

Brazil's "Winter of Discontent"

What It Says About Urban Planning and Urban Law

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Recent social movements in Brazil, characterized by diffuse claims and a diversity of actors, should not be solely interpreted as reactions to the overwhelming cost of organizing the 2014 World Cup. This article emphasizes the elitist nature and the inefficiency of recent urban policy.

The social demonstrations that have taken place in Brazil since May 2013 have puzzled many analysts, who are still at a loss to understand what exactly has been going on in the country and what the real meaning of these demonstrations is. Conflicting assessments about the events were made, and in fact some commentators from different sides of the political spectrum saw what they wanted to see, often passing premature judgment without solid information and proper research. It is tempting to reduce this confusing collective phenomenon to a single cause: on the international scale, many people have interpreted the phenomenon almost exclusively as a reaction against the absurd costs and implications of the 2014 World Cup in Brazil. Yet, the diffuse nature of the claims and the diversity of the stakeholders involved require a broader analytical framework.

The following analysis argues that, if there is a common base to these apparently disparate social claims, it is the fact that, consciously or not, directly or indirectly, they all denounce the exclusionary nature and the sociospatial segregation pattern that have long characterised urban development in Brazil. Over time, it has become increasingly clearer to many involved in the process that, since they are ultimately denouncing the same problems, they would greatly benefit from regrouping their fragmented claims under the umbrella of the analytical framework which has long inspired the urban reform movement in Brazil. Within this context, this essay stresses the need for the social mobilisation in Brazil to work for the effective and full implementation of the "right to the city" promised by the country's groundbreaking 2011 City Statute.

Nature, causes, and goals of the social mobilisations

Countless massive social demonstrations and street protests have taken place all over Brazil since late May 2013. The phenomenon is continuing, although it has recently lost momentum. Over the last months, street protests have occurred more sporadically and in fewer cities, although many analysts believe that they should regain their vigour in June during the forthcoming World Cup to be played in 12 Brazilian cities. Initially, there was a widespread

perplexity regarding the causes and timing of the social demonstrations: no one knew the exact identity of the actors involved, nor what their goals were. Several lessons have gradually emerged for Brazil and countries everywhere, especially regarding the relationship between urban planning, policy, management, and urban law. It is not easy to explain what has happened in 2013, given the general lack of focus of the demonstrations, as well as the absence of clear leaders.

The first demonstration in Sao Paulo back in May 2013 was a specific protest against increased bus fares. Fomented by violent police reaction, the demonstrations have since then grown and spread to many other cities, as well as incorporated several other claims such as the quality of public services (especially health and education), the cost of the 2014 World Cup, the 2016 Olympic Games and several large projects funded by the public authorities. They have also denounced specific laws and politicians, as well as widespread corruption.

The diffuse composition of this social mobilisation has also been intriguing. Demonstrators have largely been young people, initially from the so-called “new middle-class” which has – ironically – emerged out of the social policies adopted by the Federal Government over the last ten years. They were later joined by the members of the traditional middle-classes and eventually by residents in shantytowns. Regardless of their different backgrounds, they have all shared a profound distrust of the official institutional actors – political parties, powers of the state, governmental levels, unions, students’ organisations, NGOs, media, etc. Fomented by the repeated use of police violence, this broad popular agenda now risks to be taken over by largely obscure radical right and left-wing groups. They have indeed included both groups, seemingly supported by conservative and even reactionary segments – some of which have publicly declared their longing for the military regime – and the supporters of the still little studied “Black Bloc tactic.” The action of this latter group seems to be based on unclear notions of forms of acceptable “anarchy” and “vandalism” – depending on one’s perspective – as well as the place of “symbolic violence” in the confrontation of exclusionary political systems.

Many largely peaceful demonstrations have ended in some form of violence by minority groups. The recurrence of both police violence and violent actions of such minority groups in the demonstrations seems to have led to the current declining popular participation. However, even when the latter have been violent, this social mobilisation process has thus far dialogued with the state and demanded an overall “political reform”, even though in vague terms.

Streets protests and the urban question

Amidst all these uncertainties, two things are certain: the street demonstrations have an urban nature and – consciously or not, directly or indirectly - they are ultimately about the so-called “urban question”, that is, the nature of the social process of production of urban space in Brazil. No wonder then that the ideas of Henri Lefebvre (1968) and Manuel Castells (1977) are back in vogue among the demonstrators.

Even when they are conveyed in specific terms, their claims ultimately address, and condemn, the general urban development pattern in the country: socio-spatial segregation deeply affecting 85% of the people living in cities; the increasing peripherisation of the urban poor, who can no longer afford to live even in more centrally located favelas and other informal settlements; the concentration of public services, equipment, facilities and

opportunities; growing taxation and limited access to public services. For the last eight decades, Brazil has experienced an unparalleled increase in urban risk and spoliation, with an enormous socio-environmental impact.

Cities in Brazil are the socio-spatial expression of an exclusionary and perverse socio-political pact: a gigantic housing deficit co-exists with an equally gigantic stock of vacant built properties and serviced urban land, as well as thousands of informal settlements. Going to work for most people requires long, precarious and expensive commutes. Interestingly, “better housing” as such has not been a significant claim of the demonstrators: in some specific cases, people have opposed the eviction of *favela* dwellers. Residents in *favelas* have made it clear that they want sanitation, not cable cars; but few people seem to have directly questioned the official housing policy and the process of informal development.

It has become increasingly clear to all that the underlying question determining the growing social unrest concerns the increasing commodification of Brazilian cities. If they were originally the *place of*, and provided *support to*, the urban-industrial economic development model, they are currently both the *place* and the *object* of the post-industrial model, i.e. a globalising and highly speculative development model. Indeed, new, still largely ignored, powerful stakeholders working at the global level – developers and promoters, banks, pension funds, hedge funds – have increased their presence, thus leading to increased speculation.

A lack of urban planning and management?

Has this exclusionary urban development pattern resulted from the lack of urban planning, as many have argued? The answer is no. Brazil’s urbanisation has largely been a state-led process. What is at stake is the kind and nature of traditional urban planning (theory, education and practice), which has long been viewed merely as a “technique of territorial organisation”, as well as being “neutral” and “objective” socially and politically. The fragmented approach has dissociated urban policy from land policy and housing policy, as well as from transportation, environmental, fiscal and budgetary policies. What’s more, planners have no understanding of the exclusionary and speculative dynamics of the property markets they create, seeing themselves as poor hostages of such aggressive markets.

As a result, this elitist planning tradition has led to informality. Moreover, there is no attempt to share with the community some of the gigantic surplus value resulting from state action (through public works, services, and urban laws) and, when there is, it reinforces socio-spatial segregation. Mistaking effects for causes, well-intended governmental actions have generated ill-effects: the massive social programme implemented by the federal government – My House, My Life National Housing Programme – has for example already built over 2 million houses in precarious peripheries; costly, but isolated, regularisation programmes have led to higher land, property and rental prices and thus to evictions.

Urban planning has also long been dissociated from urban management. Lengthy, bureaucratic procedures, the lack of intergovernmental articulation as well as of transparency and accountability, all of these combined factors have significantly contributed to the current urban crisis. This has been the case especially at the local level, given the widespread lack of municipal capacity to implement more complex proposals. Although nominally recognised and even required by the legal-urban order in force, popular participation has not taken place

in all stages of decision-making and it has often been manipulated, reinforcing the longstanding tradition of political patronage.

Is legal reform sufficient?

The street demonstrations have also told an important cautionary tale: legal reform is not sufficient. Brazil is the land of the acclaimed, groundbreaking 2001 City Statute, internationally considered as one of the most enabling regulatory frameworks for sustainable urban development. Since then, 1450 Municipal Master Plans (MMPs) have been approved nationally. The enactment of the 2001 federal law was largely the result of a nationwide process of social mobilisation. The City Statute regulated the original chapter on urban policy introduced by the 1988 Federal Constitution, which had itself been preceded by an unparalleled process of sociopolitical mobilisation, especially through the formulation of the Popular Amendment on Urban Reform. I have discussed both the constitutional chapter and the City Statute in detail elsewhere (Fernandes, 2010); for the purposes of this paper, it should only be stressed that the main dimensions of the City Statute are:

- that it replaced the traditional legal definition of unqualified individual property rights with the notion of the social function of property so as to support the democratisation of the access to urban land and housing;
- that it defined the main rules of land, urban and housing policy to be observed in the country;
- that it created several processes, mechanisms, instruments, and resources aiming to render urban management viable, with an emphasis on sharing with the community some of the surplus value generated by state action which was traditionally fully appropriated by land and property owners;
- that it proposed a largely decentralised and democratised urban governance system, in which intergovernmental articulation as well as state partnerships with the private, community and voluntary sectors are articulated with several forms of popular participation in the decision- and law-making process;
- that it recognised the collective rights of residents in consolidated informal settlements to legal security of land tenure as well as to the sustainable regularisation of their settlements.

Together, these intertwined dimensions of the City Statute certainly constituted a new urban land governance in Brazil. Given the highly decentralised nature of the Brazilian federative system, the materialisation of this legal framework was largely placed in the hands of the municipal administrations through the creation of MMPs. Prior to the enactment of the new law, the vast majority of municipalities did not have an adequate regulatory framework to govern the processes of land use, development, preservation, construction, regularisation, etc. Most of them did not have basic information, maps, photos, and other relevant materials either. Out of some 1,700 municipalities that had a legal obligation to approve such MMPs so as to apply the City Statute, some 1,450 have already done so, a remarkable fact in itself.

However, since the enactment of the City Statute, Brazilian cities have undergone significant changes. The rates of urban growth have decreased but are still relatively high, especially in middle-sized and small cities, thus leading to the formation of new metropolitan regions. Economic development and the emergence of a so-called “new middle class”/“precarious working class” have aggravated longstanding urban problems of transportation, mobility,

environmental impact, and urban violence. Infrastructure and energy provision problems have increased, and the fiscal crisis of the public administrations is widespread, especially at the municipal level. Above all, the long existing land and housing crisis has escalated. The housing deficit is still enormous (between 6 and 7 million units), and despite the impressive number of units already built, the “My House, My Life” national housing programme has not fully reached the poorest families and has been criticised for having reinforced longstanding processes of socio-spatial segregation. While the levels of land, property and rental appreciation have broken historical records, there is an enormous stock of vacant serviced land, abandoned and under-utilised properties (calculated as 5.5 million), as well as of public land and property without a social function.

Informal development rates are still high, with the densification of old settlements and the formation of new settlements usually in peripheral areas, and it has also been taking new shapes – backyarders, informal rental transactions, etc. The proliferation of gated communities in peripheral areas and other metropolitan municipalities means that for the first time rich and poor are competing for the same space. Urban development in the new economic frontiers – especially in the Amazon – has largely taken place through informal processes, leading to a growing number of land disputes and socio-environmental conflicts throughout the country.

Over the last two decades or so, an enormous amount of public resources and fiscal incentives have been given to land developers, urban promoters and builders, usually within the context of urban renewal (revitalisation programmes, rehabilitation of downtown areas/historic centres, large scale projects, modernisation of harbours/ports/infrastructure, World Cup and Olympic Games). The number of forced evictions – estimated by some at 250.000 people only insofar as the World Cup is concerned¹ - is staggering, not only in Rio de Janeiro and Sao Paulo, but even in municipalities such as Belo Horizonte and Porto Alegre that were long committed to the urban reform process. In fact, the urban reform process, so vivid in the 1980s and 1990s and instrumental for the enactment of the 2001 City Statute, seems to have lost momentum. Many stakeholders want to know who has actually benefitted from the enormous transfer of public resources.

The existing studies on the new generation of MMPs have clearly shown that there has been progress on many fronts: the general discourse of urban reform has been adopted by most MMPs; specific sectors – environment, cultural heritage – have been dealt with; there has been a widespread creation of ZEIS – Special Zones of Social Interest corresponding to the areas occupied by existing informal settlements; and, whatever the variations the participatory nature of the discussion of the MMPs was remarkable. Perhaps the main achievement has been the record production of data and all sorts of information about Brazilian cities.

However, there are still serious problems constraining the legal and social efficacy of the law, especially as policymakers and planners have failed to make full use of its potential and have not fundamentally changed the exclusionary nature urban of planning. The game has become more incongruent than ever, with timid municipal spheres now tackling aggressive global stakeholders. There are several problems of legal efficacy undermining the new MMPs: the excessive formalism and bureaucracy of municipal laws; the obscure and imprecise legal

¹ Observatorio das Metrópoles

http://www.observatoriodasmetrolopes.net/portalpopulardacopa/index.php?option=com_k2&view=item&id=600:porque-n%C3%A3o-abrir-m%C3%A3o-da-cr%C3%ADtica-%C3%A0-copa-do-mundo?&tmpl=component&print=1

writing (urban laws are rarely written by legal professionals) have widened the scope for disputes.

There are also several problems of social efficacy undermining the new MMPs: most plans remain traditional plans, often failing to territorialise the proposals and intention, as well as to intervene in the land structure and in the land and property markets. The vast majority of MMPs has failed to recapture any surplus value resulting from state and collective action, and when this has happened, there has been no or limited social redistribution of the newly generated financial resources. Moreover, most MMPs have placed no or limited emphasis on social housing in central areas. Generally speaking, there are no specific criteria for the expansion of urban zones, public land and property have not been given a social function, and there has been no clearly articulated socioenvironmental approach. Large projects have often bypassed the MMPs – and presumed collective eviction. Above all, land, urban, housing, environmental, fiscal and budgetary policies have not been integrated, and the regularisation of informal settlements is still largely viewed as an isolated policy.

Bureaucratic management and technical complexity have also meant that there has been a widespread lack of administrative capacity to act at municipal level. Obscure planning language has been as problematic as obscure legal language. At other governmental levels, the precarious institutional systems have experienced several problems. At the federal level, sectoral policies have not been integrated, within and outside the Ministry of Cities; there is no national metropolitan policy, as well as no national territorial policy (especially regarding the Amazon). Above all, at all governmental levels, there is a profound lack of understanding that cities are not only about social policy and infrastructure for economic development, but they are also about the economy.

The social demonstrations have clearly indicated that, for all the country's undeniable progress towards confronting poverty and inequality, there still is an enormous amount of work to be done to redress several forms of historical injustices, to provide better public services, and to promote effective inclusive socio-economic and urban policies. This requires an articulated set of public policies, ranging from the creation of a truly redistributive tax system – in a country dominated by regressive and indirect taxation – to more incisive land policies.

A renewed call for urban reform

Brazil's legal-urban order has significantly changed, but urban managers have not assimilated the new principles, and civil society has not wakened up to the new legal realities. The confirmation of old socio-spatial segregation by the Brazilian state at all governmental levels demonstrates that – with the support of lawyers – urban planners and public managers remain hostages to exclusionary land and property markets, as well as to segregating public policies, that they created and fomented in the first place. Playing the game according to the new rules is fundamental for the collective construction of sustainable and fairer cities for the present and future generations.

It is in this context that the street protests have increasingly led to the revival of the urban reform movement, which was very influential in the 1980s and 1990s, but now lost momentum. There has been a concerted attempt to articulate all the specific claims defended

by the demonstrators under the umbrella of the “Right to the City”. Achieving this goal would require new political strategies way beyond representative democracy, involving direct participation, but also recognising the scope for confrontation, occupation, and radical action. Independent media and community planning strategies, with support from committed academics, have had a growing influence in this search for original collective emancipation processes.

The future of The City Statute urgently requires a thorough renewal of the socio-political mobilisation around land, urban, housing and environmental matters so as to advance urban reform nationally. It is everyone’s task to defend the City Statute from the proposed (essentially negative) changes being discussed at the National Congress, and to fight for its full implementation.

If decades of socio-political disputes are necessary for the enactment of the City Statute, a new historical stage has been opened, namely, that of the socio-political disputes for its full implementation. Let’s hope that, come the World Cup and beyond, a renewed social mobilisation process fully embraces the urban reform agenda in Brazil so as to affirm, and enforce, the collective right to sustainable and inclusive cities.

Further Reading:

Manuel Castells. *The Urban Question*, London, Edward Arnold, 1977

Henri Lefebvre. *Le droit à la Ville*, Paris, Anthropos, 1968

Edesio Fernande. *The City Statute and the Legal-Urban Order*, Cities Alliance, 2010 (<http://www.citiesalliance.org/node/1947>)