

## **The deconstruction of irregularity and the construction of legitimacy**

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The construction of Brazilian land irregularity coincides with the poor assimilation of private property category by Brazilian law (FONSECA, 2005, p. 110). This has been the case not only as a consequence of the inobservance of the formal model of the land, as defined by Brazilian law in the mid-nineteenth century, with its liberal universal claims, but also as a result of the proposals for the ordering of use, possibilities of land division and the construction of buildings.

In order to ensure the regular occupation category, among others, two linked great founding myths were sought to legitimize its conception. The first being related to the formalities recognized by the State, and the second concerning the meaning of urban order.

In the first case, the legitimacy of the regularity consists of a set of procedures recognized by a private entity with powers analogous to those of the State, that assumes the *status* of "truth, security and certainty" (GEDIEL, 2009, p. 351) to the individual property owner, as a result of its characterization stated by public faith. From then on, the public records begin stating the individual's right of appropriation from their lecture method, which distinguishes between fact and norm. However, once they assume the understanding that Brazil is a country of holders, they tend to dissipate that validity appropriation must necessarily coincide with a property title. Using the Barcelona's terms, "modern logic, therefore, is essentially possessive logic" (BARCELONA, p. 122), about a specific type of ownership given in the context of individualism owner, which means that the formalities are not mere attributes to

juridical security, but constitute the necessary representation and manipulation of law and power to set norms on how to legalize relations. Thus, the proprietary legitimacy only stems from the hypothesis that the norm pretend an forged formalizing of inaccessibility of the majority.

In order to proceed with such conceptions, at least three steps were taken (GROSSI, 2006, p. 6): (i) possession and ownership are first confounded to be later purposely separated. In that being so, if the right of possession firstly attributed origin and legitimacy to the occupation of the land, later on, possession is subject to a natural right and, therefore, to an ahistorical conception of private property; (ii) the process of acquisition and transference of ownership is worn with modern rationality, and the various forms of social violence do not appear as verifiable information unless they're juridically debated between owner and holder, always being offered the second the burden of proof and; (iii) the understanding that the contract starts out from the liberty and consciousness of both sides whom, on the basis of equal footing, decide which interests harmonize with the effectuation of individual claims, that is to say that in the "normal" relationship, both parts involved and the State are satisfied with the outcomes.

Besides the presumption of regularity based on the fiction of ownership, a sense of urban order, forged by hygienist, technocratic and strategic models have also established abundant rational and scientific norms, and therefore, legally valid forms of conditioning the use and division of space. As a result, many kinds of irregularities have been identified in the specialized literature. Perhaps the most obvious difference between property and urban order relates to time. If to the property there was a need to deny the past to build another past, for ordination was necessary to abandon the past to build the future, the future of progress, the future of development. As Lefebvre said "[.. ..] strange and wonderful was also taking place, which helped renew dialectical thought: The non-city and the anti-city would conquer the city, penetrate it, break it apart, and in so doing extend it immeasurably, bringing about the urbanization of society and the growth of the urban fabric that covered what was left of the city prior to the arrival of industry." (Lefebvre, 1999, p.23)

In fact, following the issues of ownership and ordering, the sign of "regular" took over a strange meaning in Brazilian land policy and its related law. This is so because

land and construction regulation do not match the signifier and the significance relative to what is constant, usual and common, but to law's statements themselves, though it ignores reality and the conditions of possibility for its creation by the State, which means carrying out certain intentionality that is present only in must-be condition. Therefore, using the Maia's expression, the land irregularity is an invention (MAIA, 2008, p. 65).

As a result, the research's guiding matter consists of the possibility-need to deconstruct the meaning of irregularity concept, confronting it with the substantial legitimacy of occupation in its real forms. The objective consists in identifying the fictional character conferred to the sense of regularity and its consequences to Brazilian social reality, evaluating its value to different sections of its population, to the State itself and to the proposition of land public policy in the country. To do that, guiding questions were formulated: (i) what is irregularity and what are its fundamentals?; (ii) the irregular is exceptional, illegitimate or illicit?; (iii) the irregular produces irregular; (iv) how can be read the categories of legal certainty and the guarantee of rights face that regular?; (iv) how the regularization public policy can reaffirm a possible wrong reading of irregularity?

The essay's methodology is based on the analysis of proposals for public programs of land regulation, especially those defined in federal stance and in three Brazilian states, Paraná, Goiás and Minas Gerais. The analysis consists on the identification of defining criteria of what is being considered irregular, and what kinds of regularization are being sought. The empirical verification is based on the readings of the policy tools and procedures used, so that though analysis of the regularization procedures and its pathways it was possible to comprehend the sense conferred to ownership legitimacy and the values attached to the sentiment of property.

As a result, it's been confirmed that: (i) the indirect administration and sometimes even the public entities, frequently refused to carry out public services in areas not yet officially registered, or registered on behalf of third parties, particularly when they were specifically occupied by low-income population; (ii) since the development of discourses on the new environmental laws still obstructs the maintenance of such low-income population homes, even when exists flexible

requirements in environmental legislation and Federal Law n. 11977/2009; (iii) the demands for expropriation in occupied areas with sufficient time for adverse possession requests in favor of the previous owner; (iv) the owner prospective treatment of the state by state agents; (v) the misunderstanding about the dangers of giving and patronage, always associated with low-income population; (vi) the relentless pursuit of formalities and the denial of historical reality of the occupation of the areas, could, amongst other issues, which might denote a strengthening of the association of a sense of irregularity with the lower classes through the criminalization of possession and the tightening of decisions directed at solving wrong-doings, which seemed inevitably necessary, were equally noted.

Thus, the vices of possession were constantly sought, while the vices of the property were "solemnly" ignored. About the possession of low population have not been only few indications or doubt regarding bad faith, consistent in knowledge of "irregularity", considered the origin and maintenance of the occupation. However, public faith made invisible property origin overshadowing the necessary questioning of its legitimacy.

Undoubtedly, the symbolic weight attributed to the irregularity take effect on the discursive construction and normative legitimacy, so that the construction of another questioning legitimacy of normative and symbolic structure can change the course of land public policy, therefore considered other assumptions, goals changes, the production and use of instruments and argumentative burden that now weighs on the low-income population that, forced to immersed in individualism owner universe that surrounds the land, see criminalized their own existence.

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