Urban-legal Paradigms Supporting Post-Millennium Evictions: the Role of the Courts in Displacement Practices

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Abstract: Why is Brazil, a country with one of the most progressive and inclusive land legislations in the world, being accused of violating its citizens' constitutional right to housing? Why is the Brazilian Judiciary, despite all the legal mechanisms created by recent laws to reverse exclusionary patterns of land use, executing forced evictions of thousands of marginalized families? I argue that these violations and removals must be understood as legalized displacement. Namely, land dispossession practices are not only a direct result of the commodification of housing, but of a much broader discrimination process, in which the courts are playing a major role. Judicial dispossession can be read as a direct outcome of eviction mandates ordered by the courts. However, what makes it legitimate is not only the fact that it is ruled by judges, but that these practices are embedded within governmental, legal, and policy apparatuses. Drawing from Porto Alegre, a city with a tradition of participatory planning programs, this article will analyze how urban-legal paradigms support post-millennium evictions in Brazil by addressing how legal frameworks on land use and property rights are used to justify displacement. By employing archival research and discourse analysis, I show that courts are ignoring recent legal mechanisms created to ensure the constitutional right to housing in the country. I find that judges are mobilizing discourses that idealize private property regimes at the expense of alternative forms of tenure already established by paradigmatic land legislation. At stake here is the fact that these removals are expelling the vulnerable populations from the city. Lastly, I am calling into question the false distinction frequently made between evictions in the context of the Global South - perceived as violent conflicts involving mostly informal tenants - and similar processes in the Global North, often understood as part of more "legalistic" processes.

Keywords: displacement, right to the city, Brazil, eviction

Introduction

Why is Brazil, a country with one of the most progressive and inclusive land policies in the world, being accused of violating its citizens' constitutional right to housing? Why is the Brazilian judiciary, despite all the legal mechanisms created by recent legislation to reverse exclusionary patterns of land use, ordering the eviction of thousands of marginalized families? There is a substantial body of literature that argues that displacement is being caused by the financialization of housing. However, I hypothesize that these violations and removals must be understood as what I call *legalized displacement,* namely displacement practices that are not only a direct result of the financialization of housing and land, but of a much broader process of discrimination in which the courts are playing a major role. In this paper, I will analyze the apparent gap between the legal framework on land use and

its application in Brazil. My main goal is, thus, to investigate how these removals are validated through urban-legal paradigms or, as Gherner (2011, p. 131) puts it, how eviction can be perceived as an "act of governance rather than violation". Thus, at stake here is a re-framing of rights and the infringement of the constitutional right to housing through judicial mandates that are challenging recent reformist laws on land and property rights.

Despite having one of the most progressive land regulations in the world, approximately six million households do not have access to adequate housing in Brazil (Fundação João Pinheiro, 2017). The Federal Constitution, established in 1988, declared housing a constitutional right. The City Statute, promulgated in 2001, reinforced that property rights should be subjected to the "social function" of landed property by creating mechanisms to prevent sub-utilization of urban parcels through instruments like progressive estate taxation and adverse possession law. Officially, these new laws enabled municipalities to demand that owners of vacant properties and idle land promote their immediate use. These decrees also produced the legal framework to ensure the right of individual and collective actors to claim formal tenure of urban parcels that they have occupied for more than five consecutive years. In practice, however, despite these legal apparatuses, judges are determining to evict thousands of families from abandoned private and public properties in central urban areas of Brazilian cities.

A growing body of literature argues that the banishment of the poor from the city is more than a simple outcome of housing commodification or a direct consequence of urban development projects led by the State (see Caldeira, 2000; Roy, 2017). Some authors suggest that displacement is increasingly being endorsed and carried out by judiciary systems on behalf of aesthetic norms or the "public interest", at the expense of the urban poor who are criminalized in the process (Gherner, 2011; Bhan, 2016). With my work, I will elaborate on these displacement processes and reveal the discourses performed by the courts when ruling eviction cases. In this paper, I will answer the question: *How are legal frameworks on land use and property rights being used to justify displacement?* Although tenant security is also threatened by real estate speculation and other financial maneuvers, I claim that the state, particularly the judiciary, plays a major role in practices of dispossession. I argue that legal instruments created by recent legislation have provided the courts with legitimate reasons to issue eviction notices. Lastly, I show that judges are mobilizing political ideologies that condemn certain property regimes in favor of other models, thereby challenging land use legislation passed recently.

To reflect upon the legal discourse that it is being used to support displacement in Brazil, I ground my analysis in the case of Porto Alegre, the fifth most populous metropolitan areas (IBGE, 2012). I have chosen Porto Alegre because of its participatory planning tradition. The city has a past of progressive housing policies, community participation programs, and social justice movements that overlap with the tenure (for over a decade) of the *Partido dos Trabalhadores*, or "Workers Party" (PT), in its municipal government. To answer my research question, I conducted a discourse analysis of court records filled in Porto Alegre from 2001 to 2018 involving squatter settlements of private and public properties.

Historical background: land and property rights in Brazil

An assessment of Brazil's trajectories of land legislation and housing policies reveals that the State always had a fundamental part in both protecting and impairing the access to shelter of the urban poor. Like in many Latin American countries, the government in Brazil has played a central role in the housing sector (Bonduki, 1994; Villaça, 2000; Holston, 2008). In this sense, the 1988 Federal Constitution and the 2001 City Statute were paradigmatic as they opened a new chapter in Brazil's history of property rights, creating an innovative urban-legal framework to democratize the access to adequate housing and correct centuries of non-egalitarian and discriminatory land practices (Maricato, 2010). Nonetheless, recent legislation might also have had perverse consequences. Initiatives targeting land regulation, associated with social housing programs, might have increased social-spatial segregation and the risk of displacement. On one hand, these instruments gave more power to local authorities, including the judiciary, to displace and relocate people based on their settlement and tenure conditions. On the other hand, these laws, by enforcing the right to urban property and making more people eligible to hold land titles, also inflated the urban land market in Brazil and made millions of people more vulnerable to financial manipulations within the formal housing market (Fernandes, 2011).

After years of negotiations and mobilizations at all levels, the Brazilian Legislature passed the new Federal Constitution in 1988, giving municipalities more power in terms of urban land management and regulation. The document also created the concept of the *social function of property* "along with the recognition and integration of informal settlements into the city, and the democratization of urban governance" (Rolnik, 2011, p. 242). In the early 2000s, the federal government passed another important piece of legislation focusing on land and property rights, the paradigmatic 2001 City Statute. Macedo argues that, in terms of private property, the Statute "innovates by establishing preemption rights for local governments, whereby areas of interest can be demarcated in local Master Plans and potentially acquired by local governments for projects of social interest, such as low-income housing" (2008, p. 262). In addition, Fernandes argues that this Legislation offered local authorities a whole new set of instruments "to reverse to some extent, the pattern and dynamics of formal and informal urban land markets, especially those of a speculative nature" (2007, p. 213). One of these instruments was the *usucapião coletivo* (collective adverse possession law), allowing not only single actors, but also communities living in a vacant private property uncontestably and continuously for at least five years to jointly claim its ownership. The Statute also created "grants for special use", which is similar to *usucapião* law but applied to public land. Nevertheless, these legal tools might also have had the opposite effect, actually boosting spatial-segregation in Brazil. The 2001 City Statue's emphasis on property rights and land regularization might have made it more difficult for the urban poor to resist displacement. Land titling programs, for example, have incited the interest of major construction firms and investors in informal settlements, creating a bigger land market in Brazil (Alfonsin et. al., 2003).

The case of Porto Alegre

Most research on housing justice and inequality in Brazil until now has focused on cities like São Paulo and Rio de Janeiro. Even though Porto Alegre's metropolitan area is the fifth largest in the country (IBGE, 2012) and despite the city's history of progressive housing policies and participatory planning programs, limited attention has been paid to the state capital of Rio Grande do Sul. In

addition to hosting the first edition of the World Social Forum in 2001, Porto Alegre was also the first city in the world to apply the Participatory Budgeting program (PB), allowing residents to decide on the allocation of a share of public investments. The PB, implemented in 1989 by the Workers Party (PT), also encouraged popular articulation around themes like urban infrastructure and housing. In fact, Porto Alegre is the state capital in Brazil in which PT had its longest municipal term (1989 – 2003) (Fedozzi, 2001), in which the socialist administration helped establish several housing movements in the city.

Under the military regime (1964 – 1985), irregular tenants living in "inappropriate" zones (e.g. the riverside) would only be allowed to stay in the area depending on their "political behavior" (Baierle, 2007). When PT won the municipal elections in the late 1980s, however, the scenario changed. Under PT's administration, the 1990 Organic Municipal Law was passed (instituting "concessions of right to use" and, thus, giving people the right to occupy vacant public land) and the Housing Cooperative Program was created in 1993 (giving technical support and legal assistance to housing groups, including land acquisition and regularization) (Alfonsin, 2005). PT's strategy concerning land disputes in Porto Alegre was very clear: not to expropriate, but to mediate agreements between squatters and property owners (Fruet, 2005). When PT left the municipality, though, the new mayor revoked the Organic Municipal Law and instead of a land regularization plan, developed a mortgage program. In fact, during my preliminary fieldwork, evidence extracted from eviction court records indicates that in 2003, the municipal approach towards squatter settlements changed to the extent that local authorities would no longer expropriate private property, particularly "to avoid illegitimate land appropriations" (TJRS, 2017, p. 43). In fact, Soares and Sanches (2018) argue that today in Porto Alegre, the more organized and combative the housing organization is, the more the judicial and police forces are employed to dismantle what could serve as an example for others. As a leader of *Lanceiros Negros Vivem* squatter group told me informally during preliminary fieldwork in August of 2017, "the position of the current administration has changed towards us. Local authorities tend not to engage with the movements as they used to and many families are getting evicted just months after they squat" (female occupant).

Discussing Landscapes of Property and the Theories of Racialized Displacement

My paper addresses the economic, political, and judicial dimensions of land, housing, and property rights. I am approaching these themes starting from the premise that the legal space both produces and is produced by the social space. In other words, I assume that law is not objective, but, as Blomley (1994) argues, constantly echoing power structures and incorporating social and cultural systems. Thus, drawing from the literature on racialized displacement and property regimes through a legal geography perspective, I frame my research problem around the idea of *legalized displacement*. I am conceptualizing legalized displacement as an outcome of *judicial dispossession*, by which I mean eviction mandates ordered by the courts. What is significant about such mandates, however, is not only that they are ruled by judges, but that these practices are embedded within the governmental, legal, and policy systems. Evictions, in this case, are understood as legitimate actions and inserted in broader processes of racialized capitalism.

Racialized Displacement Processes

The market alone cannot explain the level of displacement taking place globally today. More than a direct and inevitable outcome of the commodification of housing, practices of dispossession must be addressed as discriminatory politics or, as Roy (2017) suggests, racialized displacement. Although concepts like the financialization of housing help us understand much of the urban transformations currently taking place across the world, this framework does not fully clarify the continuous entanglements between capitalism and racial discrimination. As Fraser summarizes, "exploitation-centered conceptions of capitalism cannot explain its persistent entanglement with racial oppression" (2016, 201, p. 163). According to her, "the subjection of those whom capital expropriates is a hidden condition of possibility for the freedom of those whom it exploits" (2016, p. 166). Roy also claims that foreclosure can be understood as mechanisms of social and racial banishment. While investigating the Chicago Anti-Eviction Campaign, the author found that banks confiscate houses located "at city's end" (2017, p. A3). She argues that these processes hide discourses on models of ownership and embody not only a loss of property, but more critically, a loss of personhood. Similarly, Desmond (2016) concludes that eviction is a commonplace practice in inner-city black neighborhoods in Milwaukee. He argues that women are more than twice as likely to be displaced than men. Particularly black women tend to have less-flexible schedules, receive lower wages, and often are the sole providers for their family, preventing them from working extra hours to "work off" the rent. In sum, Desmond emphasizes that, while black men in the United States are locked up, "black women are locked *out* (emphasis added)" (2016, p. 121).

Racialized logics also shape state policies and justify courts' decisions. Perry argues that, in the case of Salvador, Brazil, black women are disproportionally subjected to forced removals by local authorities. The evictions she investigated were allegedly being led in order to "make way for new structures that were meant to attract tourists to the city center" (2013, p. 49). However, the author argues that judges ordered the eviction of poor black women even when they presented the required documentation proving land ownership. She summarizes, "black women, especially those living in the poorest urban neighborhoods, traditionally have been consigned to a 'de facto status of non-citizens,' occupying not only the spatial margins of cities but also the socioeconomic margins as the poorest of Brazil's poor" (2013, p. 115). Bhan and Ghertner also look at state-sponsored displacement in India, examining the fundamental role played by the courts in evicting the poor in Delhi. The former explains "the involvement of the courts rather than the state" (2009, p. 128) differentiates contemporary evictions in India. Similarly, Ghertner claims that judges confronted with the lack of proper documentation, abandoned previous bureaucratic prerequisite and statutory requirements for ordering evictions and "made the appearance of filth or unruliness in and of itself a legitimate basis for demolishing a slum" (2011, p. 287). While suggesting that some bodies, due to their limited mobility, are becoming more displaceable than others, Yiftachel argues that displacement is switching "from an act to a systemic condition through which marginalizing power is exerted through policy and legal systems" (2017, p. 3). He claims that urban planning has become a very powerful governing tool and that "planning (or lack of) provides the authorities with a set of technologies with which they can legalize, criminalize, incorporate or evict" (2009, p. 96).

Social and racial discrimination in the (re)making of the city is not new. Spatial segregation has always been present in urban planning, from Haussmann's efforts to revitalize Paris to Moses' attempt to redevelop New York. What has changed, on one hand, is the sophistication level of financial, policy, and legal instruments being used to exclude. On the other hand, discriminatory politics are

now increasingly hidden behind populist discourses, rhetoric that I intend to analyze in my dissertation.

On Property Regimes

The processes described in the previous sections are entangled with legal and social foundations of property rights. Discourses performed by the state, especially by the courts, validate certain tenure models while condemning others, ultimately producing dispossession (Ghertner, 2008; Bhan, 2013). Property regimes built around the idea of private and individual right, for example, might limit the access of the disfranchised to the urban space, untimely boosting socio-spatial segregation (Singer, 2010; Griffin, 2010). Therefore, frameworks on property entail not only claims to territory, but it also mobilizes concepts such as power and identity. There is a growing body of literature studying regimes of property focusing on the rhetoric associated with principles of ownership. Many authors discuss the challenges implicated in understanding private property ownership as the "proper" and acceptable mandate. In the next paragraphs, I will build on these scholars and elaborate on what Roy (2003) identifies as "paradigms of propertied citizenship", in which certain prerogatives are being given exclusively to those who can afford to become homeowners.

Blomley (1994) uses the term "landscapes of property" to urge scholars studying property regimes to take into account not only the social scope of property but its historical and geographic dimensions as well. He criticizes the geographical alienation of legal studies and calls for spatialization of law, defending a closer look at the connection between the law and legal systems, including not only the effects of law upon space but also "the ways social spaces affect law" (2004, p. 99). Porter (2014) and Graham (2010) agree and claim that the notion of property needs to consider the relationalities embedded in it. The latter suggests that "property is not a thing but a relation of claims" (p. 403) while the former encourages us to reflect upon the significances of property within different legal and cultural discourses and practices.

In addition, it is important to think about the problems of ignoring or condemning alternative property models. Postcolonial scholars have already highlighted the danger of associating modernity to specific "modes" of space production. As Robinson puts it, the concept of urban modernity "has assumed a privileged link between modernity and certain kinds of cities" (2004, p. 709). Hence, besides challenging the dichotomies of informal-formal, illegal-legal as two disconnected systems (Sousa Santos, 2002; Roy, 2005; Benjamin, 2008), it is fundamental to acknowledge alternative mandates of property that are not necessarily related to the Anglo-American liberal model based on individual rights and ownership (Esteva, 2014; Leitner & Sheppard, 2018). In fact, Gillespie (2016) questions the universal applicability of Western standards of propertied mandates and proposes a new framework of thinking about property relations in different contexts by debating concepts such as tenure security, exclusion, and rights. He claims that "legal concepts of property need to be more place sensitive so as not to potentially undermine or destabilize existing and evolving social norms and conditions" (2016, p. 264).

By framing property around the idea of exclusion, Blomley argues that "property provides both a rationale for dispossession and a ground for its opposition" (2016, p. 594). In this sense, the American paradigm of propertied ownership was responsible for shaping socio-spatial boundaries in the North-American cities and excluding individuals that did not meet quintessential norms of residence (Roy,

2003; Wyly et. al., 2012). Roy, for example, asserts that "propertied citizenship for the select was made possible through the impossibility of shelter and social citizenship for all" (2003, p. 484). Furthermore, property territorialization embodies a specific form of spatial and social classification (Blomley, 2016, p. 597). As Gibson-Graham (1997) suggests, property is not a fact but an aspiration, and a very powerful one though.

Mobilization of judicial discourses in eviction cases

To understand the role of the judiciary in the displacement of squatter settlements, also called "occupations" by housing rights movements, I examined court records involving informal tenants in Porto Alegre. By conducting a discourse analysis of these documents, I clarified the arguments used by the courts to justify (and counter) forced removals. I accessed these eviction court records through the online database for the Rio Grande do Sul Court of Justice (TJRS), the tribunal responsible for analyzing lawsuits filed in Porto Alegre. Because I am primarily investigating how the courts apply legal frameworks established in the last two decades in Brazil, I analyzed only the decisions published since 2001. I used keywords like "property", "repossession", "occupation" or "land invasion", and "collective" to narrow my search on the TJRS database to only include decisions involving squatter occupations. I discarded results with keywords such as "commercial", "commerce" and "rural". The results generated are summarized by Table 1 below:

Table 1: Squatter settlements-related eviction cases in Porto Alegre ruled by TJRS (2001 – 2018)

Year	Number of qualifying cases	Number of cases ruled against squatters
2002	0	n/a
2004	2	1
2005	3	3
2009	1	1
2014	0	n/a
2015	1	1
2016	2	1
2017	2	2
2018	1	1
Total	12	10

Data collected from TJRS *jurisdição* online database

TJRS is an appellate court that takes on appeals cases once the municipal court has issued a decision. Therefore, the number of actual eviction cases involving *ocupações* ("occupations") in Porto Alegre since 2001 could be much higher. I chose not to investigate the decisions published by the municipal court because documents from this database cannot be accessed using specific keywords, but must instead include the name of at least one of the parties involved in the litigations or their lawyers.

Of the twelve cases I analyzed, only two of them had decisions that favored the squatters.

Decisions in favor of squatter settlements

In the two cases in which the judges[1] ruled in favor of the squatters, the decision was based on the premise that evictions would aggravate the "social problem" of lack of housing. First, in the lawsuit arbitrated in 2002, the court accepted the appeal of seventy families. The squatters were occupying a property owned by the Rio Grande do Sul Housing Company (*Companhia de Habitação do Estado do Rio Grande do Sul* – COHAB). They sustained that the property had been abandoned for over thirty years and, thus, was not fulfilling its *social function*. They also claimed that they had the *constitutional right to housing*, and it was the state's duty to grant it. The defendants' lawyers also highlighted that carrying out with the removal would result in the eviction of dozens of families that would "be subject to complete abandonment, having nowhere to go". (TJRS, 2002, p. 2).

The court responds to these arguments by stating that:

> *Although it is necessary to seek in the discipline of the civil law the legal subsidies required to solve controversies, one cannot forget the particularity of this new social fact [my emphasis], that of collective invasions, in which people organize themselves in movements that represent neither the solution of an individual problem, nor the interest in individual advantage or benefit, but the fulfillment of a basic need of a community […].On the other hand, the right to housing is constitutionally guaranteed and, unless proven otherwise, those who do not have a shelter to live in are in a state of need*. (TJRS, 2002, p. 5).

One of the judges assigned to the case claims that he grounds his decision, accepted by the other judges of the case, on two legal principles: the court's responsibility to the community and the theory of proportionality. The former refers to the fact that Judiciary needs to take a position on issues of strong popular appeal – "will the Judiciary only represent another instance of power against the citizen, or will it embody the last instance of power, in his favor?" (Idem). Finally, he also sustains that a judge must seek the "least harmful solution" and asks what are the least damaging answer in this case:

> *[…] to turn away from the needy families who find themselves in the property shooing them away with their junk and pain, or delaying the permanent resolution a little more showing understanding of the seriousness of this Brazilian drama, which does not generate irreversible burdens to the other party?* (TJRS, 2002, p. 6).

In the second case determining the permanence of squatters in occupied property, ruled in 2016, the court had similar remarks. Although the judges do not make direct reference to the social function of property or the constitutional right to housing, they agree that evicting four hundred families from the private property they occupied would represent a "social problem of housing" (*problema social de moradia*). Thus, the judges allowed the families the right to stay put while waiting for a federal appeal.

[1] In TJRS second instance, usually three State Court judges, called *desembargadores,* deliberate. However, the ruling may be made by a collegiate of five judges or, in certain cases, even result from a monocratic decision.

Decisions against squatter settlements

The arguments used by the judges when ruling against squatter groups in the other ten cases are basically built around two main principles: the *indisputability* of private property and the fact that occupations constitute an *illegal act*. The application of these two different discourses, nonetheless, depends who owns the occupied property, a private or public actor. The latter justification is mostly used when the complaint is a public entity and, in these cases, judges usually emphasize the lawlessness of the "infraction" being committed by the "invaders". They often claim that these squatter settlements are *unfair* in the extent that if the state were to guarantee the right to housing to all those who illegally occupy third party's property, other marginalized citizens not adopting the same *occupation tactic* would not be entitled to similar privileges. (i.e. access to shelter).

However, when a private actor is involved, the argument is frequently centered around the premise that collective claims cannot surpass *individual rights* when it comes to property. When analyzing the ten verdicts evicting squatters, private land was the object of seven of them. One quote, in particular, stands out because it is repeated by one judge in two different decisions. Despite acknowledging the mechanisms created by the 1988 Federal Constitution and the 2001 City Statute, in these lawsuits registered in 2004 and 2005, he highlights:

> *Even when we understand that properties must fulfill a social function, it is not within the scope of a possessory lawsuit that the State should decide whether the owner was or not subtracting the property from its social purpose. If we accept the defendants' [squatters] argument, all landlords would be liable to lose possession - albeit only in the course of the proceeding - of their property to the homeless when the latter consider the land a socially unproductive property. The fact that a parcel is not occupied by buildings or plantations, even for a long period of time, clearly does not mean that the property in question lacks a social function; at least while the owner has not been yet questioned by the competent authorities about how he will give a proper social allocation to his property. What cannot be admitted, with the danger of implementing a new form of social and legal insecurity, is that those with no access to housing through planned invasions, executed in the dead of night, settle themselves permanently in duly registered and regularized urban parcels, on the basis - possible to be invoked in relation to any non-built plot of land - that the property is not meeting its social purpose. To admit this type of conduct would mean to ensure housing only to those who will have the organizational capacity to promote invasions, establishing a real parallel power to that of the State, which, evidently, is not fair, much less acceptable.* (TJRS, 2004, p. 3; TJRS, 2005b, p. 5).

Moreover, in the 2005 lawsuit, after including in his monocratic decision that the squatters accuse the owner of not paying property taxes for several years, the judge claims that this *alleged fiscal debt* is irrelevant in litigations related to possessory claims.

In another case, while ordering the removal of seventy families, another judge maintains that "the principle of the social function of property, guaranteed by the Federal Constitution should not be analyzed in isolation, and should coexist harmoniously with the rules disciplined in the Civil and Civil Procedure Codes that regulate the matter" (TJRS, 2009, p. 5). The codes the magistrate is referring to are those that protect property rights.

Additionally, in a paradigmatic ruling due to the social relevance of the work developed by the defendant, a housing rights group protecting women's rights, the judges responsible for the case also emphasize private property rights. The squatter group, known as *Ocupação Mirabal*, a movement that shelters only poor women who have suffered domestic abuse and their children, was occupying a vacant private property owned by a religious institution. One of the magistrates, in the decision, praises the "socially relevant" work being performed by the group, but highlights that the occupied building is private *not public*. His remarks suggest that his decision could have been different if the contested property was owned by the state. Another judge who was part of the body ruling on the case claims:

> *However expressive the purpose of the movement is, the protection of private property and its social function is also a fundamental constitutional right. […] The movement counts with my support as a citizen; as a Judge, my duty is to protect society, a context in which it is necessary to restricting infractions to principles such as social function and private property, values that constitute the foundations of personal and contractual freedom safeguarding the common good of society. Freedom does not exist, nor does it resist without property and its social function*. (TJRS, 2017a, p. 9).

It is interesting to notice that one judge acknowledges the "efforts of local authorities", highlighting that the *political option* adopted by the municipality starting in 2003 has changed towards squatter settlements. This posture was to no longer expropriate "invaded" private land, "in particular for the purpose of avoiding unlawful appropriations" (TJRS, 2018, p. 43). This passage suggests that political ideologies, in fact, might influence judicial outcomes.

Finally, in one of the decisions involving private property, published in 2015, the court recognizes the *constitutional right to housing* as a fundamental right. However, judges claim that when ordering the eviction of the squatters:

> *We are not denying the validity of constitutional principles and norms regarding the right to housing or the dignity of the human person [but] it is necessary to consider the impossibility of rewarding the illegal conduct of the aggravating actor - who confessed to having invaded the property of a third party - to the detriment of the other part that obtained the property and exercised its ownership lawfully and regularly.* (TJRS, 2015, p. 12).

In regard to the lawsuits involving the occupation of public property, two main arguments emerge. First, as previously indicated, the fact that these practices performed by squatter groups are *outlawed*. This type of discourse can be found in two passages in particular: "Although *legitimate* subjects of debate, it is not possible to admit invasion of public areas for the purpose of claim or protest" (my emphasis) (TJRS, 2017b, p. 11). In another ruling, the judge argues that "it is impossible to let them [squatters] stay in the property under the argument that it would be fulfilling with the *social function of the property*, since the article on the social function of property in the 1988 Federal Constitution does not protect those who enter, *irregularly*, in public property" (my emphasis) (TJRS, 2005a, p. 10).

The second premise used by the courts is that the judiciary is not the place to solve *housing policy* related issues:

> *Any solution for the relocation of the people who invaded the property, be they children, elderly, and pregnant, should be sought in the political arena, in conjunction with competent administrative agencies. The Judiciary cannot, in violation of the law that deals with possessory litigation, enter into an area of exclusive competence of the Executive Power. […] The condition of social vulnerability is not exclusive to the group that invaded the public property, as social needs are not an exclusive problem of the Municipality of Porto Alegre, since they are present in absolutely all other states.* (TJRS, 2016, p. 10).

The ruling presented above, published in 2016, is contradictory. The object of the lawsuit is a parcel owned by the Municipal Housing Department (DEHMAB) that was being occupied by three hundred families. The DEHMAB was trying to evict the families from the contested property claiming that the area would serve to accommodate other 1,300 families removed by the municipality from another area that was being required for the expansion of the local airport. Paradoxically, the judge ordering the forced removal of these three hundred families to shelter other families now displaced due to state-sponsored infrastructure works. In other words, while the court suggests that a solution for the relocation of squatters should be resolved within the scope of the Executive power determines the removal of these families to solve another "housing issue". In this sense, the judiciary, as Bhan (2009) highlights, is becoming indeed the primary site of urban planning.

Conclusion

The question that guided this analysis *was how are legal frameworks on land use and property rights used to justify displacement?*. At stake here is not only the fact that evictions might be using to displace and exclude certain marginalized groups from the city, but, particularly in the case of Brazil, the *violation* of the constitutional right to housing. By addressing the judicial dimension of land, housing, and property rights, I showed that law is not neutral and detached, but, in fact, constantly reverberating power arrangements, including regimes of property. Drawing from the literature on property and displacement through a legal geography lenses, I reflected upon the notion of eviction as a legitimate act ultimately being used to control, plan, and rule. By grounding my analysis in Porto Alegre, I also showed how a city with a tradition of participatory planning is now witnessing the marginalization of the housing justice movement.

Therefore, when courts order the eviction of squatter movements, for example, they are not only ignoring the legal mechanisms created to ensure that Brazilian citizens have adequate access to housing. They are, in fact, violating these people's constitutional right to housing, as tenure security is a key factor in one's entitlement to adequate shelter. When the City Statute was established almost twenty years ago, people fighting for urban reform in Brazil became hopeful that private property regimes and land speculation would now be challenged. Nonetheless, I claim that some of the instruments supposedly created to fight dispossession, instead are being used to displace. In other words, as Bhan argues, displacement is occurring "through democratic processes rather than in their absence" (2016, p. 9).

With this preliminary investigation, I demonstrated how legal frameworks on land use and property rights have been mobilized for and against dispossession. Courts in Brazil are mobilizing political ideologies that condemn certain tenure models in favor of other property regimes, defying thus established land use legislation in their rulings. Data found on TJRS online database illustrates this.

Despite some limitations of this study (especially in regard to subset of lawsuits),[2] further investigation needs to be done with the other parties involved in these cases, particularly the squatter movements themselves and their lawyers. We need to understand how these poor people's movements are contesting displacement, including the legal remedies that their lawyers are mobilizing to contest evictions.

References

Alfonsin, B., 2005. Depois do Estatuto da Cidade: ordem jurídica e política urbana em disputa, Porto Alegre e o urbanizador social. *Revista Brasileira de Estudos Urbanos e Regionais*, *7*(2), p.47.

Alfonsin, B.D.M., Serpa, C.B.D. and Fernandes, E., 2003. Da invisibilidade à regularização fundiária: a trajetória legal da moradia de baixa renda em Porto Alegre. *FERNANDES, E. e ALFONSIN, B. de M. A Lei e a Ilegalidade na produção do espaço urbano. Belo Horizonte, DelRey/Lincoln Institute*.

Baierle, S., 2007. Lutas urbanas em Porto Alegre: entre a revolução política e o transformismo.

Benjamin, S., 2008. Occupancy urbanism: Radicalizing politics and economy beyond policy and programs. *International Journal of Urban and Regional Research*, *32*(3), pp.719-729

Bhan, G. (2009). "This is no longer the city I once knew". Evictions, the urban poor and the right to the city in millennial Delhi. *Environment and urbanization*, *21*(1), 127-142.

_____ 2013. Planned illegalities: Housing and the'failure'of planning in Delhi: 1947-2010. *Economic and Political Weekly*, pp.58-70.

_____ 2016. *In the public's interest: evictions, citizenship, and inequality in contemporary Delhi* (Vol. 30). University of Georgia Press.

Blomley, N.K. 1994. *Law, space, and the geographies of power* (pp. 112-13). New York: Guilford Press.

_____ 2004. *Unsettling the city: Urban land and the politics of property*. Routledge.

_____ 2016. The territory of property. *Progress in Human Geography*, *40*(5), pp.593-609.

Bonduki, N.G., 1994. Origens da habitação social no Brasil. *Análise social*, pp.711-732.

Caldeira, T.P., 2000. *City of walls: crime, segregation, and citizenship in São Paulo*. Univ of California Press.

Desmond, M., 2016. *Evicted: Poverty and profit in the American city*. Broadway Books.

Esteva, G., 2014. Commoning in the new society. *Community Development Journal*, *49*(suppl_1), pp.i144-i159.

Fedozzi, L., 2001. Orçamento participativo. Reflexões sobre a experiência de Porto Alegre. In *Orcamento participativo. Reflexoes sobre a experiencia de Porto Alegre*.

Fernandes, E., 2007. Constructing theRight to the City'in Brazil. *Social & Legal Studies*, *16*(2), pp.201-219.

_____ 2011. *Regularization of informal settlements in Latin America* (p. 52). Cambridge, MA: Lincoln Institute of Land Policy.

Fraser, N., 2016. Expropriation and exploitation in racialized capitalism: a reply to Michael Dawson. *Critical Historical Studies*, *3*(1), pp.163-178.

Fundação João Pinheiro (FJP), 2017. Déficit habitacional no Brasil 2015: resultados preliminares.

[2] While randomly searching for eviction cases on TJ-RS online database I found that some cases involving squatter groups were not included in my initial study. This happened because the keywords I used to find these types of lawsuits are only applied to the summaries of the court records and not to the entire litigation document.

Fruet, G.M., 2005. The low-income housing cooperatives in Porto Alegre, Brazil: a state/community partnership. *Habitat International*, *29*(2), pp.303-324.

Ghertner, D.A., 2008. Analysis of new legal discourse behind Delhi's slum demolitions. *Economic and Political Weekly*, pp.57-66.

_____ 2011. Rule by aesthetics: World-class city making in Delhi. *Worlding cities: Asian experiments and the art of being global*, pp.279-306.

_____ 2015. *Rule by aesthetics: World-class city making in Delhi.* Oxford University Press.

Gibson-Graham, J.K., 1997. The end of capitalism (as we knew it): A feminist critique of political economy. *Capital & Class*, *21*(2), pp.186-188.

Gillespie, J., 2016. A legal geography of property, tenure, exclusion, and rights in Cambodia: exposing an incongruous property narrative for non-Western settings. *Geographical Research*, *54*(3), pp.256-266.

Graham, N., 2010. *Lawscape: Property, environment, law*. Routledge-Cavendish.

Griffin, C.J., 2010. Becoming private property: custom, law, and the geographies of 'ownership'in 18th-and 19th-century England. *Environment and Planning A*, *42*(3), pp.747-762.

Holston, J., 2008. *Insurgent citizenship: Disjunctions of democracy and modernity in Brazil*. Princeton university press.

Instituto Brasileiro De Geografia E Estatística (IBGE). 2010. Censo Brasileiro de 2010. Rio de Janeiro: IBGE, 2012.

Leitner, H. and Sheppard, E., 2018. From Kampungs to Condos? Contested accumulations through displacement in Jakarta. *Environment and Planning A: Economy and Space*, *50*(2), pp.437-456.

Macedo, J., 2008. Urban land policy and new land tenure paradigms: Legitimacy vs. legality in Brazilian cities. *Land Use Policy*, *25*(2), pp.259-270.

Maricato, E., 2010. O estatuto da cidade periférica. *O Estatuto da Cidade comentado. Brasília: Ministério das Cidades*.

Perry, K.K.Y., 2013. *Black women against the land grab: The fight for racial justice in Brazil*. U of Minnesota Press.

Porter, L., 2014. Possessory politics and the conceit of procedure: Exposing the cost of rights under conditions of dispossession. *Planning Theory*, *13*(4), pp.387-406.

Rolnik, R., 2013. Late neoliberalism: the financialization of homeownership and housing rights. *International journal of urban and regional research*, *37*(3), pp.1058-1066.

Roy, A., 2003. Paradigms of propertied citizenship: Transnational techniques of analysis. *Urban Affairs Review*, *38*(4), pp.463-491.

_____ 2005. Urban informality: toward an epistemology of planning. *Journal of the american planning association*, *71*(2), pp.147-158.

_____ 2017. Dis/possessive collectivism: Property and personhood at city's end. *Geoforum*, *80*, pp.A1-A11.

Singer, J.W., 2000. Property and social relations. *Property and values: Alternatives to public and private ownership*, pp.3-21.

Smith, N., 2006. There's no such thing as a natural disaster. *Understanding Katrina: perspectives from the social sciences*, *11*.

Soares, P. R., & Sanches, N. D. 2018. Os conflitos territoriais urbanos e a judicialização da política habitacional: reflexões a partir do despejo da ocupação lanceiros negros, em Porto Alegre. Paper presented at the *Seminario Latino-Americano de Teoría y Política sobre Asientamientos Populares*. Universidade Nacional de General Sarmiento, Buenos Aires, Argentina.

Sousa Santos, B., 2002. *Toward a new legal common sense: Law, globalization, and emancipation*. Cambridge University Press.

Tribunal de Justiça do Rio Grande do Sul (TJRS). 2002. Lawsuit n. 70008436768. BRASIL,

_____ 2004. Lawsuit n. 70008590465. BRASIL,

_____ 2005a. Lawsuit n. 70010929503. BRASIL.

_____ 2005b. Lawsuit n. 70012565354. BRASIL.

_____ 2009. Lawsuit n. 70028526036. BRASIL.

_____ 2015. Lawsuit n. 70064392392. BRASIL.

_____ 2016. Lawsuit n. 70069321636. BRASIL.

_____ 2017a. Lawsuit n. 70072101025. BRASIL.

_____ 2017b. Lawsuit n. 70072335003. BRASIL.

_____ 2018. Lawsuit n. 70073691867. BRASIL.

Villaca, F. J. M. (2010). Uma contribuição para a história do planejamento urbano no Brasil. In *O processo de urbanização no Brasil*.

Wyly, E., Ponder, C.S., Nettling, P., Ho, B., Fung, S.E., Liebowitz, Z. and Hammel, D., 2012. New racial meanings of housing in America. *American Quarterly*, *64*(3), pp.571-604.

Yiftachel, O. 2017. Displaceability - a Southeastern Perspective on the Remaking of Urban Citizenship. *DRAN/MIT: New Directions in Displacement Research*, 2.