner and the right to land disposition as property (Souza Filho, 2021).

Chapter II of the Federal Constitution, article 5, and item XXIII introduces another limitation of property, establishing that the property must fulfill its social function. However, the concept of social function was not defined by the legislator, leaving it vacant or open; thus,
such a concept has no effects per se since it should be completed by a specific legal content. Thereby, except for the limiting factors of the abstract concept of property, the Federal Constitution made evident that the property that should not fulfill the social function of the land loses its right to protection, that is, the State could not be enforced protection, neither could the police or the judge. By recognizing the social function of the property, the legislator covered the existential condition in the legal field; however, without the land, there is no point to talk about the property since only the land can provide for livelihood and production (Souza Filho, 2021).

Furthermore, for the first time in the history of Brazilian Constitutions, the institute of the social function of the urban property was confirmed, in article 182, § 2, establishing the modality of urban social function whenever a property meets the fundamental demands of city planning expressed in the master plan. In this sense, article 7 equated urban and rural workers regarding the acquisition of rights, providing these workers with a better social condition of life (Brazil, 1988).

However, it is clearly observed that the judicial decisions inserted in the legal system in force in contemporary times still raise resistance when property is ceded in the name of the social function. This resistance becomes greater when it comes to the environmental functionality of the property. This demonstrates, therefore, the overcoming of individualistic thinking, evidencing that current property must correspond to collective interests (Rovani, 2010).

The Constitution of 1988 also introduced some reparation for the atrocities suffered by indigenous peoples in the history of Brazil. Article 231 confirms the original rights of indigenous peoples over their lands occupied for production and welfare, being indispensable to their physical and cultural reproduction. In this direction, paragraph 2 consolidated the advent of permanent ownership of lands traditionally occupied by indigenous peoples, allowing for the usufruct of the goods of nature, in addition to attributing indigenous lands to the characteristics of unavailability and non-transferability (Brazil, 1988).

Thus, we might infer, once more, that the land was confused with an abstraction of property; however, the Magna Carta of 1988 strongly limited the concept of absolute property by consolidating the principles of environmental conservation and protection.

3 METHOD

This research introduces an analysis of the content of the following legislations: a) Law of the Land – 1850, b) Statute of the Land – 1964, and c) Federal Constitution – 1988. Complementarily, we searched the bibliography of authors who have dedicated their efforts to studying the historical period covered by the analyzed legislation.

4 RESULTS AND DISCUSSION

Article 1 of the Law of the Land consolidated the purchase as the only means of granting the land and created a mechanism of ownership acquisition of vacant lands, according to which that who made the vacant land productive through their work, establishment of household, and permanence, was entitled to require the State to recognize the rightful domain. Thus, the legislation transformed the land into a commodity and promoted the transition of Brazil into a modern capitalist property, favoring the replacement of slave labor with free labor; however, those who had been enslaved were robbed of their purchasing power, hence being denied the property right, freeing the state from giving them lands.

The analysis of content in article 5 of the Law of the Land revealed the combination of two inseparable elements: plantation and household, which seem to mix with the modern
advent of usucapião. However, they are opposite, the legitimation of ownership consolidated by article 5 leverages vacant lands, that is, those ruled by the State that had been appropriated at some point, whereas usucapião is a legal advent for the acquisition of private properties.

In this aspect, article 5 of the Law of the Land established that only the state could be responsible for legitimation. If any other destination for the appropriated property should be required, the public power might not recognize the land ownership. The first paragraph of that article highlighted that it was not about a mere occupation but “ownership”; thus, the land use must be legitimized and investments in production should promote crop fields, pasture for animals, and cultures, in addition to satisfying the capitalist market of the time. Thereby, the legislation once again consolidated the marketing characteristic of the land and hindered the permanence of peasants, formerly enslaved persons, or settlers, who had no means for either acquiring or maintaining the lands.

Therefore, it is known that before the transformation of land into capital, private property did not exist in Brazil as today since the sesmeiros were not aware of the land as profit, nor did the settlers, whose only goal was subsistence agriculture. Thus, the land was reduced to a commodity by the Law of the Land implying numerous problems for economic relations, which, upon the possibility of exchange for money, were favored by increasing frauds in the system of demarcations, causing land invaders to bypass the purchase and sale agreement by creating a bargaining agreement.

In turn, the Statute of the Land favored the eviction from the field supported by the unbridled industrialization, covered early on in article 1 through the extended conformation of the agrarian reform, encompassing all measures aimed at distributing the land according to the principles of social justice and enhanced productivity. Paragraph 2 of article 1 confirmed the agricultural policy as a set of actions to support the property and the interests of agricultural and live stocking activities, in addition to the rural economy, thus ensuring the convergence between the law and the industrialization process in Brazil.

Resulting from the field industrialization processes favored by the Statute of the Land that led to the submission of the peasant to the capitalist system, the rural exodus emerges and allows for the following scenarios: a) the growth of urban populations; b) the distancing between people and the land, and c) the destruction of physical health of urban people, in addition to the rural sacrality between people and the land (which until then was regarded subsistence).

Along with that, the early urbanization phenomena and the boundary closing were favored by the prominence of the State since the Statute of the Land made the land an attractive asset for the capitalist industry, responsible for separating the people from their primary relationship with the field. Thus, the Statute equated the land to a byword for property, and subparagraph “b” of paragraph 1, article 2, has eminently enshrined the transformation of the land into capital; thus, what once provided livelihood now supported the logic of the capitalist market.

In this sense, subparagraph “d” of article 2, paragraph 1, emphasized that the social function can be fulfilled through compliance with the legal provisions that regulate labor relations, that is, the device prevented the former informalities between landowners and peasants, assuming that the social function was met whenever a low-standard agreement was replaced with a contract regulated by the labor law.

Article 10 of the Statute of the Land allowed the State the power of unilateral intervention concerning the deliberation of public lands, legitimating the existence of those lands to meet several objectives that were not covered by the legislation. Once more, reformist speeches and the tradition of land occupation by landowners were preserved, which also enabled, to some extent, to cover the interests of landowners and integrate the capital into the core of the State.
Thereby, the State agreed with the modernization desired by capitalism since according to the Statute of the Land, there is no such argument that is more favorable other than that referred to in the Statute, both regarding favoring landowners and the call of capital or the offer of opportunities to latifundia in the state mechanisms. Therefore, with the advent of the Statute of the Land, the State was no longer a regulator body of the issue of land and started to participate in the precepts of the capitalist market, including the possibility to dispose of its lands, in addition to the land itself being extended concerning its right of use to those rather than landowners.

In the scope of the Constituent of 1987, the specific objectives of the National Plan of Agrarian Reform sought to favor the rupture of the capitalist system, which was based exclusively on exacerbated development and gave vacant lands away to increase production and exportation. However, the general objective of the Plan sounds contradictory since the commands of the Statute of the Land were literally repeated. Once again, the land should meet the precepts of development to eliminate the latifundium-smallholding binomial. The information from the Agricultural Census of 1980 demonstrates that the National Plan of Agrarian Reform has not benefited those who should have, that is, the peasantry since evictions from small establishments occurred. Such a scenario led to the extinction of subsistence food cultures and the peasantry itself. In addition, the products derived from the primary and subsistence relationship with the land were replaced with cultures of sugarcane, coffee, soybean, and cattle, among others, to satisfy the capitalist agricultural market.

The Constitution of 1988 faced the absolute nature of land as property, which is clear through the content of article 225 of the Magna Carta, according to which the limitation of property is imposed to meet the environmental objectives of both present and future generations. The conceptual range of article 225 does not address property as an abstraction but as a law-abiding asset, that is, the land itself, which is actually part of an ecologically balanced environment. Furthermore, article 231 addresses the land as an inherent right of indigenous peoples since temporariness was no longer covered; on the contrary, such a limitation established the indigenous peoples as landowners. Thus, article 231 not only limited the property as established in article 225 but defined the use of the land biding to the indigenous habits and practices, that is, it was not about “private property” but the “land” as the right to indigenous life and habits.

The study “Who are the few owners of agricultural lands in Brazil – a map of inequality” demonstrates for the first time the alarming inequality of landowning in Brazil in the form of a map containing geospatial information on the rural properties of the whole Brazilian territory. The study was based on information from the National Institute of Colonization and Agrarian Reform (INCRA) and the Rural Environmental Register (CAR), organized in the Atlas of Brazilian Agriculture and Live Stocking. The rural settlements are addressed as individual properties considering their disaggregation and individual lots (Pinto et al., 2020).

According to the Agricultural Census of 2017, the 5.3 million polygons of rural properties in Brazil occupy an area of 422 million hectares and a mean area of 102 hectares, against the five million rural establishments that predominate in 350 million hectares, with a mean area equivalent to 99 hectares (Brazilian Institute of Geography and Statistics [IBGE], 2017).
Commodity, Property, or Right: What is the Legal Nature of Land in Brazil?

Figure 1: Concentration of real estate by smaller and larger private areas in Brazil. 
Source: Pinto et al. (2020).

The study represented in the map above reported that the Gini index, which analyzes the land distribution in Brazil, reached 0.73, thus placing Brazil among the countries with the highest inequality index in the world concerning the grant of the right to land. Such inequality is even more alarming in the states that produce commodities for exportation, as well as in vast properties, like in the case of the states of Mato Grosso, Mato Grosso do Sul, Bahia, and the region known as “Matopiba”, covering the states of Maranhão, Tocantins, Piauí, and Bahia. In turn, the lowest inequality indices belong to the states with significant development of family agriculture, such as Amapá, Santa Catarina, and Espírito Santo. Thus, the map shows that 25% of the whole agricultural land accounted for in Brazil is concentrated in the 15,686 largest properties in the country, that is, 0.3% of the total properties. Thereby, the remaining 25% of the total area would be obtained by adding up the 3,847,937 smaller rural properties in Brazil, corresponding to 77% of the total (Pinto et al., 2020).

The referred study also revealed that the category of the 10% largest properties in Brazil occupies 73% of the agricultural space in the entire country, whereas the other 90% corresponds to only 27% of the whole area. Therefore, in all Brazilian states, 10% of the largest properties have over 50% of the rural territory. In addition, in six states plus the region of Matopiba, 10% of the largest properties represent an occupation of 70% of the area.

The study also demonstrated that the settlements that have risen from the agrarian reform, however slightly, contribute to softening the inequality indices since they result from the distribution of private properties, a constant object of projects of occupation of public vacant lands (Pinto et al., 2020).

Finally, the results of the research pointed out that the action of considering the land as a right did not cover marginalized and vulnerable groups. Furthermore, despite the right to the land being confirmed in the Federal Constitution of 1988 as property that must fit the precepts of an ecologically balanced environment, or as a right of indigenous peoples, related information has demonstrated the permanently urgent efforts to implement an agrarian policy.
of lands that prioritize the distribution of private properties. Therefore, the right to land bears such a nature due to the status vested by the Federal Constitution of 1988; however, in practice, this right is still concentrated in the hands of a few landowners.

5 CONCLUSIONS

In light of this, we might conclude that the land was not always considered a right since identified three distinguished natures have been attributed to it in Brazil. Depending on the context and the legislator’s intent, the land could be understood as a commodity, property, or right. In the Law of the Land of 1850, the only form of land acquisition was by purchasing; therefore, it was exchanged for money. Such an interchange favored the rise of new landowners who had the socioeconomic conditions for purchase; therefore, the land was seen exclusively as a commodity in the hands of a few landowners.

With the Statute of the Land, in 1964, the legislation tended to land industrialization, favoring the process of rural exodus, which can be considered a transition period since the monopolist land culture remained unchanged and the landowners of vast tracts lingered in the power.

Lastly, the Constitution of 1988 vested the land with the nature of rights and property. “Land” is even confused with the abstraction of property; however, even with such a conceptual confusion, the property covered in the Carta is not mixed with the absolutisms featured in the history of properties in Brazil since, as mentioned, the Constitution imposed limiting factors.

Article 225 establishes the right to an ecologically balanced environment for both present and future generations, thus implicitly foreseeing that property must meet such a requirement for it to fulfill its social function that provides its legal existence; therefore, the land is regarded as property in a wide sense. Later, upon the legislator confirming the use of the land by the indigenous peoples in practicing their cultures and beliefs, the concept of property no longer mattered more than the land itself as the right of indigenous peoples, as established in article 231 of the Federal Constitution, the reason why it assumes the nature of the right.

Either as property or right, this research understands that the Constitution of 1988 introduced some remarkable advances for rereading the concept of land by establishing limiting factors to property covering the implicitly of the right to land and the right to life of indigenous peoples, in addition to the right to the maintenance of an ecologically balanced environment for both the present and future generations. Thus, we might infer that the merely abstract social function of property was overcome by the meaning of the organism itself, without which land property would simply not exist.

This study presented the transformation of the nature of the land through a merely legislative and historical analysis, without, however, going into the merits of the effects of this transformation for the realization of the right to land. The objective was also to present data in order to open the agenda for future and future studies on the theme of the effects of this transformation of the nature of the land into law.

Finally, further research is suggested in the matter of: i) empirical verification of the fruits perceived by the transformation of land into law; (ii) access to land for vulnerable populations; iii) judicial applicability of the social function established in the Federal Constitution of Brazil.
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