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COMPARATIVE URBAN STUDIES PROJECT AND BRAZIL INSTITUTE

Democracy and The City: Assessing Urban Policy in Brazil

While unable to solve all of a country's problems, progressive urban policy can be an effective tool to address poverty and inequality. Brazil, a country notorious for its spatially segregated cities and concentration of money and power, not only offers important lessons for improving the quality of life of city dwellers through urban policy and planning but also illustrates how such instruments can backfire or cause unintended consequences. On May 17, 2007, the Comparative Urban Studies Project and the Brazil Institute of the Woodrow Wilson Center cosponsored a conference on urban development in Brazil, focusing on how participatory requirements in Brazil's urban law have reshaped the city. Director of the Brazil Institute *Paulo Sotero* set out the terms of the debate, acknowledging the salience of democracy at the local level—where citizens have been directly affected by these policies.

Reflecting upon the new generation of urban policies in Brazil, *Teresa Caldeira*, professor of city and regional planning at the University of California at Berkeley, presented her research on citizen participation in urban planning required by Brazil's *Estatuto da Cidade* (Law of the City) and São Paulo's Master Plan. Urban policy is significant for Brazil, she contended, because it represents the country's efforts over the last twenty years to make democracy work and to combat entrenched social inequality. Furthermore, this new, participatory method of urban policy formulation and implementation engenders and expresses a new vision for the ordering of urban space; a new way to see the state's role in development, and a new role for the newly empowered citizenry. However, initial data from São Paulo suggests that popular participation has not brought about social justice, as was expected, but has instead legalized spatial inequality.

The *Estatuto da Cidade* is a federal law mandated by Brazil's 1988 constitution, requiring over 1,600 cities, or approximately 40 percent of Brazilian municipalities, to reformulate their Master Plans (MP) by October 2006 in accordance with the principle of popular participation in urban reform and municipal administration. The original objectives of the *Estatuto da Cidade* have been quite democratic. The center-left groups decided to use the MP and the fact that it was obligatory as a way to combat urban inequality and injustice to enforce the radical objectives of the *Estatuto da Cidade*. They did this in spite of the fact that they were in principle critical of MPs as instruments of demo-



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cratic planning. For them, MPs represented a nationalistic and authoritarian style of planning that democratic planning was supposed to replace. Caldeira's findings show that to a significant extent the progressive reformation of cities MPs has complicated the fight for social justice.

Within the section on urban policy in the Constitution, Caldeira mentioned two noteworthy articles that have transformed the character of urban policy in Brazil by subordinating property rights to the collective interest. Article 182 establishes that urban property has a social function while article 183 creates *usucapião urbano* (akin to adverse possession). Article 182 establishes the principle of the social function and creates instruments for the state to tax or force the utilization of properties that are not inhabited and therefore do not fulfill the social function. *Usucapião urbano* creates the ability to establish uncontested title of ownership for residents who have squatted continuously for five years on small lots of urban land, given no legitimate opposition to the change in title.

The *Estatuto da Cidade* aims to promote sustainable development and combat inequality through proper regulation and democratic management. To this end, it stipulates popular participation along with the state's cooperation and partnership with private initiatives and civil society associations. Popular participation in management takes the form of debates, public hearing, conferences, a system of popular amendment, and participatory budgeting. Far from developmentalist's implicit assumption of the citizenry as ignorant and in need of enlightened leadership to bring about modernization, the *Estatuto da Cidade* both assumes and requires an active and engaged citizenry. It presupposes that citizen engagement with urban affairs—the exercise of citizenship—is the path to social justice and equality. Caldeira explains that, while society's needs were once unilaterally scripted

from above to mean modernization, progress, and development; now they are fashioned by society itself, with today's needs encompassing citizenship, rights, participation, and equality.

This novel approach to urban policy comes about through the repertoire of neoliberalism, the institutionalization of which coincided with the "invention" of democracy in Brazil in the 1980s. Caldeira explained that it was this two-pronged approach that dismantled the corporatist, developmentalist, authoritarian state in which the law was used to create inequality: significant segments of the population were excluded from property ownership. Neoliberalism re-conceptualizes and rationalizes the role of the state and the citizen, with the state utilizing the entrepreneurial initiatives and freedom of its citizens to govern. Just as neoliberalism cannot exist without citizen engagement, so democracy cannot exist without popular participation. To be sure, these two forms of participation coexist in a tense environment: democracy strives for social justice while neoliberalism's primary concern lies with the dismantling of the interventionist state.

Caldeira argued that popular participation within urban policy and planning did not necessarily result in greater equality. In fact, São Paulo's MP, written to fulfill the requirements of the *Estatuto da Cidade*, ironically has proven an obstacle to the implementation of social justice. The two basic tenets of São Paulo's MP were to use urban policy to address urban sprawl and socio-spatial inequality by encouraging densification where infrastructure already exists and discouraging the growth of illegal settlements in the periphery. For the illegal settlements already in existence the MP provides measures to legalize holdings, set standards of urbanization, and improve infrastructure. In line with the progressive requirements and democratic ideals of the

Estatuto da Cidade, São Paulo's MP stipulates that the planning, implementation, and control of urban policy be done in a participatory manner and through active engagement and partnership with the third sector, non-governmental entities of civil society. São Paulo's citizenry have actively participated in more than thirty public hearings to debate the process of formulation of the MP, its zoning codes and regional plans. However, Caldeira found that while popular participation in urban policy planning enforced the *principle* of social justice, in practice, popular participation actually contested social justice.

Three main coalitions articulated their demands in these participatory debates. The *Frente pela Cidadania* (Front for Citizenship) represented powerful real estate developers; the *Frente Popular pelo Plano Diretor* (Popular Front for the Master Plan) represented popular movements, consultants, and university-based researchers; and, the *Movimento Defenda São Paulo* (Defend São Paulo Movement) represented the interests of affluent upper-middle class neighborhoods. As can be expected, the two coalitions representing the rich and powerful (*Frente pela Cidadania* and the *Movimento Defenda São Paulo*) were most successful in making their interests known and in influencing policy making. Real estate developers focused their efforts on convincing the MP to abandon its designs to unify rules for construction that made it necessary to purchase authorization to build larger than the total area of the lot (i.e. vertically), known as *solo criado* (created soil). The upper-middle class lobbied against changes in zoning regulations that would dismantle the privileges of the exclusive residential areas (the neighborhoods that they represent).

While the *Frente Popular* opted not to participate in these two debates, it did successfully advocate the establishment of *Zonas Especiais de Interesse Social* (Special Zones of Social Interest – ZEIS).

ZEIS are low income areas targeted for state intervention to promote their re-qualification, legalization, and urbanization according to Plans of Urbanization approved by the executive and formulated with participation of the population involved. The objective of this initiative is to protect areas from real estate speculation by establishing them as areas devoted to low-income housing. Likewise, it also subjects low-income neighborhoods and *favelas*—a type of low income settlement in which residents do not have claims of ownership to the land—to rules of occupation that differ from those of the rest of the city. For instance, ZEIS authorities may grant exemptions in land use standards in the name and interest of promoting low-income housing development.

Because of popular participation requirements, urban policy in São Paulo is now made through democratic debate and negotiation. However, class differences defined the terms of the debate and the outcome was far from egalitarian, observed Caldeira. The upper and lower classes both successfully pursued their own specific interests, however, the result has been the *legalization of inequality*. The more affluent areas of the city are marked by higher land use standards, while poorer areas are marked by the low standards set forth through ZEIS formulation. Whereas inequality was formerly expressed through illegality—the poor peripheries were informal and thus illegal; now, inequality is expressed in legality. The very legislation of popular participation, intended to reverse urban illegality, has unintentionally legalized spatial inequality between the center and periphery, and therefore has set back social justice in São Paulo.

Such findings question common knowledge and widespread assumptions about both democracy and social movements. The unintended consequences of participatory urban policies and planning demonstrate the contradictory claims of democracy and neoliberalism. The redefined

state proves less able to act as an impartial and egalitarian orchestrator between the city's various interests groups—many of whom are necessarily antagonistic, focused primarily on self-preservation and personal gain, and therefore generators of *unequal* distribution of state resources. Popular participation and partnership does not necessarily bring about social justice if and when those groups that are most coherently and effectively represented are the ones with wealth and power (as is often the case). Additionally, social movements are no longer dominated by the working classes, as was the case in the 1970s and 1980s. Most of the citizens Caldeira found shaping the debate on urban policy in São Paulo were from the upper-middle classes and represented elite interest groups. Thus, in a way, these innovative urban laws have unintentionally created a form of participatory citizenship of the rich. Caldeira finds these transformations not only surprising but also ironic: this discourse of participatory democracy was embraced by center-left political parties (particularly the *Partido dos Trabalhadores* – PT) and social groups advocating social justice, while the result of their efforts has been new forms of privilege and social inequality.

While the *Estatuto da Cidade*, São Paulo's MP, and ZEIS formulation have contributed to this re-invention of social inequality, they have also provided powerful instruments to help foster social justice and improved quality of life within the poor periphery. Additionally, requirements for popular participation have forced powerful interest groups to take part in the democratic process if they wish to influence public policy. While real estate developers were still able to exact the concessions they wanted, at least now they are forced to do so openly and through the democratic process of negotiation, as opposed to closed-door, unilateral imposition of demands. Furthermore,

Caldeira was quick to acknowledge that laws are now being implemented with the aim of improving the quality of life of low-income citizens rather than expelling them from their illegal settlements to construct roads or high-income housing developments. Furthermore, she offered concrete proof that the *usucapião urbano* of the *Estatuto da Cidade* has helped neighborhood associations make and win claims of adverse possession in peripheral neighborhoods of São Paulo, in particular Jardim das Camélias.

Numerous positive developments have come about from this growing trend of participation and the subsequent formalization of the ZEIS. Marcia Leite Arieira, senior social development specialist at the Inter-American Development Bank (IDB), observed that, in many ways, Brazil has set the stage for progressive urban development strategies—a trend that has been spreading to other countries in Latin America. In the past twenty years, urban policies targeting these zones have undergone a significant transformation, particularly in São Paulo. The traditional approach to *favelas* was to declare them special zones (ZEIS) and target them with traditional physical infrastructure improvements: streets were paved and sewage systems were installed. However, the needs and wants of ZEIS residents were not taken into account. Later on, the slum-upgrading approach gave coherence to these improvements, with the concept of transforming the *favela* into a regular neighborhood.

According to Arieira, this new approach to ZEIS should be seen as a step in the right direction for two reasons. First, by focusing solely on public works, the state failed to tackle the key problem with low-income neighborhoods: lack of geographical and legislative representation. These informal neighborhoods did not officially exist. Their inhabitants (and needs) were in effect invisible to the state. For this reason, the emphasis that

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social groups have placed on legalizing and formalizing ZEIS through participatory governance is a positive gain as the state now acknowledges the existence of *favelas*. To acknowledge their existence means also to acknowledge their needs for infrastructure and social services. While the standards applied to such neighborhoods are unfortunately not on par with the standards that apply to wealthier neighborhoods, as Caldeira pointed out, the fact that standards now actually exist is nonetheless an improvement.

Second, ZEIS are now treated as integral parts of greater São Paulo, and concerns of their residents related to quality of life trump city planning for physical infrastructure. With the formalization of illegal neighborhoods, the parameters are set for sustainable growth with an eye to the needs and wants of the low-income residents. In the 1960s and 1970s, *favelas* were often demolished and residents displaced in the name of rational planning and in order to accommodate upper-class residences. Now, ZEIS are treated more like actual neighborhoods and urban policy heeds the quality of life of all citizens, not just those with resources and strategic influence. Much remains to be done to tackle issues of urban inequality and poverty; however, Arieira concluded, these new trends in urban policy and planning bring benefits and are here to stay.

Such success is less evident in Rio de Janeiro, according to *Bryan McCann*, associate professor of history at Georgetown University. As with many other urban policy initiatives, Rio's *Estatuto da Cidade* has not performed as planned. Even the best of laws are insufficient at engendering social change without the necessary political transition. For instance, *solo criado* was designed to restrict the right of owners to construct multi-level units on their property through tax disincentives. The objective was to promote social justice: tax the wealthy (those able to build high-rises) and use

the resulting revenue on government services for the poor. However, in reality, the law has led to an increase in the number of low-density, upper-class properties in Rio de Janeiro: an unintended consequence predicted by the scholar Martin Smolka. Similar to what Caldeira witnessed in São Paulo, progressive urban policies in Rio have led to surprising transformations as well as sub-optimal developments.

Regarding *usucapião urbano*, mitigating circumstances have prevented *cariocas*—residents of Rio de Janeiro—with informal or illegal living arrangements from legitimizing ownership of their residences, even though many qualify. Although guaranteed by the 1988 constitution and strengthened by the 2001 *Estatuto da Cidade*, the law has been used sparingly to formalize the 30 percent of housing in Rio de Janeiro considered informal. This lies in sharp contrast to the case of São Paulo, where the instrument has successfully established uncontested titles of ownership to people who bought their land but could not get their deeds either because they bought the land from swindlers or because there are irregularities in the subdivision of lots. Informal urban dwellers in Rio are not taking advantage of the opportunity to legalize their residence, McCann explained, because neighborhood associations have an incentive to retain informality and thus prevent residents from pursuing titling. Organizations linked to the drug trade and the mafia benefit from informality because they are able to take advantage of the power vacuum and lawlessness, and thus discourage their residents from pursuing land titles. Favela leaders and Mafiosi, elected to help rewrite Rio's new MP, saw to it that their low-income neighborhoods either remained outside the realm of legality or in a form of legalized inequality such as the low land use standards of the ZEIS described by Caldeira.

COMPARATIVE URBAN STUDIES PROJECT AND BRAZIL INSTITUTE

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