

- Irvin, R. and Stansbury, J. (2004). Citizen Participation in Decision Making: Is it Worth the Effort? *Public Administration Review*, 64(01), pp.55-65.
- Klimova, Z. (2010). *Public Participation in Urban Renewal Projects*. Master Degree. Lunds University.
- Kuang, X. and Lu, Y. (2015). The Exploration and Practices of Shanghai Community Regeneration in the Context of Inventory Planning. *Annual Conference on Urban Planning of China 2016*.
- Li, Y. (2012). *Public Participation Issues in Preservation Planning: Practices of Chinese Historic District*. Master Degree. University of Pennsylvania, Philadelphia, PA.
- Metselaar, G. and Priemus, H. (1992). *Urban Renewal Policy in a European Perspective an International Comparative Analysis*. Delft, Delft University Press.
- Qian, Y. (2009). *Policy and practice of urban neighborhood renewal and regeneration: what can China learn from British experiences?* Ph.D. Heriot-Watt University.
- Shi, Y. (2010). The Media Effects of Public Participation in Urban Planning: A Case Study of Urban Renewal in Haizhu District, Guangdong. *Annual Conference on Urban Planning of China 2010*.
- Smith, R.W. (1973). A theoretical basis for participatory planning. *Policy Sciences*, 4(3), pp.275–295.
- Sun, S. and Yin, Y. (2008). Public Participation Based on Urban-rural Planning Law. *Planners*, 24(05), pp.11-14.
- Wei, B. and Dai, Z. (2015). *Analysis and Implications of Public Participation in Urban Planning in China and the UK: Case Studies of Hangzhou and London from a Comparative Perspective*. *Planning Studies*, 39(5), pp.32-36.
- Wu, X. (2007). Regain Energy—Primary Analysis of Historical Area Protection and Renovation Mode by the example of Three Alleys and Seven Lanes in Fuzhou. *Urban Plan Landscape Architecture*, 25(03), pp.83-85.
- Yan, H. (2011). The Comparison Study of Public Participation in the Urban Planning Process. *Productivity Research*, 2011(6), pp.103-106.
- Yang, B. and Chen, P. (2015). Succession and Transformation of Urban Planning under the New Normal. *City Planning Review*, 39(11), pp.9-15.
- Zhang, Y. (2015). *Public Participation Approaches for Urban Planning in China*. University of Wisconsin-Madison.

ID 1537 | URBAN REGENERATION PROJECTS IN BRAZILIAN CITIES: HEGEMONIC DISCOURSES AND POLICY MODELS

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1 INTRODUCTION

The central purpose of this article is to analyze planning traditions, regulatory frameworks and the social construction of legitimizing discourses on urban regeneration in Brazil. It presents an overview of the main argumentative lines underlying the discursive construction of the notion of public interest in the context of urban regeneration initiatives in Brazilian cities and shows how the convergence of different, and eventually conflicting assumptions and propositions related to urban development have provided ideological support for the widespread assimilation of urban regeneration initiatives as socially desirable interventions. It comprises the following sections: Introduction; The construction of the arguments; The Urban Reform; Sustainability; The strategic planning of cities; The trajectory of urban regulation and regeneration policies in Brazil; The recent process; Conclusions.

The point of departure of an urban regeneration project is the recognition of a certain urban situation as problematic, and the assumption that an intervention aimed at fixing it is socially desirable. These projects are backed by narrative constructions addressing what the urban problems are, and what sort of

measures should be adopted in order to fix them in a way that is consistent with what is assumed to be the public interest⁴. Though the notion of public interest is disputed and contingent, taking on different characteristics according to the context, the evocation of this concept is always present in urban regeneration projects. The justification of urban interventions promoted by the state inevitably requires the formulation of discursive constructions aimed at showing their alignment with the notion of public interest, regardless of how this is conceived. In the case of urban regeneration projects targeting previously developed land, which usually affect a variety of both particular and collective interests, a verifiable connection between their alleged purposes and the pursuit of goals embedded in interests of a higher kind is necessary if they are to attain a minimum level of legitimacy and political feasibility. Referring to the public interest may be regarded as an unavoidable argumentative step to justify urban regeneration projects.

These discursive constructions are usually based on more or less explicit assumptions of what the socially desirable patterns of urbanization are, and also of why certain policy arrangements are more suitable than others to improve them. In this sense, thinking of the relations between urban regeneration projects and discursive formulations on the public interest develops in two dimensions of analysis, which could be summarized as a programmatic one and an instrumental one. The first is dominated by questions like the general goals and strategies of urban development that underlie urban regeneration projects, and the reasons why these projects are expected to generate positive impacts in the city. The second discusses the way in which they are implemented, the alleged reasons for the choice of certain kinds of regulatory arrangements rather than others. These two dimensions are somehow intertwined, both reflecting broader trends of the contemporary urban development models. However, the distinction may be useful for analytical purposes.

Rather than being built upon a one-dimensional line of reasoning, the discursive constructions backing urban regeneration policies are usually based on an amalgam of different principles and claims which are somehow associated with the notion of public interest. Their power rests on the ability to make urban regeneration projects be perceived as expressions of the public interest by a diversified set of agents at different geographical levels, and, by doing so, setting favorable ideological conditions for the formation of strong developmental coalitions. The formation of coalitions imposes the necessity of accommodating interests and claims that may be contradictory. If the shaping of public interest narratives within urban regeneration projects requires some degree of openness of policymakers to the diversity of aspirations and existing needs in cities, this notion is also employed as a powerful rhetorical device to hide conflicts and forge political consensus. Though the way these narratives are woven may change according to local features, it is also possible to identify discursive constructions that are recurrently applied to legitimize urban regeneration projects on a public interest basis, which makes them hegemonic discourses.

The term 'urban renewal', attributed to intervention in the pre-existing urban fabric, became commonplace, according to Compans (2004) with the end of World War II, in view of the need to rebuild the European cities destroyed by the conflict and to respond to the housing deficit accumulated over the previous decades. Later, in the 1970s, with the restructuring of production and the economic recession, programmes were started to convert abandoned and degraded port and industrial areas. The simultaneous crisis of public finance led to a framework of pragmatism that sought association with private initiative in configurations with a greater or lesser degree of state intervention, depending on the context.

Urban regeneration projects with private sector involvement were highly developed and important in Brazil during the 1990s. Since then there have been a proliferation of policies of this kind, which has also entailed the continuing development of a directly or indirectly related legal and regulatory apparatus. It is important to stress that this process has been spatially uneven. Though urban regeneration initiatives are spreading throughout an increasingly broader geographical base, they are still highly concentrated in major cities and metropolitan regions. This trend is even more explicit if considering the situations in which these projects are carried out with a relevant involvement of the private sector

In this scenario, certain local experiences in major cities have been playing a substantial role in shaping the regulatory landscape of urban regeneration projects, and these local experiences have been even more influential than national legislation and programmes. A number of urban regeneration processes recognized as successful experiences within hegemonic discourses have been assimilated as benchmarks for the formulation of regulatory arrangements related to this kind of intervention, and have become referential models in various Brazilian cities. The city of São Paulo has played a particularly important role

as a laboratory of regulatory arrangements related to urban regeneration initiatives at least since the 1990s, and the influence of regulatory arrangements originally conceived in São Paulo can be seen in specific projects promoted in other localities and even in national legislation, which has incorporated some of its instruments and given them the status of standardized regulatory tools applicable in the country as a whole. More recently, the city of Rio de Janeiro has also become a centre of the development of urban regeneration policy frameworks. Taking the previous experiences of São Paulo as an inspiration, this city has deployed complex schemes of urban regeneration with private sector involvement. The latter have been regarded as more sophisticated than those previously structured in São Paulo, and also as potentially influential models for further generations of interventions of this kind.

Cities like São Paulo and Rio de Janeiro can be seen as uncharacteristic of the Brazilian scenario, with specific attributes related to their size, economies and managerial capacity that are far from being a generalized pattern throughout Brazilian cities. Thus, the urban regeneration schemes in these cities cannot be simply transferred to smaller towns as ready-to-use regulatory frameworks. Even if they are willing to replicate urban regeneration models developed in São Paulo and Rio, most smaller towns and cities do not have the necessary economic and institutional conditions to enable them to function. However, these major cities do exert an influential role on defining policy paradigms, guiding governmental agendas, exporting regulatory frameworks, which means that they act as incubators of policy arrangements of this kind.

Urban regeneration actions are loosely regulated at the national level if regarded from a more "programmatic" perspective. There is nothing like a comprehensive national plan of urban regeneration, and neither is there a well-structured federal policy to guide or support these initiatives at the municipal level. There is also a lack of legal and regulatory devices clearly defining urban regeneration as a goal to be pursued by local governments. The connections between federal regulations and urban regeneration are limited to general principles that exert an indirect influence on initiatives of this kind.

In order to present the Brazilian context, two policy instruments used in urban regeneration processes will be scrutinized: the urban operation and the public-private partnership. These two modalities are linked to different processes and origins, but they have in common the fact of being urban instruments which enable the articulation between the public power and the private initiative with the purpose of expanding the capacity of promoting urban interventions that will allegedly benefit society in the future. While the urban operations come from an urban matrix ideology, in which a goal of urban renewal is present, whatever the content that it acquires, the public-private partnerships are based on large public infrastructure works which are mainly focused on the field of production or on sectorial policies that require large-scale equipment, such as in the case of health, with the need for the construction and management of large hospitals. They therefore come from a management matrix.

The following sections of this paper present an overview of the main argumentative lines underlying the discursive construction of the notion of public interest in the context of urban regeneration initiatives in Brazil. They seek to show how the convergence of different - and eventually conflicting - assumptions and propositions related to urban development provided ideological support to the widespread assimilation of urban regeneration initiatives as socially desirable interventions. In this sense, these sections explore the recent evolution of the ideas of 'urban reform', 'strategic planning' and 'sustainability' within urban policy debate in Brazil and their influence over the imaginary of urban regeneration. The last two sections address the regulatory framework related to urban regeneration policies in Brazil. They present an overview of the roles played by different governmental spheres in structuring these policies, their level of institutionalisation and the legal and regulatory instruments more directly employed in their implementation.

2 THE CONSTRUCTION OF THE ARGUMENTS

There are three levels of the Brazilian state, with federal, state and municipal legislative and executive authorities. The complex framework of plans and regulations takes place in these three political-administrative spheres, but the tradition of Urban Planning and Regulation has always been at the local level, that of the municipalities. This shows the fact that the urban question has traditionally been the "particular interest" of the municipality.

The overlapping of the urban question with the national sphere has always been very fragile, historically passing through some periods of regulation and others of almost invisibility, but this issue gained visibility when the Ministry of Cities was created in 2003, as will be seen later in the “The Recent Process” section. The construction of these instruments (Urban Operations and PPPs), validated in Brazilian Law, is a result of the form that ended up by acquiring a set of concepts and principles formulated in a context in which the domain of discourse was that of social development but were materialized in another more liberal and pragmatic period.

Different and even conflicting concepts and principles of different natures were used and linked to support urban renewal proposals and to present them as socially desirable actions. In this sense, the instruments currently used in Brazil bring together elements derived from traditional Urban Regulation and its practice, and the diverse ideas present in the debate on urban policy in Brazil, namely Urban Reform, Sustainability Ideals and Strategic Town Planning.

3 URBAN REFORM

The references to Urban Reform come from the “Basic Reforms” formulated at the heart of great mobilization of intellectuals and social movements in Brazil in the early 1960s, with a view to overcoming social inequality and technological backwardness. According to Maricato (2008: 8),

“Those with the greatest repercussion and visibility were the proposals for Agrarian Reform, Educational Reform and Health Reform. But, despite having less critical mass, the Architects joined this national movement. In 1963 a National Congress of Architects held in Petrópolis in the state of Rio de Janeiro proposed Urban Reform, with public control of land use and social housing as central issues of a manifesto resulting from this important event.”

Shortly after, military intervention interrupted this process for a considerable period by establishing a centralized system of government and suppressing elections for state governors and state capital mayors, who were now nominated by the government in Brasília.

From the end of the 1970s the model began to run out of steam, and social movements expanded. In smaller cities and towns and in those around the state capitals, where the mayors continued to be elected, various experiences of participation and democratization of public actions were undertaken, with the interaction of social movements. In this context, and with the mobilization, claims and proposals of the urban social movements, it was possible to once again launch the ideals of Urban Reform.

In 1987, the Popular Amendment for Urban Reform was presented by a wide field of popular urban movements, trade unions and professionals, non-governmental organizations, university sectors and civil servants. The amendment clearly states what is coming, beginning with the title: ON URBAN RIGHTS, with the following two articles (Emenda Reforma Urbana, 1987):

“Art. 1 - Every citizen has the right to decent urban living conditions and social justice, and the State is obliged to ensure:

I - Access to housing, public transportation, sanitation, electricity, public lighting, communications, education, health, leisure and security, as well as the preservation of environmental and cultural heritage.

II - The democratic management of the city.”

Art. 2 - The right to decent urban living conditions requires the exercise of the right to property in the social interest in the use of urban properties and subordinates it to the principle of the state of necessity”.

With reservations and cuts, the proposals were partially incorporated into the Constitution, forming the Chapter of Urban Policy, as part of the section named “On the Economic and Financial Order”. The chapter is made up of articles 182 and 183, with a central focus on the institution of the social function of property and the city. As the state of Brazil is at three levels, as mentioned, with federal, state and municipal levels of legislative and executive authority, the elaboration and approval of the State Constitutions and Organic Municipal Laws followed those of the Constitution.

Approved in 1990, the Organic Law of the Municipality of São Paulo reaffirmed and detailed the provisions of the Constitution stating that, in order to ensure the fulfillment of the social function of the property, the Municipality shall: I. Prevent distortions and abuses in the economic fruition of urban property and speculative use of land as a reserve of value; II. Ensure the suitable use of the potential of urban land for building, respecting the limits of the installed capacity of public services; III. Ensure the fair distribution of the costs and charges arising from the works and services of the urban infrastructure and recover for the community the increase in real estate value resulting from the action of the Public Power. The right to build shall be exercised in accordance with the principles set forth in this Chapter and criteria established by municipal law (Art. 151). In these terms, the city becomes a public, collective good, with the fruition of any real estate subject to this condition.

The inclusion of the Urban Order as the attribution of the Government, from the text of the Constitution itself, reiterates this nature of a collective asset attributed to the Government, which has the responsibility, according to the Constitution, of “the defence of social interests” (CF, art. 127), whose functions include the protection of “diffuse and collective interests” (CF, art. 129, III). However, according to the Constitution, the principles expressed in the Urban Policy chapter would only come into force after the national regulatory law, as in the terms of the law in articles 24 and 182. However, this regulation of the two articles of the Federal Constitution regarding Urban Policy and its developments, incorporated at state and municipal levels, required thirteen years of persistence, mobilization and negotiation, until the approval in 2001 of the City Statute - Federal Law n 10,257 / 2001.

As the expression of more than two decades of struggle by popular, trade union and professional movements after the proposal and collection of signatures for the Popular Amendment of Urban Reform, the City Statute resulted in a negotiated project which included some of the demands of the social movements but also the counterpart of elements favourable to capital, as required by the real estate development and production sectors.

It was this set of developments that, in a context of democratic advancement, provided the basis for the establishment of principles that pointed in the direction of a fair city, an urban order based on a comprehensive notion of public interest. These are the principles of the Urban Reform movement, which unfolds into guidelines such as: more intensive use of areas with good availability of infrastructure, services and jobs; preventing speculative retention of unused real estate properties; reduction of social and spatial inequalities between different regions of the city; balanced distribution of the costs and benefits of the urbanization process through the establishment of a redistributive tax system; socialization of the gains associated with “urban surplus values”. This last principle is the one that provided the justification to charge the granting of development rights, which would also constitute the core of urban operation's financial engineering, as discussed below in more details.

The articulation between, on the one hand, the ambiguity of the meaning of “diffuse and collective interests” in an unequal society such as Brazil, and, on the other, the conflict between the various sectors of capital that contain the materiality of the city as their object of production, has been modulating the design of new urbanistic instruments. It is in these terms that an instrument such as the Urban Operation Consortium will emerge and expand in major capitals and large cities, with varying formats and specificities.

4 SUSTAINABILITY

Sustainability is one of the themes coined in the twentieth century as a facilitator of dialogue in a context of disputes. Based on an environmental approach, resulting from the perception of the finiteness of natural assets, it has ended up as a broad spectrum concept, able to include very different interpretations, allowing for convergence in declarations and agreements, without however signifying a convergence of understanding. Sustainability, as a guarantee of availability of natural resources for present and future generations, is the thematic core that unites different agendas.

Behind the word there is an ideological dispute that is not explicit. The neoliberal consensus model that depoliticizes social relations, concealing or naturalizing all forms of conflict, also includes the term Sustainability. This magic word, this widely held unanimity, incorporates the most diverse and antagonistic contents.

The City Statute, for example, establishes among the general guidelines of the Urban Policy the "guarantee of the right to sustainable cities, understood as the right to urban land, housing, environmental sanitation, urban infrastructure, transportation and public services, work and leisure, for present and future generations" (art. 2, I).

The National Policy for the Environment, as conceived in the law that creates the National Environmental System (Law No. 6.938 / 81), aims to preserve, improve and recover the environmental quality conducive to life, aiming to ensure, in Brazil, the conditions for the socio-economic development, the interests of national security, and the protection of the dignity of human life (art. 2). The Decree n ° 99.274/90, which regulates it, explains that the National Environmental Agenda is the document that recommends the themes, programmes and projects considered as priorities for the improvement of the environmental quality and the sustainable development of Brazil (art 7º § 4º).

On the other hand, for the World Bank, a sustainable city (Rivière d'Arc, 2001) is one that contains: Competitiveness - an effective land market, an efficient traffic circulation system, a broad and available communications system; Quality of life (liveability) - a decent standard of living, the ability to overcome urban and environmental degradation, the provision of cultural resources and "amenities"; Good governance – organization to simplify and reduce exchanges / decision flows, overcome corruption, have explicit rules; Bankability - Credibility as a borrower.

In short, sustainability viewed as a socially just, environmentally balanced, or economically balanced pattern of urban development allows for a broad field of legitimacy and consensus around the term, but not of content.

Therefore sustainability is one of the key terms of functional approximation and a central argument for Urban Operations that, prioritizing the "competitive" city's economic perspective, ensures functional quality conditions and the infrastructure required by large corporations, without extracting this cost directly from the public budget. More than this, it aggregates the positive image of sustainability as expressed both in Brazilian international commitments and in its environmental and urban development legislation.

In this field are included questions as environmental preservation, the expansion of green areas, drainage management, and the quality of water bodies, as well as the compact city model, which avoids peripheral expansion, reducing impact on natural areas, providing transportation and expanding the supply of social housing.

These two meanings of sustainability – one in the economic sense, other in the environmental one – give indirect support to urban regeneration in the sense that it can promote better local environmental conditions, support the shift towards a compact city model that avoids sprawl and consumption of natural sites, and also foster financial sustainability.

So that, if one hear just the formal justification, everything seems positive in this broad spectrum of discourse on urban development. Who could be against it?

5 THE STRATEGIC PLANNING OF CITIES AND TOWN PLANNING WITH RESULTS

In Europe the economic recession of the 1970s provoked a reaction from local governments and key economic actors to "promote cities" in order to attract investments, generate jobs and renew the productive base of cities. In addition, according to Nickson (1998), the World Bank and the Inter-American Development Bank, after two decades of ignoring local government programmes in the late 1980s, have become strong advocates of decentralization and the institutional strengthening of local governments. Firstly, given the demands of structural adjustment policies, they recognized the benefits of decentralization in helping to overcome the state's fiscal crisis by incorporating the vast and untouched fiscal potential of local governments. Secondly, they saw local governments as an institutional arrangement to produce services more efficiently and effectively. Thirdly, local governments could play an instrumental role as a more efficient administrator of poverty reduction programs during structural adjustment. Thus, the local element is seen less as "government" than, pragmatically and instrumentally, as "local administration". The Habitat Agenda adopted at the United Nations General Assembly in

December 1996 stressed the importance of decentralization as a transfer of power and the attributions of central government to cities.

It is in this context that, inspired by concepts and techniques from business planning, comes the proposal of the Strategic Planning of Cities. It was disseminated in Brazil and Latin America “by the combined actions of different multilateral agencies (The World Bank, Habitat) and international consultants, mainly Catalans, whose aggressive marketing systematically disseminated and promoted the success of Barcelona” (Vainer, 2000, p. 75).

A Strategic City Plan is, according to Castells and Borja (1996), a joint action between the local government and the main economic and social agents in carrying out a transformation of urban infrastructure to facilitate the transition from the traditional industrial model to that of a qualified tertiary centre and a change of image to suit the new requirements of the global economy and international competitiveness. According to them, the Strategic Plan is based on building a strong and positive image of the city “supported by an offer of infrastructure and services (communications, economic services, cultural offerings, security, etc.), which attract investors, visitors and user with money to the city and which help its 'exports' of goods and services, and of professionals, etc. The local government have to act as the promoter, with the role of creating the conditions that enable actions to be made by public or private agents (through planning, political campaigns, economic compensation, etc.)” (Castells & Borja, 1996, 160). In order to make the Strategic Plan viable, it is also necessary to promote the city internally with its inhabitants, fostering a sense of belonging, collective will and trust, and belief in the future. Castells and Borja believe this internal promotion must be based on visible works and services, both monumental and symbolic, and those aimed at improving the quality of public spaces and the well-being of the population.

This vision of urban and economic development thus requires a solid political leadership, visible authoritarianism or considerable marketing work in order to bring together the expectations of entrepreneurs, trade unions, community organizations, scientific institutions, NGOs and inhabitants in general, around certain projects. In summation, it is eloquent the alignment of the urban regenerations with the pragmatic and entrepreneurial logic advocated in the discourse of strategic planning.

6 THE TRAJECTORY OF URBAN REGULATION AND REGENERATION POLICIES IN BRAZIL

Brazilian cities are made up of superimpositions, as Benedito Lima de Toledo (1981) wrote when referring to São Paulo: three cities in a century (mid-nineteenth to mid-twentieth): “The city in mud (taipa)” with its churches and the two storey colonial houses; the “palimpsest”, seen in the mansions and neoclassical and eclectic public buildings; and, at the end of the 20th century, the modernist skyscrapers “Designs for a Metropolis”.

These transformations in the centre, and the city expansion through subdivisions of land in the outskirts, were triggered by private owners and interests, with little public intervention, and were seen as “progress”. Only at more authoritarian moments there have been plans for major public interventions, such as the São Paulo Avenues Plan (1930) or the remodeling of Rio de Janeiro, the Agache Plan (1930).

Up to this point, according to Villaça (1999), public intervention consisted of the beautification plans beginning in 1875 in Rio de Janeiro, with the Plan of the Engineers (the first general plan on a monumental scale), which took up a large part of the public budget. He states that the term “urban beautification” was used to characterize the performance of city halls and clearly expressed the proposals of the dominant classes for the cities, in some cases to crystallize and spatially demonstrate the domination of the State, in others such as São Paulo to show the victory of capitalism, with the beginning of the rise of the industrial bourgeoisie, and to aesthetically resemble the great world capitals and to feel driving away the recent slave-owning past (Villaça 1999: 171, 243).

In 1929, the Arthur Saboya Code was established, regulating works in the city of São Paulo that extended the scope of its predecessor, the 1886 Code of Postures of the Municipality. This norm was reference for numerous cities and was regularly amended until 1972, when the General Law of Zoning No. 7.805 / 1972 was adopted, using the zoning model for the whole city, with differentiated indexes of land use and occupation, according to the district. In order to stimulate certain actions by private investors, the first

flexibilizations of utilization coefficients appeared, allowing planning gains for certain uses such as schools and hospitals.

It was during the 1970s, with the increase in verticalization, that, inspired by international experiences, the term "built surface" was coined: the emergence of an area built on the same plot or territorial boundary. This concept alerted to the fact that that more area had been created without the corresponding donation of public area as required in the cases of land parceling. In this period, the norms of land use and occupation, aiming at inducing some form of urban design, proposed different development potentials according to the area of the city.

In parallel with this process in the 1970s, the Law 101/71 was created, which dealt with the establishment of a public company (EMURB) with the purpose of developing urban renewal programs associated with projects contained in the Integrated Development Master Plan (PDDI), a legal document that translated the guidelines of the Basic Urban Plan of 1968: the implementation of a metro network in the São Paulo, the construction of expressways, as well as the redevelopment of areas along the first line of the new metro.

Among the measures was the proposal that the expropriations to be made by the metro for the implantation of the stations would be greater than what was effectively necessary, as these areas could then be marketed, with higher rates of utilization, resulting in profits for the metro, for the continuation of works and the expansion of lines. EMURB was the first attempt of using a public company governed by private law in the provision of public works.

From the end of the 1980s, urban planners began to be aware of the unfairness of the differentiation of development rights across the city, which attributed more intense conditions of use to certain lots, without any counterpart on the part of the owner of the lot for this differential, and the notion that this differential was equivalent to a "surplus urban value" generated not by the merit of the owner, but by all the investments made in the city, became clear. The idea that these owners should be charged some counterpart, an "onerous concession", that they should repay to the "public" the value of this virtual lot, to which they would have access by means of the higher utilization coefficient, was thus consolidated.

In 1986, this flexibilization took on a new dimension, with the adoption of Law no. 10.209/1986, which introduced the Interconnected Operation, establishing as a counterpart to the potential construction gain the production of social housing. This device was applied to areas with favelas in the most wealthy and expensive regions of the city.

From 1990, a new concept for Interconnected Operations was no longer aiming at removing favelas. The practice of charging for the granting of additional development rights was generalized to the entire city, and the resources generated were directed to housing policy. The cost of the concession was estimated by municipal technicians according to certain rules and criteria to assess the earning potential that the expansion of the building potential would provide to the entrepreneur. This practice continued until it was contested by the Court of Justice in 2001.

As a result of the history of failures in the legal field, a new concept, the Urban Operation was constructed and proposed in the 1985/6 Master Plan, which was approved after the expiry of the statutory time limit.

Later, drawing on a strategically designed format, based on well-elaborated discourses and a negotiation process to include certain social demands and achievements, the idea of the Urban Operation Consortium was included in the Plan drawn up in 2002/2003 and approved in 2004. It basically consists of an infrastructure and urban improvement plan targeted to a delimited area of a city, where the works are paid through the sale of development rights to be used within the area.

7 THE RECENT PROCESS

At the same time that the constitution was completed in 1988, establishing a series of social rights, a government with a neoliberal platform took office in 1990. Countering this governmental platform, a wide political mobilization, bringing together housing movements, representatives of the urban reform movement, academics, the Workers Party (PT), and other stakeholders, demanded a stronger commitment from the central government in terms of social policies in general, including playing a greater

role in the field of housing and urban policy. After the victorious campaign of Lula for President, this political agenda started in 2003 to be institutionalized, with the creation of the Ministry of Cities as its emblem. Initially, the Ministry team included several actors engaged in the political mobilizations for the construction of a progressive urban agenda in the previous decades. One of the first actions carried out by the group in charge of the Ministry was to initiate a broader attempt to structure coordinated national sectoral policies, targeting areas like housing, mobility, sanitation, and waste management.

The role of federal institutions in this area had diminished significantly since the macroeconomic crisis of the 1980s. The roll back of federal interventions in this field can be understood as a combined effect of macroeconomic conditions and institutional changes witnessed during the two last decades of the twentieth century and was influenced by features like the cutbacks in social expenditure of the central government in a context of fiscal crisis, the privatization of state owned companies previously providing public services, and the municipalist paradigm affirmed by the Federal Constitution of 1988, which had devolved a wide range of attributions to local governments. Many municipalities, however, lacked the necessary financial and institutional conditions to adequately perform the roles assigned to them by the Constitution, which prevented, in the majority of cases, the expected quality gains as a result of greater autonomy, from actually taking place.

This process, however, suddenly suffered a significant setback. The fragile political balance of Lula's first term of office obliged the government to make a deal with other parties to ensure governability. The strategy was to extend the space of conservative political parties in the composition of the government, with the consequence that the control of the Ministry of Cities was transferred to a right-wing political party, resulting in the formulation of sectoral urban policies being relegated to a marginal position within the governmental agenda. Some policies were developed, while others were almost paralyzed during the following years. One of the policies affected by this political shift was the "Urban Centres Regeneration Programme".

This program had been launched in 2003, the first year of the government, and was the most explicit federal initiative directly related to urban regeneration, focusing on supporting municipal governments engaged in urban regeneration initiatives by providing financial aid, transferring federal properties located in urban centres, and helping local governments to implement actions related to institutional development and capacity building.

Its concrete results went little further than the publication of a policy guidance document, with no consistent set of concrete actions. The federal government provided some financial support to isolated urban regeneration initiatives promoted by local governments, but it failed to build a comprehensive program with systemic impact.

Municipal regulations in some cities provide relatively comprehensive legal backgrounds for urban regeneration projects, and it is common to find systemic definitions of targeted areas for urban regeneration within municipal master plans. In São Paulo, for instance, a recent municipal decree established a specific methodology for the formulation of urban interventions, covering issues like the definition of envisaged goals, participatory mechanisms, and the establishment of financial and regulatory instruments. However, it is important to stress that the level of complexity of municipal regulations related to urban regeneration is very uneven throughout Brazil. In many towns and cities, regulations of this nature are very basic, or even totally absent.

When we consider the regulatory devices of an instrumental nature, in addition to the government level programmes, there are federal regulations such as the City Statute that play an important role as a background for urban regeneration initiatives. Most of the tools employed to implement urban regeneration projects with private sector involvement are regulated at the federal level, and even though some of these instruments were initially enacted by municipalities, most of them have been subsequently incorporated into national legislation.

The Urban Operation Consortium is the most emblematic instrument of this kind now in Brazil. The conception of this regulatory tool can be traced back to the 1980s, as previously shown. However, the first time it was used within an urban regeneration project which was actually implemented was in São Paulo in 1995, with the creation of the Faria Lima Urban Operation Consortium. Before it, the intervention in the centre of São Paulo, called the Urban Centre Operation, utilized the award of building rights in order to obtain resources to invest in infrastructure works but did not arrive to implement a consortium mode

Afterwards the Urban Operation Consortium was then included among the urban instruments established by the City Statute, which was enacted in 2001. This law outlines the general conditions for the use of this instrument in Brazil, establishing a general basic pattern for its use by municipalities, and is particularly representative of the penetration of a market oriented logic in urban regeneration projects. In brief, an urban operation consortium as designed in the Faria Lima project consists of an infrastructure and urban improvement plan targeted to a specific area of a city and sponsored through the sale of additional development rights by the municipality within the area of intervention. It requires the enactment of a specific municipal law, which must define the area of the project, the envisaged improvements, the total number of additional development rights within the area, the governance regime, among other aspects. The rules concerning the commercialization of development rights within urban operations are also regulated at the federal level. These rights are traded by municipalities through the issuance of financial bonds called CEPACs (Certificate of Additional Building Rights) and their subsequent auctioning on the stock exchange. The CVM (a national independent authority responsible for the regulation of capital markets) is the competent authority to establish the general regulations concerning the trading of CEPACs and transparency in the management of urban operation consortia. It is also entitled to authorize the issuance of CEPACs in individual urban operations and to supervise their development. The norms issued by CVM explicitly define CEPACs as a capital market instrument, illustrating the financial rationale underlying this urban redevelopment scheme. This regulatory tool is present in two of our case studies, the Água Espraiada Urban Operation Consortium in São Paulo, and the Rio de Janeiro Porto Maravilha Project.

Another regulatory tool of growing importance in the field of urban regeneration interventions carried out with private sector involvement is the public-private partnership (PPP). This contractual instrument was firstly introduced into the legal system in Brazil by legislations at state level. By the early 2000s, several provinces had started enacting local PPP laws and launching privatization programs based on this instrument. A national PPP law was enacted in 2004, outlining the general conditions for its utilization. Certain municipalities also enacted local PPP laws, regulating in greater detail this contractual regime at the local level. This regulatory instrument has a broad scope as it is not specifically targeted to urban regeneration projects, but to actions combining the building of infrastructure and the provision of public services in general. Before the enactment of PPP laws, the delegation of economic activities to the private sector was regulated by a general law of concessions, which was enacted in 1995 to support the process of privatization carried out in that period. This was more directly suited to the concession of profitable activities, in which the concessionaire could be remunerated through the payment of tariffs by final users. The most important innovation of the PPP laws was to design a contractual regime in which the remuneration of the concessionary may combine tariffs and direct transfers made by the State. Arrangements of this kind were not legally impossible in the previous period, but there was no adequate contractual instrument to support them. Thus, the introduction of PPPs should not be regarded as a groundbreaking legal change, but rather as an incremental step in a longstanding process of legal and institutional reforms oriented towards supporting privatization. Another issue addressed by the PPP laws was to establish mechanisms to assure the security and profitability of concession holders. In a general sense, the introduction of this contractual regime enhanced the attractiveness of a wider range of activities for private agents, expanding the room for privatization. PPPs started being used in urban regeneration programmes in the early 2010s. The Porto Maravilha Project in Rio de Janeiro, which involved a comprehensive PPP contract covering a wide set of public works and the provision of public services within the area of intervention by the concessionary, may be considered a hallmark of the use of this contractual instrument in the specific field of urban regeneration initiatives. This paradigmatic experience gave rise to a proliferation of initiatives focused on urban regeneration using this instrument. Most experiences of this kind are still at the formulation stage or at a very initial phase of implementation, but the PPPs may already be considered a well-established model for urban regeneration within hegemonic policy discourses.

8 CONCLUSIONS

The diffusion of urban regeneration projects as a common trend of hegemonic conceptions and practices of urban planning is rooted in the recognition of these interventions as potential solutions for problems and challenges faced by contemporary cities in general. The strength of discourses portraying urban

regeneration as socially desirable interventions rests fundamentally in the diversity of urban problems which they supposedly address.

When assessing the literature and policy debates on urban planning within the Brazilian context, it was possible to identify the confluence of different, and even paradoxical, discourses and lines of reasoning as a basis for the rise of a favorable mindset for the proliferation of urban regeneration policies. At least three discursive streams have played a significant role in supporting such interventions. An initial significant discursive approach backing urban regeneration is that which is rooted in the “urban reform” mobilizations, where urban regeneration is associated with political demands oriented to the promotion of social justice, the provision of housing for low income groups in well-served areas, and the struggle against sociospatial segregation. Here urban regeneration initiatives are conceived as potentially helpful paths in the pursuit of an inclusionary urban agenda. A second discursive approach is that associated with the ideas of strategic planning and urban competition. Within this pragmatic and market oriented perspective, urban regenerations are regarded as means of improving the image of cities, turning them into attractive places for investment and reinforcing social cohesion at the local level. Associated to this is the idea that the works constructed with resources of building rights should not be a onus on the public funds and may redirect resources to social policies. A third perspective is that related to sustainability, where urban regenerations are regarded as potentially helpful alternatives to counter urban sprawl and move towards a compact city model, helping to rationalize the use of resources, reduce the environmental impact of the urbanization process, and provide the city with more green and open space. These perspectives are representative of different interests and goals and are voiced by different social actors. The ideological power of hegemonic discourses on urban regenerations rests precisely on their ability to forge an multifaceted image of such interventions as an amalgam of these diverse aspirations, hiding the underlying conflicts and social struggles and embedding them into narratives of public interest.

In a context of longstanding market oriented reforms, the implementation of urban regeneration projects has increasingly relied on regulatory schemes conceived to enhance the role assigned to private agents within urban development processes. This trend is seen in the growing presence of governance arrangements of a contractual nature, such as the urban operation consortium and public-private partnerships, in urban regeneration processes. Some emblematic experiences of urban regeneration have not been mere recipients of previously established regulatory arrangements but have also worked as important sites for the incubation of such models. In the wake of the increasing influence of a contractual paradigm, urban regeneration projects have been progressively conditioned by a business rationale, which is diminishing the space for concerns about the promotion of social inclusion and equity within cities.

BIBLIOGRAPHIC REFERENCES

- ALFONSIN, Betânia. "Operações Urbanas consorciadas como instrumento de captação de mais-valias urbanas: um imperativo da nova ordem jurídico-urbanística brasileira". In: FERNANDES, Edésio; ALFONSIN, Betânia (orgs). *Direito Urbanístico no Brasil e no mundo*. Belo Horizonte: Del Rey, 2004.
- BRASIL. Ministério das Cidades. Secretaria de Programas Urbanos. *Reabilitação de Centros Urbanos*. Brasília: Ministério das Cidades, 2005.
- CASTELLS, Manuel e BORJA, Jordi. "As cidades como atores políticos"; in *Novos Estudos CEBRAP*, n. 45, julho/1996, p. 152-166.
- COMPANS, Rose. *Parceria público-privado na renovação urbana da Zona Portuária do Rio de Janeiro*; in *Cadernos IPPUR*, ano XII, n. 1, jan-jul/1998, p. 79-101
- COMPANS, Rose. *Empreendedorismo urbano: entre o discurso e a prática*. São Paulo: Editora Unesp, 2005.
- Emenda Reforma Urbana. *Proposta Popular de Emenda sobre "Reforma Urbana"*. Texto da coleta de assinaturas, 1987
- FIX, Mariana. "A fórmula mágica da parceria público-privada: operações urbanas em São Paulo". *Cadernos de Urbanismo*, n.3. Rio de Janeiro: Prefeitura Municipal do Rio de Janeiro, 2000.
- HECK, Eneida B.G. *A EMURB como instrumento de planejamento urbano em São Paulo: 1971 – 2001*. São Paulo FAUU-USP, 2003. *Dissertação de Mestrado*
- MARTINS, Maria Lucia R. *O Direito à Cidade e suas Matrizes*. Seminario el Derecho a la Ciudad, FLACSO, Quito, 2015

MASSONETO, Luis Fernando. "Operações urbanas consorciadas: a nova regulação urbana em questão". Revista da Procuradoria-Geral do Município de Porto Alegre, n. 17, Porto Alegre, 2003, pp. 101-118.

NICKSON, A. Where is local government going in Latin America ? A comparative perspective. Trabalho apresentado na Annual Conference of the Society of Latin American Studies, University of Liverpool, 17-19 abril, 1998

NOVAIS, Pedro. Uma estratégia chamada "planejamento estratégico": deslocamentos espaciais e a atribuição de sentidos na teoria do planejamento urbano. Rio de Janeiro: 7Letras, 2010.

PEREIRA, Alvaro. Intervenções em centros urbanos e conflitos distributivos: modelos regulatórios, circuitos de valorização e estratégias discursivas. Tese (Doutorado) - Faculdade de Direito, Universidade de São Paulo. São Paulo, 2016.

PORTAS, Nuno. Planificación Estratégica Urbana. Seminário Internacional: Las Ciudades Medianas en el Contexto Europeo. 1994.

RIVIERE D'ARC, Heléne. Lecture "As palavras da Cidade", Prolam-USP, São Paulo, Oct 2001. Ref: World Bank, A strategic view of urban and local government issues: implications for the Bank, January 1999, draft, Washington, 1999.

TOLEDO, Benedito Lima de. São Paulo: Três Cidades em um Século. São Paulo, duas Cidades, 1981.

VAINER, Carlos. "Pátria, empresa e mercadoria: notas sobre a estratégia discursiva do Planejamento Estratégico Urbano". In: ARANTES, Otilia; VAINER, Carlos; MARICATO, Ermínia (orgs). A cidade do pensamento único: desmanchando consensos. Petrópolis: Vozes, 2000, pp. 75-103.

VILLAÇA, F. Uma contribuição para a história do planejamento urbano no Brasil, in DEÁK, Csaba e SCHIFFER, Sueli R. orgs. O processo de urbanização no Brasil, São Paulo, Edusp, 1999.

ID 1552 | THE SUBSTANTIVE IMPACT OF A PROCEDURAL RULE: THE CASE OF THE DUTCH 'LADDER' FOR SUSTAINABLE URBANIZATION

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1 STEPS TOWARDS SUSTAINABLE URBANIZATION

Since the dawn of the new millennium, the Netherlands, world famous for its protected Green Heart, growth centers, mainports and prohibition of out-of-town shopping malls, has been busy dismantling its national planning (Zonneveld and Evers 2014). In 2012, it opted to decentralize, deregulate and replace all remaining national urbanization policies with a single procedural rule called the ladder for sustainable urbanization. The 'ladder' owes its name to the three steps that local zoning plans must consider when granting rights for new urban development (see text box below). In short, they must argue that (1) a regional need exists, (2) explain the siting within the urban fabric and, if out-of-town, (3) consider multimodal accessibility. This substantiation should be included in the plan's explanatory notes.

Like many regulatory instruments, the ladder is a procedural rule aiming to achieve substantive ends, in this case, reining in the overproduction of housing and commercial property on car-dependent greenfield sites which had characterized post-2000 urban development in the Netherlands (Janssen-Jansen and Mulders 2012). One could easily be forgiven for not believing that a requirement to explain planning decisions in non-binding explanatory notes would overcome the powerful economic logic of land development. Indeed, an initial evaluation found the application of this rule in local plans to be clearly inadequate (Evers 2015a). Even so, the ladder – and more particularly its enforcement through the court system – has since been blamed for hampering development and in the summer of 2017, less than five years after it entered into force, it was relaxed.

Given the benefit of several years of implementation history, it is now possible to shed light on the impact of this instrument in more detail and reflect on whether the ladder was as ineffective its proponents had feared or as obstructing as its detractors had claimed. The research draws on an analysis of hundreds of