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## **Territory as a complex legal institute: an analysis based on subjects, subjectivities and territorialities**

*Território como instituto jurídico complexo: uma análise fundamentada nos sujeitos, nas subjetividades e nas territorialidades*

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### Abstract

Territory is a legal institute central to Modern Law. In modernity it has been reduced to land, a neutral and universal physical unit, a good that can be traded on the market. Human Geography - especially with Milton Santos - has added complexity to space, showing that it is a social production, where life takes place. Territory has acquired a prominent epistemological status not only for Geography, but also for Law, becoming a central legal institute in the defense of different subjects and dignities. The objective of this article is to delve into the complex interdependence between subjects and territories, making an epistemological dive into this relationship, using the Cultural-Historical theory of subjectivity as a framework. Thus, the problem faced is: what epistemic deepening can the Cultural-Historical theory of subjectivity and human geography provide for the understanding of the legal institute of territory? It is hoped that the conclusions of this article might contribute to the effort to analyze territory as a complex legal institute, inseparable from its subjects and the defense of multiple dignities.

**Keywords:** Territory; Subject of Law; Historical Cultural Theory of Subjectivity.

### Resumo

O território é um instituto jurídico central para o Direito Moderno. Na modernidade foi reduzido à terra, unidade física neutra e universal, um bem capaz de ser comercializado no mercado. A Geografia Humana - em especial com Milton Santos - tem agregado complexidade ao espaço, mostrando que ele é uma produção social, onde a vida se realiza. O território tem adquirido um status epistemológico de destaque não apenas para a Geografia, mas também para o Direito, sendo redescoberto como um instituto jurídico - objeto de diversas reformulações quanto ao seu conteúdo. O objetivo do artigo é fazer uma releitura da noção jurídica de território por meio de um mergulho epistemológico, com base nas contribuições da geografia humana e da teoria Histórico-Cultural da subjetividade como referenciais teóricos. Assim, o problema enfrentado é: quais aprofundamentos epistêmicos a teoria Histórico-Cultural da subjetividade e a geografia humana podem proporcionar para a compreensão do instituto jurídico do território? Espera-se, com este artigo, contribuir com as reflexões do território como um instituto jurídico complexo, indissociável de seus sujeitos e da defesa de múltiplas dignidades.

**Palavras-chaves:** Território; Sujeito de Direito; Teoria Histórico Cultural da Subjetividade.



## Introduction

This article<sup>1</sup> seeks to problematize the legal institute of territory, delving into the legal-epistemic relations established between subjects, subjectivities, and territorialities. Considering that territory is a complex legal institute that has demanded various reformulations of its content, this text will start from the hypothesis that territoriality has been reduced to land. He will argue that the territory subjectivized as land is only one specific form of territorialization. It is hegemonic but not exclusive.

Human Geography - especially Milton Santos (2006, 2021) - has added complexity to space, showing that it is a social production where life takes place. Milton Santos shifts the focus away from single territoriality (land, location) and deepens the theoretical foundations of what is now understood as territorialities (geographical space under which human beings dream, live, and symbolize).

Geography's contributions have been of great importance to the legal debate, as the questioning of space as a neutral category leads to the recognition of territory as a complex legal institute, i.e., territoriality is not reduced to land, a physical asset but is plural, involving multiple subjects.

The connection between the subject and their territory is not reduced to a dichotomous relationship between a subject and a physical object. There are reciprocal implications, and contemporary theorizing about territory has taught us this. Geographical space constitutes and is actively constituted by its subjects. This article will take an epistemic dive into the legal institute of territory, seeking to delve deeper into the relationship between subjects, their subjectivities, and their territorializations (REY, 2003).

The problem of the article is: what epistemic insights can the historical-cultural theory of subjectivity and human geography provide for understanding the complexities of the legal institute of territory?

To answer the problem posed, the theoretical framework adopted is that of Milton Santos (2006, 2021), Beger and Luckmann (1985), Haesbaert (2009), Gonzalez Rey (2003), among others. The following methodological path was followed. At first, it was

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argued that the modern state is territorial, but it epistemically and legally reduces territory to the dimension of land, an appropriable asset. Next, the land was analyzed as a socially and subjectively constructed institution. Finally, we work with the idea that territory is a subjective production that constitutes its subjects simultaneously as a result of them, in a non-linear influence between the two.

It is hoped that the epistemological reflections in this article will enable theoretical advances in the legal, geographical, and psychological fields, offering contributions to knowledge and legal recognition of the deep ties between subjects and their multiple territories.

## 1) State and territory

The State is a political and social organization that emerged and consolidated in Europe between the 16th and 18th centuries. It is a consequence of the breakdown of medieval society, one of the characteristics of which was the fragmented control of the land by various warlords. It emerges as a monopolizing centripetal force, concentrating land ownership, military power, tax collection, and the law (ELIAS, 1993).

The origins of the modern state are complex. Still, its link to the idea of territory implied the submission of the ancient lords of the land, warriors, and landowners, who competed freely with each other and determined social organization (ELIAS, 1993). The state has imposed itself as a hegemonic power and the constituent of a new territorial order, which brings with it the claim to the centrality of political and legal relations (SCHMITT, 2014).

The modern state is territorial, as it establishes rigid borders, establishing order within itself while opposing other states. This phenomenon is often understood as a simple spatial possession in which the state exercises power over citizens in a uniform and neutral spatiality. This notion is the foundation of Administrative Law.

For Carl Schmitt (2014), however, the relationship between state and territory is not reduced to mere possession. For him, there is a "taking of the land", the foundation of a new *nomos*. The verb "take" used by the author is significant, as it indicates the capture of the soil - an act that presupposes violence that structures spatial, social, and legal order. The modern state develops within borders and takes possession of the land,



inducing new social relations and territorial configuration. In this sense, the state appropriates space and produces its spatiality, understood here as physical, political, and human grandeur.

The author, in developing the concept of land grabbing, already problematized the relationship between state and territory, bringing, even if in an incipient way, space as a result of human production far beyond being just a physical measure<sup>2</sup>. He took on board the complex relationship between the state and the territory, understanding it in a deeper way than mere territorial possession and limitation. In this sense, it adds complexity to the legal institute of territory. It points out very clearly that there is a constitutive relationship, which is not reduced to physical spatial domination (SCHMITT, 2014).

At the same time, especially based on the contributions of Milton Santos (2006), there has been a revival of discussions around territory. Milton Santos (2006, 2021) made it possible to understand, going beyond Carl Schmitt (2014), that state territory is just one of several forms of territorialization, each of which has its subjects. The following topics explore the relationship between subjects, territories, and subjectivities.

## 2) The concept of territory

It is important to remember that the definition of territory is not consensual. It is a legal institute and an academic concept that has acquired great strength in the political struggle for rights by affirming the relationship of belonging between subjects and specific territorialities. As Mançano Fernandes (2009) points out, various actors have appropriated this concept, and there is a dispute over its meaning. It is important not to explain what territory is as if it were a pure and universal category but to admit that conceptual and legal disputes exist around it.

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<sup>2</sup> The hegemonic concept of territory for the Law links the idea of territory to that which surrounds a specific boundary on the surface. Constitutional law constantly uses the idea of territory as a physical portion that delimits the political extension of a country - this does not mean that this is the only dimension of territory dealt with in the Federal Constitution, it should be emphasized. This is the case, for example, when it makes provisions on the right to move, the delimitation of Brazilian nationality and the political-administrative organization of the country, just to name a few examples. In these cases, we see a very clear adoption of territory as a physical and political space. As will be shown, this administrativist view of territory is epistemically based on the subject/object dichotomy. It serves a dual purpose, the standardization of subjects and territories, allowing for the better exercise of sovereign power (ROCHA, 2013).



Arturo Escobar (2015, p.98), relying on Brazilian authors such as Rogério Haesbaert (2004) and Mançano Fernandes (2009), has a very elucidating definition:

The 'territory' is the space - biophysical and epistemic at the same time - where life is enacted according to a particular ontology, where life becomes the 'world'. In relational ontologies, humans and non-humans (the organic, the non-organic, and the supernatural or spiritual) form an integral part of these worlds in their multiple interrelationships.

According to Arturo Escobar, territory is relational: it is the conjunction between the human and the non-human, between the physical and the spiritual, and between the symbolic and the organic. This is the opposite of territory as land, a neutral space, epistemologically based on the dichotomy between subject and object (HONNETH, 2020; SANTOS, 2006).

To problematize the neutrality of space is to assume a complex epistemology in which the relationship between subjects and the world is affirmed. We have seen this epistemic change today with the new territorial struggles, especially the indigenous, *quilombola*, and peasant struggles. This political and epistemic turn should have repercussions when considering the legal institute of territory, abandoning the subject/neutral space dichotomy and reaffirming the interrelationship between subject, body, symbol, and spatiality.

To talk about territory is to talk about individual or collective subjects, constituted and constituting plural territorialities, which are not neutral. As Rogério Haesbaert (2004) explains, groups, communities, individuals, or society can only be defined in a specific geographical and territorial context. Subjects are productions and producers of territories, the destruction of which means the end of the subjects themselves.

If the territory is associated with its subjects, it is material, symbolic, emotional, and a subjective production. It is multiple because different territorialities can be configured on the same spatiality with different scales and subjects. For example, the national territory of states is permeated by the territories of traditional peasant communities, certain urban groups, or the transnational territories of corporations (FERNANDES, 2009).

State territoriality is hegemonic but not exclusive. There are other non-hegemonic territorialities with their subjects and subjectivations. The academic rediscovery of the category of territory was soon politically appropriated by multiple



subjects, such as peasants and peripheral urban communities, who also began to claim their territories politically (HAESBAERT, 2007). The consequence has been the struggle for legal recognition of diverse territorialities. The territory thus acquires a new epistemic status but redefines its relevance and complexity as a legal institute.

The territory category brings to light the political dimension of space and time, denouncing the silences underpinning the notion of land as a neutral space. As Arturo Escobar (2015) points out, the claim for territory announces another ontology, the relational one, opening the way to understanding that even in modern-state territorialization, there is no rupture between the subject and the land, but only the epistemological and subjective pretension of separation. The territory is there - as belonging, as life that becomes the world, a space for inducing meaning - even when denied.

### 3) Subject, subjectivity, and the complex production of reality

It's not easy to understand the complexity of the category of territory. To clarify, we opted methodologically to delve into the cultural-historical theory of subjectivity (REY, 2003). Through it, reality will be presented as a complex system of meanings, not as a dichotomy between subject and object. This turn will allow us to announce erasures that simplify the notion of space by reducing it to the earth. The legal consequence will add complexity to the institute of territory, shifting it from a simple border portion and highlighting its deeper implications with its subjects and *nomos* (SCHMITT, 2014).

Reality, as experienced, is the result of the process of symbolic crystallization shared intersubjectively<sup>3</sup> (BEGER AND LUCKMANN, 1985). The existence of shared

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<sup>3</sup> There are multiple symbolic systems, language being one of them (BENVENISTE, 2006). As has been clear since Saussure (1999), language and other semiotic systems (BENVENISTE, 2006; TODOROV, 2001) are the intersubjective creations of a specific community. If, on the one hand, they are products of human action, on the other, human action itself needs these systems as a stable ground on which to develop (ROLNIK, 2011). They exist because they are collective creations of a given community, but at the same time, they are a condition of possibility for the very existence of the collectivity, structuring its horizon of meaning.

In addition to language, there are other systems that allow the world to acquire meaning. Paintings, songs and signs are forms of symbolization that are not linguistic and contribute to the collective production of intersubjectively apprehended meanings. Language has a special function because it is a means of interpreting other forms of symbolization. They use it, for example, to try to understand a piece of music or a painting, translating them into words. Significant systems with different bases, however, cannot be reduced to one another. No matter how much we use language to try to understand other non-linguistic



institutions results from common symbolisations that allow people to share the same everyday life.

The symbolic crystallization of reality ensures that life is structured. Everyday life is lived and shared because there are relatively stable symbolisations that the people of a given community share. You can experience habituality, engage in political disputes, participate in power games, and enter into conflict because an established arena allows action to gain meaning (BEGER AND LUCKMANN, 1985).

Reality is an intersubjectively shared symbolic production. However, its relationship with its subjects is not linear but circular, a permanent system in which symbols are crystallized and meanings are enunciated. In other words, the meanings of subjects are created within a stable and territorial symbolic universe. At the same time, subjects don't just reproduce or limit themselves to previously established significant possibilities; they are creative agents, builders of new meanings, and fragments of new realities. In other words, the real is territorialized, seems fixed, but is in constant molecular movement due to the creative activity of its subjects (ROLNIK, 2011).

### 3.1) Subjectivity and subjective meaning: the interaction between the symbolic and the emotional

Discovering symbolic systems, especially language, had a major impact on social science studies. As already mentioned, it was understood that reality is a product of intersubjectively shared meanings<sup>4</sup>. According to Historical-Cultural Theory, reality is a

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symbolizations, they will never be reduced to it. This is what Benveniste (2006) calls the principle of non-redundancy between semiotic systems with different bases.

<sup>4</sup> This has posed enormous challenges for the Human Sciences, including the following question: is reality reduced to the symbolic? Another concern was the role of the human being in the face of semiotic structures that were prior to them and that made their actions possible. The question was: if human action develops on the basis of intersubjective symbolic structures, can it modify the structure itself or just play the game it sets up? (DOSSE, 2007).

Initially, it is important to establish that the analysis will be based, above all, on François Dosse's studies on structuralism. In response to the first question, initial perceptions were radical in the sense that the real was reduced to the symbolic, with some authors going so far as to say that everything was language. The answers given to the second question went in the same direction, affirming the death of the subject (the one who creates) in favor of the actor/agent, the one who acts under a previously established structure (DOSSE, 2007; REY, 2003).

The reasoning was: if human action is made possible and develops through a previously established symbolic structure, it is up to the agent to integrate a previously defined game. The chess metaphor was widely used. Human action is creative and can be multiple, there can be infinite games of chess, each with its own uniqueness, but always subject to the same set of rules that must be obeyed by all the pieces, otherwise the game doesn't exist. In this way, the human could always be the actor, the one who moves and



symbolic and emotional creation since all symbolization is permeated by emotionality in a process that generates meaning (VIGOTSKI, 2008; REY, 2003).

Reality is a complex symbolic web comprising various intersubjectively shared semiotic systems that favor understanding and living together.

Subjects with unique biographies and physical and psychological experiences process every symbol. They share the same meaning but reverberate in different ways<sup>5</sup>. Thus, corporeality and emotionality gain prominence: "Emotions represent a form of registration of events in reality that unfold in symbolic processes [...]" (REY, 2009, p. 128). The symbolic is inseparable from the emotional, and the combination of the two produces what Gonzalez Rey (2003) defined as subjective meaning.

Emotions are registration forms with a physiological and social background since "emotionalizing" also results from a biographical process. There is a recursive relationship between the symbolic and the emotional that is constitutive of reality. It is stabilized through intersubjectively shared meanings but is emotionally registered differently by the subjects, producing subjective meanings<sup>6</sup>.

Thus, no matter how much the subject (individual or collective) is immersed in a social reality - which shares common symbolizations and induces emotions - they will never linearly receive this influence, being an agent that generates meanings, transformations, and ruptures. Subjective meaning, as much as it reflects an intersubjectively shared reality, always brings a new element to reality since it is emotionally permeated (REY, 2003).

The social influences the individual but does not impose itself deterministically. It can also be said that individually processed experiences also impact shared reality. There is a complex interdependence between the individual and the social that is

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accomplishes, but could not be the subject, the one who alters the intersubjectively shared symbolic structures themselves. According to Dosse (2007), structuralism then declared the death of the subject.

This brief summary is important in order to affirm that, while the previous topic stated that reality is a symbolic production, this text is part of an epistemological current that will not reduce it to that.

<sup>5</sup> With Vygotsky (2008) it was possible to understand that meanings are an intersubjective construction, but are accompanied by different sensations and perceptions when experienced by different subjects. For example, when you say "mother", two interlocutors will certainly understand the same meaning, but the meanings produced will be different. Someone who has always had a caring relationship and someone who has been permanently physically and psychologically abused by their mother will establish different relationships with meaning. Meaning is the most stable part of the symbol, but it doesn't exhaust it. Every meaning is accompanied by different emotional registers, what Vygotsky (2008) called meaning.

<sup>6</sup> For more on the concept of subjectivity and subjective meaning, see REY (2003).



constitutive of reality, which Cultural-Historical Theory seeks to explain through the category of subjectivity (REY, 2003).

Returning to the territory, the subject's relationship with space is not reduced to the subject/object dichotomy, in which no reciprocal implications exist. Space is symbolically structured, and only in this way can it be experienced. At the same time, all symbolization is crossed by emotionality. Space is a symbolically territorialized space experienced by meaning-producing subjects.

Territory is a source of meaning-making for a particular person or group, and at the same time, it is the result of that meaning-making. The territory and its subjects establish a dynamic and reciprocal relationship in which they need the territory as a symbolic and emotional space that will give meaning to their existence. In contrast, the territory only exists because of those subjects.

Based on the above, it can be concluded that when we say that the modern state is territorial, it means something much more than it dominates certain borders and imposes its law in a neutral spatiality, as the administrative view would have us believe. According to Carl Schmitt (2014), there is a "taking of the land", creating a new *nomos*. However, it is also necessary to go beyond Carl Schmitt and, based on cultural-historical theory and the geographical propositions of Milton Santos, state that space can only be experienced as symbolically territorialized, which constitutes and gives existential meaning to its subjects. Milton Santos (2006, 2021) made it possible to understand that if state territorialization is hegemonic, it is not exclusive because there is no single, universal, and neutral territoriality; there are territorializations.

To continue problematizing the legal institute of territory, it will be necessary to delve deeper into how it has been reduced to the notion of land, a physical, objective, and neutral space; in other words, it has been reduced to a linear category, masking its own complexity. We must analyze how the modern *nomos-state* has taken over space, transforming it into bare, depersonalized land that subject-citizen owners have commodified.



#### 4) Reducing the legal institute of territory to land

As Reinhard Bendix (1996) explains, the formation of the modern state involves centralizing administrative and judicial power. In the author's analysis, a new relationship with space is inaugurated, in which the serf is detached from the land, becoming a free and equal citizen in a direct relationship with the state, no longer mediated by the lord. At the same time, the territory as land becomes a public good, owned by the central authority and subject to the market, and can then be marketed as private property. As Carl Schmitt (2014) puts it, a new *nomos* is founded, reorganizing social and spatial relations and reducing territory to land. It then begins to be subjectivized as an exclusively physical, objective, and universal quantity that can be detached from its subjects and sold on the market.

In modern times, there is a new form of subjectivization of the territory, which implies another symbolic and emotional stabilization involving space. There is the crystallization of a particular symbolic universe, which becomes institutionalized, offering a predictable horizon of action for individuals, allowing for the development of daily life. This topic aims to understand the process of institutionalization and the reduction of territory to land, with the loss of its complexity. The first step in understanding this process is to clarify what the category institution means.

##### 4.1) What is instituting?

Beger and Luckmann (1985) are important authors who have sociologically discussed the role of institutionalization. For them, institutions are not just legal constructs. They result from stabilizing collective habits, which create an intersubjectively shared behavioral field, making everyday action possible<sup>7</sup>.

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<sup>7</sup> The authors' analysis (BEGER and LUCKMANN, 1985) is of great value in understanding how reality is stabilized. However, despite offering a relevant contribution to understanding the institutionalization of the real, they do not give due emphasis to the role of the subject, which can lead to criticism of the deterministic tendency of the theory they developed. This text assumes the presuppositions of the Cultural-Historical Theory of subjectivity, for which the relationship between subject and institution is always procedural: if, on the one hand, the individual reproduces socially shared behaviors (the instituted); on the other hand, they also experience them in their own biographical and psychic field, inducing unique subjective meanings.

Having said this, it is important to point out that Beger and Luckmann's (1985) theory is pertinent to understanding the institutionalization of reality and, in this sense, will be useful for the purposes of this topic. It will be used by the authors of the article, making the necessary contextualizations, but knowing that they are running the risk of theoretical eclecticism and possible criticism of incompatibility.



Beger and Luckmann's (1985) study focuses on the institutionalization of reality and its normative process on individuals. As I said, institutions for them are the perennial results of collective habits that stabilize. By perpetuating themselves over time, they become fixed and begin to act normatively on individuals. Thus, to share an institution is to experience a collectively built habit.

In everyday life, for example, the institution of the family has its demands about what it means to be a good mother and father, as well as establishing a particular place for each person in the relationship. Performing these social roles is fundamental for the people involved to recognize themselves and be recognized as part of that institutionality. Deviation will be viewed with suspicion. Another example that can be given is the Judiciary, which defines very well - even ritualizing through legal norms - the role of the judge, the prosecutor, the lawyer, and the defendant. Even if allowed, it would be difficult for a judge to preside over a hearing in beachwear or excessively informal clothes. He would not recognize himself or be recognized in his place of authority (BEGER and LUCKMANN, 1985).

As mentioned in the previous topic, these processes are not linear, as suggested by the authors' theory (BEGER and LUCKMANN, 1985). The experience of institutionality does not have a homogeneous impact on the subjects. The person reproduces the social role but is also a subject of transformation, as they bring with them multiple experiences - including from other institutions - which will also influence the exercise of a specific social role.

A person can perfectly well refuse the social role a certain institution imposes on them without compromising their self-image as a member of that social space. For example, a judge, who is also an actor, may find it easier to subvert certain rites; a mother or father with a political-academic background in feminism may be more inclined to challenge certain aspects of the family structure.

Institutions stabilize behaviors, offer social roles, and thus contribute to crystallizing reality. They act normatively (but not linearly) on individuals, who tend to feed back into them.

The collective standardization of habits has the advantage of automating behavior, offering a predictable field of action for daily action. Individuals, consciously or not, share expectations about the conduct of others. As a rule, they act based on previously institutionalized standards and expect reciprocal actions. As Berger and



Luckmann (1985) teach, one of the advantages of this process is the reduction of the field of choices<sup>8</sup>. By not having to decide on certain aspects of life, the actor is free to make new decisions.

Institutions serve as a space of control, comfort, and possibility, offering parameters for acting in a given society. Their absence or lack of understanding will have the opposite effect: a lack of references for behavior. It is precisely because they limit the human field of action, induce certain behaviors, and allow us to share the same daily reality that they are so important.

Instituting means consolidating symbolizations and stabilizing a range of everyday relationships. Common symbolic representations are shared through them, which induce their subjectivities. Stabilized symbolizations instigate relatively common subjective meanings, which act non-linearly on individuals. For example, it is assumed that Brazilian penal institutions trigger emotional registers associated with suffering, fear, and anger in a relatively generalized way. They have collectively produced spaces with a specific social subjectivity (REY, 2003).

It's worth noting that, despite this induction of action made possible by the symbolic, social spaces shape subjective meanings of their own, processed in particular biographical histories, thus having a complex influence on individuals. While for some, the experience of prison can mean an encounter with the Divine, for others, it can represent the negation of any metaphysics. Thus, the symbolic stabilization of reality is processed in a particular way by each subject in a recursive and non-linear relationship between the social and the individual (REY, 2003).

Institutions are historical and subjective products, but to the extent that they become institutionalized, they become reified, that is, subjectivized as being a reality in themselves, external to human action itself, losing their social and historical dimension: "It is the apprehension of human phenomena as if they were things, that is, in non-human or possibly super-human terms" (BERGER and LUCKMANN, 1985, p.122, emphasis added). One of the political consequences of this process is naturalization, that is, the perception

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<sup>8</sup> It should be made clear to readers that the formation of habits is part of social complexity, with its disputes and struggles, as well as its numerous institutions that seek to shape and guide behavior. Anyone wishing to delve deeper into this intricate web of power that leads to legal institutionalizations, as well as the resistance that emerges from it, should consult Rocha (2013).



of a given institution as something non-historical; therefore, unquestionable, unalterable, the only way.

Institutions' reification is evident in current discussions about gender, the family, or territory as land. Understanding gender as a social construction is no simple matter. Similarly, we can mention the family, which tends to be experienced as a natural sphere of belonging, understood by many as sacred. Both examples are cited to return to this article's subject. It is argued that the modern vision of territory, institutionalized as land, is also the result of this process of reification. The reduction of territory to its geographical and physical dimension is naturalized, concealing the complex relationships between the symbolic network that constitutes space and its subjects.

Every social space is a territory that induces subjective meanings, even when understood as land. The concealment of the complex web of meanings produced between subjects and territories allows the state territory to be reduced to a neutral physical portion, devoid of human relations and subjective meanings.

The institutionalization of the modern state goes hand in hand with the institutionalization of territory as land. In modern times, the territory is reduced to a material, physical dimension, losing its spiritual, metaphysical bias present in other worldviews (ELIAS, 1994; HAROCHE, 1992).

Territory as land is objectified and reified, subjectified as natural. This is why it is so difficult to question this assumption, to add complexity to this legal institute, and to recognize other forms of subjectivation that generate and produce multiple territorialities.

#### **4.2) The institutionalization of territory as a land**

The process of land grabbing by the modern state involves the separation of the subject and the territory, which come to be understood as atomized elements. The territory has become subjectivized and naturalized only as a physical space, dissociated from its subjects. Through this rupture, the individual was instituted and subjectivized as a free, autonomous being capable of establishing contractual relations, being an owner and possessor. Land, on the other hand, became a commodity, negotiated through a contract and therefore able to be appropriated, owned, or passed on.



There is an epistemic rupture between the subject and the territory, which reflects but also implies other modern dichotomies, such as the opposition between the subject and the object, between the individual and nature, or between objectivity and subjectivity (SANTOS; MENESES; NUNES, 2005).

The reduction of land to a commodity profoundly affected feudal social institutions based on the subject's belonging to the land. With the dismantling of the feudal *nomos* and the emergence of the modern *nomos*, new institutions emerged, including the state, the free and proprietary individual, and land as a disposable asset.

The process of commercialization of land began in Europe. It first reached maturity in England, providing food and labor for English cities, which led to the outbreak of the Industrial Revolution. It came of age in France with the French Revolution, which attacked the feudal ties that still existed in that country. It expanded worldwide in the second half of the 19th century, with European imperialism and the advance of colonial violence, imposing itself militarily and epistemologically on different forms of life, considered savage or non-modern (KAUTSKY, 1980; POLANYI, 2012).

The result of colonialism, based mainly on the processes of expropriation and slavery in Latin America and Africa, was a dismantling of the traditional relationship between people and territory, throwing new lands and people onto the market, either as slaves or as free labor. The context of epistemological rupture imposed, especially by the metropolises on their colonies, strengthened the institutionalization of land as commodities, becoming the hegemonic form of relationship between subjects and space in the modern colonial world system (KAUTSKY, 1980; POLANYI, 2012; WALLERSTEIN, 2006).

According to Ellen Wood (2000), between the 16th and 18th centuries, Europe had an intense transition, especially in England, in which the meanings produced around land changed. In this period, the medieval territory was deinstitutionalized in favour of a new territorialization: land as property. Over the centuries, customary rights have been questioned, enabling the process of capital accumulation to advance.

Feudal law was built on institutes that protected the village community, such as the collective use of land. The advancement of capitalist economic relations required the emergence of new legal institutes that allowed the commodification of land, restructuring the relationships between subjects and territories. It was necessary to develop an



exclusionary notion of territoriality, capable of imposing limits on the regulations and restrictions that the village community exercised over individual property (WOOD, 2000).

The village community's use of the territory began to be delegitimized. Ellen Wood (2000), in her analysis of the commodification of land in England, the country that first experienced this process, highlights the importance, for example, of the concept of improvement. According to the author, tenure and common rights began to be questioned, including in the courts, because the land was not improved, which should be understood as made more profitable. It wasn't enough to work the land, to use it to meet the community's needs following age-old practices. It became necessary to improve it, increasing its productivity and profits.

The legal maturity of this process was reached with the Code of Napoleon, which established the land as a marketable asset and turned mortgages into private contracts. In England, the most significant legislative changes took place between 1801 and 1846 through laws aimed at extending freedom of contract over land to the detriment of medieval legal institutes that imposed limits on free private appropriation, such as inalienable donations and common lands (POLANYI, 2012).

With the advance of modernity and capitalism, land is reduced to an appropriable and negotiable item, dissociated from any existential reproduction. On the other hand, the contractual subject of law is considered autonomous about others and to the territory, free to come and go, negotiate, and sell their labor power on the market.

The rupture process between subject and territory is structural to modernity and fundamental to appropriating land as a commodity. The rift between subject and nature provides the epistemic basis for commodifying the environment and the earth (WITTMAN, 2009). This abyss between the subject and the territory conceals the necessary relationships between the two, and nature becomes subjectivized as external to the individual, as something wild that must be tamed (SANTOS; MENESES; NUNES, 2005).

As a commodity, land acquires value on the market. Their exchange value becomes preponderant over their uses. Before, it was understood in its multidimensional dimension, subjectivized as a source of food, socio-ecological reproduction, spiritual connection, and ecological services; now, it has acquired a predominantly one-dimensional meaning. It is reduced, above all, to a negotiable commodity. Likewise, the multiple subjects who were interconnected and constituted based on different territories



tended to become uniform in the institution of the individual owner. The process worsens with the advance of reifying land as a commodity and of the individual as a contractual being, capable of doing business and selling himself through the commercialization of his labor power (POLANYI, 2012; WITTMAN, 2009).

The modern episteme disconnects the human from nature. The earth is torn from the human, and the human from the earth is in a double movement. As Polanyi (2012, p.199) states: "Traditionally, land and work are not separate: work is part of life, land remains part of nature, life and nature form an articulated whole." Through the rift created, it was possible to isolate humans and nature, breaking their deepest bonds and subjecting both to the logic of the market. "What we call land is an element of nature inexplicably intertwined with man's institutions. Isolating it and forming a market with it was perhaps the most fantastic undertaking of our ancestors" (POLANYI, 2012, p.199).

The advance of modernity and the market economy has caused the social fabric of the village community to unravel. Medieval institutions were deterritorialized, including family organization, customs, and land cultivation<sup>9</sup> (POLANYI, 2012).

The epistemological rupture between subject and nature promoted by modernity established man and earth as distinct entities, inducing their meanings and senses. It has obscured the necessary relationship between the human and the territory, subjecting both - not without permanent resistance - to the logic of capital. As a result, the territory as a legal institute loses its multidimensionality and complexity, taking on a one-dimensional characteristic, reduced to a thing that assumes value only in the market.

## 5) Subjects, subjectivities, and the complexity of territories

Rogério Haesbaert (2004) is right in his assertion that there is no territory without subjects, just as the destruction of territories means their elimination. Subjects make themselves as such in geographical space, which is physically and socially generated. This relationship is complex non-linear, and needs to be well understood.

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<sup>9</sup> The new symbolic universe that emerged demanded a new, commercialized agriculture, with its rites, its temporalities, its industrial rhythm, its symbols and its specific meanings (POLANYI, 2012). Among the main characteristics of modern agriculture are individual ownership of the land and the commodification of all its products (KAUTSKY, 1980).



As I said, a conceptual difference exists between the subject and the actor. Conceptually, the subject goes beyond the actor. They are immersed in semiotic networks but also represent a qualitative moment in the construction of communication and the very web they are part of (REY, 2003). It is assumed that there is a symbolic universe that remains relatively stable even though it is in constant movement.

Returning to what has been discussed here, institutions are stabilized but not fixed, as they are historical and cultural processes in permanent movement. They are synchronic (establishing their systemic logic) but also diachronic (they are temporal and historical) (ROCHA, 2013).

Territories are institutionalized through symbols, practices, rites, codes, and shared social roles; in other words, a common culture with its games. They are thus products of a set of institutionalizations that support each other. Geographical space is socially organized through its institutions. At the same time, the experience of this crystallized reality allows subjects to give meaning to reality, allowing life to become a world (ESCOBAR, 2015).

By establishing their logic, territories establish their power dynamics and thus stimulate the production of relatively common symbolizations and emotionalities in their subjects, what social psychologist Gonzalez Rey (2003) has called social subjectivity. These territories are geographical spaces and sources of subjective meanings about the world. In other words, they are geographical and subjectivation zones under which subjects are constituted (ESCOBAR, 2015; HAESBAERT, 2007).

In the territory, the subject has the symbolic and institutional reference to produce meanings about the world and themselves. In this symbolic web, reality crystallizes and takes on a systematic (synchronic) logic. Thus, the subject only exists crossed by the territory, by its symbolizations, institutions, and power games, as Rogério Haesbaert (2007) rightly put it. However, they also have an active and non-linear relationship with the territory. They are sources that generate new subjective meanings, which act in a constitutive tension on the territory.

Subjectivity is a complex process resulting from a recursive interaction between the social and the individual. The social is symbolically shared and institutionalized, stimulating specific subjective meanings. However, the meanings induced by the social are processed by subjects with their biography and body. Meanings are processed in the



subject's constitutive network of meanings, which makes it a space that generates new meanings (REY, 2003).

In complex, multi-territorial societies, as Mançano Fernandes (2009) points out, there is conflictive coexistence between different territorialities. It is difficult for subjects to limit themselves to a single territorial experience. In this sense, he is deeply marked by his different experiences and the meanings induced by his multiple territorial experiences.

This territorial experience, however common it may be, is always unique, as it is emotionally registered in a particular way, always involving innovations, ruptures, and novelties. The subject is understood by Rey (2003) as a procedural being who, in his configuration of meanings, will process his daily life, generating particular meanings. The subjective meanings elaborated based on a given territorial experience will be marked by experiences that are internal and foreign to that space. The subject is an important integrative element of different territorialities, a generator, and a factor of change (REY, 2003).

## 6) Territory as a complex legal institute

In modern times, epistemically and semantically, territory has been predominantly associated with state territory, referring to its legal-political notion of a border space over which the state exercises its sovereignty. There is a supposed neutrality in which space, reduced to land, is subjectivized as an object dissociated from any social relationship, as a reified reality in itself; in other words, it is the bare earth (SANTOSb, 2005).

The thinking of Milton Santos (2006, 2021) has helped to deconstruct the supposed neutrality of geography, showing that territory is not just a physical object with universal metrics and scales but is empty of human relations. On the contrary, geographical space is a product and producer of social relations. It is economic, social, cultural, symbolic, and therefore affective and subjective. The author brought to the field of geography the questioning of scientific purity that has marked the post-positivist social sciences: "We live with a notion of territory inherited from incomplete Modernity and its legacy of pure concepts, so often passing through the centuries practically untouched." (SANTOSb, 2021, p. 255).

The epistemic affirmation of neutrality has meant the invisibility of the power relations that make up social relations and, therefore, the concealment of exclusions and



non-hegemonic social forms. As analyzed here, geographical neutrality and the reduction of territory to land as an objective unit contributed to the state territory being understood as unique to the detriment of other territorialities.

As Milton Santos (2006, 2021) says, a circular relationship exists between the state and the territory. The modern state shapes the territory simultaneously as it is shaped by it. A recursive path is established between the territory and its institutions. The state *nomos* is not unidirectional but circular because, at the same time, the state is a founding institution of a new form of territorialization; it only exists because of the socio-territorial relations it has helped establish. We can see the mistake of dividing the territory from the people who occupy it.

The territory brings together the manifestations of multiple subjects with their spatialities and temporalities. This is because action is not restricted to the present but resonates with the past and projects itself into the future. This spatiality then also takes on a temporal aspect. The territory is established based on a specific configuration of meanings inducing a particular, socially produced form of subjectivation.

The territory is also a place of political exercise. For this reason, considering the variety of spaces, there is consequently a multiplicity of colliding political dynamics. There is a constant flow of meanings over individuals, considering that the territory also resonates in subject formation and political manifestation (SANTOSb, 2006).

Territory is also the space where affection is exercised. Here, it is understood beyond the perspective of affection but of being affected, which can happen in the most diverse ways. The subjects are diversely affected and constituted in this interaction with the other, with otherness, listening, and touch (HUTTA, 2020).

The territory still exerts its influence on relationships of distance and proximity. This can happen regarding the place itself and the other structures that dialog with it: subjects, discourses, physical structures, etc. Thus, we can see the extent of the effects of territory and the idea of territoriality on the constitutions of subjects (HUTTA, 2020).

The legal institute of territory cannot be limited to the administrative vision as a territorial and border portion, as bare land that can be sold and commercialized. The contributions of Human Geography and Social Psychology make it possible to understand its epistemic complexity, which must be translated into its legal repercussions.

Adopting an epistemology far removed from the subject/object dichotomy allows us to understand that there is no rupture between the subject and the land but



rather a reciprocal influence between the two, which is institutionalized in territorialization. It is thus understood that even the hegemonic modern subjectivization of territory as land is only one of many other forms of territorialization. The complexity of the territory requires us to translate the rich and profound interrelationship between subjects and space into legal terms.

## Conclusion

Moving towards the conclusion, it is important to look back. Carl Schmitt (2014) was right to say that there is a new taking of the land, a new *nomos*, with the emergence of the modern state. With this, he problematized territory as a complex legal institute. The relationship between the state and geographical space is not just one of possession or ownership but of founding a set of institutions and sociabilities. In the words of Schmitt (2014), it is a new socio-spatial organization.

In modernity, the subject is understood as isolated from nature, atomized; there is a rupture that has the consequence of epistemically erasing other spatialities. Reality becomes subjectivized as uniform, with space reduced to the earth the physical environment, above which human relations develop separately. It can be appropriated and traded on the market as a physical, measurable, quantifiable quantity. Its exchange value begins to override its use value. Thus, although the legal institute of the territory is fundamental to modern law, it is understood in a one-dimensional way, as a physical space only, erasing its human dimension.

The territory reduced to land, stripped of its existential dimension, forms an abyss between the subject and the territory in an ontological and epistemological dualism. The territory is denied as a relational and subjective space that generates specific symbolizations, emotionalities, and subjects.

Geography's epistemic advance was necessary to insert humans into space, pointing out that territory is inseparable from the social relations and conflicts within it. Social psychology made it possible to deepen the epistemic critique and affirm that territory is also a subjective production that induces meaning. Space is systemic and historical, with its institutions and subjects. Modernity wanted to attribute no single universal territory to the earth. The state *nomos* is one territoriality among many others.



This conclusion is relevant for thinking about law in the context of the Democratic State after the 1988 Constitution. The epistemic, political, and legal support for territory as a complex legal institute also means the affirmation of various subjects, such as different forms of dignity and existential fulfillment. At the heart of the law is the preservation of dignity, understood in a plural and not universal way. Thus, Geography and its propositions on territory, as well as Social Psychology and its reflections on the processes of subjectivization, have much to contribute to the legal debate (FLORES, 2009).

The state territory is not exclusive, neutral, or a single subject. Geographical space is configured and institutionalized due to the subjective meanings produced by its subjects. In it, life becomes a world, social practices become institutionalized, and symbolic universes crystallize, becoming a physical and social space that generates new subjective meanings constituting the subjects. Territories and their subjects are inseparable, although they do not have a linear relationship but a constitutive tension. If the state territory is not unique, there is a diversity of subjects and many forms of dignity that demand protection by the law.

The debate on dignity is at the heart of law and takes on even more complex contours in a democratic constitutional society. Law has been discovering the complexity of this central legal institute for modernity, the territory. Geography and Psychology have much to contribute to the legal and political struggle to affirm different subjects, territories, and dignities.

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