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CONSTRUCTING THE 'RIGHT TO THE CITY' IN BRAZIL

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ABSTRACT

While there has been a growing utilization of Henri Lefebvre's concept of the 'right to the city', not much has been said about the legal implications of such a concept. This article discusses the main aspects of the legal construction of the 'right to the city' in Brazil. Following a discussion of Lefebvre's contribution to the debate on urban politics, the article analyses the role played by the legal order in the determination of the exclusionary pattern of urban development in Brazil, as well as the role a redefined legal order can have in the processes of urban reform, socio-spatial inclusion, and sustainable development. Emphasis is placed on the main dimensions of the 2001 City Statute, the legal framework governing urban development and management, which recognized the 'right to the city' as a collective right, followed by an introduction to the proposed 'World Charter of the Right to the City'. As a conclusion, it is argued that, while a great deal has already been done to promote the materialization of the 'right to the city' in Brazil, there are still serious obstacles to be overcome, and renewed socio-political mobilization is required for the new legal-urban order to be fully implemented.

KEY WORDS

Brazil; City Statute; Henri Lefebvre; right to the city; urban law

Il faut penser l'impossible pour saisir tout le champ du possible. (Henri Lefebvre)

INTRODUCTION

SINCE IT WAS originally coined in the late 1960s by French philosopher and sociologist Henri Lefebvre (1901–91), the concept of the 'right to the city' has inspired renewed theoretical discussion and several forms

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of socio-political action, initially in Latin America and more recently in several other regions and contexts. This concept has been generally understood from a combined philosophical and political perspective, providing substance to the formulation of both a general discourse of rights and social justice, and a more specific rights-based approach to urban development. However, very little attention has been placed on the legal nature and implications of such a concept. Indeed, what exactly does the 'right' to the city mean in legal terms, and what does it entail? These are important questions – in legal and also in theoretical and socio-political terms – especially in the current stage of urban politics, in which countries such as Brazil have already formally incorporated the notion of the 'right to the city' into their national legal systems, explicitly or partly, and in which there is a growing international mobilization aiming to have a so-called 'World Charter of the Right to the City' approved by the UN in the near future.

This article aims to discuss the main aspects of this process of legal construction of the 'right to the city' in Brazil. Following a brief discussion on Lefebvre's always inspiring contribution to the debate on urban politics, the article will provide a general analysis of the central role played by the legal order in the determination of the exclusionary pattern of urban development in Brazil, as well as of the role a redefined legal order can have in the processes of urban reform, socio-spatial inclusion, and sustainable development. Special emphasis will be placed on the main dimensions and implications of the 2001 City Statute, the main legal framework governing urban development and management in the country which explicitly recognized the 'right to the city' as a collective right, to be followed by an introduction to the proposed 'World Charter of the Right to the City'. As a brief conclusion, it will be argued that, while a great deal has already been done to promote the actual materialization of the 'right to the city' in Brazil, there are still serious problems and obstacles to be overcome, and as a result renewed socio-political mobilization in the country is required for the new legal-urban order to be fully implemented.

The Brazilian case deserves to be better known internationally not only because it provides sound bases for the further development of international law in the area of urban law, but also because it provides strong elements to make the development of a Lefebvrian theory of rights possible, in which the 'right to the city' is to be understood not only as a socio-political and/or philosophical value, but also as a legal right.

THE BRAZILIAN PROCESS

As a result of a process of rapid urbanization in the past four decades, Latin America is the most urbanized region of the developing world, with over 75 per cent of the population living in urban areas; in Brazil, 83 per cent of the total population lives in cities. The socio-economic development model that has required rapid urbanization in the region has produced cities heavily

marked by the presence of precarious peripheral areas. Despite the many existing differences in the processes of urban development verified in the region, generally speaking, urbanization has brought about combined processes of social exclusion, spatial segregation, and environmental degradation. According to data from several sources, in Brazil 26 million people living in urban areas do not have access to water; 14 million are not served by rubbish collection; 83 million are not connected to sewage systems; and 70 per cent of the collected sewage is not treated. Other figures suggest that despite the often long distances involved, 52 million Brazilians walk to work, given the high costs of public transportation. The national housing deficit has been estimated as 7.9 million units; even more alarmingly, the number of existing vacant properties has been estimated as 5.5 million units. Urban violence is increasing, especially in peripheral areas.¹

In particular, one of the main characteristics of urban development in Latin America countries is the fact that the social production of urban space has been increasingly promoted through informal processes of access to urban land and housing. Tens of millions of Brazilians have not had access to urban land and housing other than through informal, and mostly illegal, processes and mechanisms. Although the data are imprecise, it is realistic to say that more than 50 per cent of the people living in urban areas have had access to land and housing through informal processes. As has also happened in most Latin American cities, for several decades, Brazilians have been self-constructing a precarious, vulnerable and insecure habitat in *favelas*, irregular and clandestine land subdivisions, irregular housing projects, front-and-back houses, as well as by increasingly occupying public land, steep hills, preservation areas, water reservoirs and riverbanks.

Resulting from the combination of speculative land markets, clientelist political systems, elitist urban planning practices and exclusionary legal regimes – which have long affirmed individual ownership rights over the constitutional principle of the social function of property – for some time now Brazil's process of informal urban development has not been the exception, but the main socio-economic way to produce urban space in the country. It is a phenomenon that has structured Brazil's consolidated urban order, and as such it needs to be confronted. In many different ways, in the past two decades the process of informal access to land and housing has increased in large, medium-sized, and even in small cities. In fact, despite the association commonly made between informal urban development and large cities (all cities with more than 500,000 inhabitants have *favelas*), the precarious, illegal occupation of the territory can also be identified in all kinds of cities and regions of the country. According to official data, *favelas* exist in 80 per cent of the cities with 100,000 to 500,000 inhabitants, and in 45 per cent of those with a population of 20,000 to 100,000 inhabitants. Irregular settlements can be increasingly identified in small cities – 36 per cent of the cities with less than 20,000 inhabitants have irregular land subdivisions and 20 per cent of them have *favelas*. Although it can be by no means reduced to the poorest social groups, the informal production of the

habitat in urban areas among such groups needs to be urgently confronted, given the grave socio-economic, urban, environmental, and political implications of the phenomenon, not only for the residents of informal settlements, but also for the urban population as a whole.²

Many have been the discussions on the causes of this phenomenon, generating a rich tradition of urban research in which specific economic, social, political, and cultural analyses have been replaced by interdisciplinary discourses. More recently, it has been stressed that this remarkable Brazilian, as for that matter Latin American, tradition of urban research has neglected a crucial factor, namely, the role the liberal legal-political order has had in the determination of the region's exclusionary pattern of urban development. By the same token, given the growing, though still fragile, process of redemocratization in the region, special emphasis has been increasingly placed on the possibilities that a new legal-urban order governing the processes of land use and development may come to have in the promotion of an urban reform process committed to the principles of socio-spatial inclusion and environmental sustainability.

Indeed, in Brazil and in several Latin American countries, academics, politicians, urban managers and above all urban social movements and NGOs have gradually understood that there is no way urban reform can be promoted in the region without the promotion of a profound legal-political reform that affirms a new set of citizenship rights. It has also become clear that the important developments promoted by those local administrations committed to the cause of urban reform have found obstacles, limits, and even insurmountable barriers in the obsolete provisions of the prevailing national legal-urban orders. As a result of growing socio-political mobilization – not only of urban social movements, but also of sectors of productive real estate capital that have been harmed by the prevalence of a legal order that still widely supports predatory land speculation practices – Brazil and some other Latin American countries have been undergoing an important process of legal change, thus contributing towards the empowering of a new field of public law, namely urban law.

This socio-legal movement has long been greatly inspired by the seminal work of Henri Lefebvre, and his concept of the 'right to the city' has been embraced by social movements, NGOs, some local and even national governments in the region as their guiding political-philosophical framework. It is largely as a result of this growing mobilization that, since the 1970s, consistent attempts have been made in countries such as Brazil and Colombia to materialize that concept not only in socio-political terms, but in legal terms as well so that the 'right to the city' becomes a legal right, and not only a political notion. The approval of Law no. 388/1997 in Colombia, and Law no. 10.257/2001 in Brazil – the internationally acclaimed City Statute – are very significant developments in this process.

More recently, another inspiring socio-political mobilization has taken place, and grown, in the region, calling for the approval of the 'World Charter of the Right to the City', which, if adopted by the United Nations, would

become a groundbreaking development in international law, especially in the current global context in which by 2007 50 per cent of the world population will be living in cities.

HENRI LEFEBVRE: FOR A NEW POLITICAL CONTRACT OF SOCIAL
CITIZENSHIP TO AFFIRM THE 'RIGHT TO THE CITY'

Although there has been some considerable recognition of late, especially through the works of English-speaking authors, the truth is that the full extent of Henri Lefebvre's fundamental contribution to urban research still needs to be properly appreciated internationally. Following David Harvey's belated discovery of Lefebvre's work when he was finalizing his equally influential *Social Justice and the City* (1973), and given the translation of some of Lefebvre's books, a growing number of studies in the English language have explored the notion of the 'right to the city' from a socio-political perspective (see Mitchell, 2003).

However, a thorough reappraisal of his work is long overdue in France and elsewhere. As Christian Topalov (1989) once put it, perhaps the path of urban research in France and internationally would have been very different had Lefebvre's contribution not been put aside by the enormous political and academic influence of Manuel Castells's *La question urbaine* (1972). Some of Lefebvre's books, as for example *La révolution urbaine* (1970) and especially *La production de l'espace* (1974), still are fundamental sources of sharp insights and enlightening analysis on crucial socio-economic, political, and cultural aspects of the process of urban development, particularly the dynamics of the urban land market. Some of his ideas were even visionary: long before the concept became widespread, Lefebvre was talking about the phenomenon of globalization ('*mondialisation*').

Although the concept of the 'right to the city' was first proposed in two of his books, *Le droit à la ville* (1968) and *Espace et politique* (1973), I would argue that Lefebvre's most consistent elaboration on the nature of this concept can be found in a lesser-known book, *Du contrat de citoyenneté* (1990), in which the original concept was further developed and given more socio-political content, and in which the importance of reforming the long-standing liberal tradition of citizenship rights was strongly argued.

Indeed, more than 200 years have passed since the Declaration of the Rights of Man and Citizens on 26 August 1789 – the touchstone of the democratic order – was approved. Throughout this period, as a result of wars, political struggles and all sorts of social movements the set of human rights originally affirmed has gradually been recognized, expanded, and incorporated into the ordinary lives of individuals and social groups, thus expressing the needs, questions and claims of each historical period. However, despite the profound socio-economic, political and territorial changes that have taken place throughout the past two centuries, particularly those promoted by the combined processes of industrialization and urbanization, the same

cannot be said about the set of rights of citizens, which remain, to a large extent, the same political rights originally stipulated in 1789. In this context, Lefebvre argued that updating the Declaration of the Rights of Citizens is of utmost importance so that new legal-political conditions can be created so as to affirm a notion of social citizenship that effectively expresses contemporary social relations, that is, the new relations that have been formed between individuals, within society, and between individuals and society.

This is a challenge all the more important in the current stage of economic globalization, which has at stake the traditional political forms of social and national state organization. The formulation and materialization of a new political contract of social citizenship, recognizing and legalizing the rights of citizens to participate fully and actively in political and civil society form the *sine qua non* condition for the expansion and deepening of democracy. Such a widening of citizenship rights becomes even more important for the promotion of democratic governance of cities: cities and citizenship are ultimately the same subject. A new political contract would then replace the bases of the traditional notion of 'social pact' that has determined the long-standing framework of liberal legalism, which is still dominant in Latin America. Stressing the profound influence of Rousseau's abstract concept of the 'social pact' in the determination of still hegemonic liberal political and legal thinking and resulting in very concrete legal-political systems, Lefebvre affirmed that, by means of negotiations and political struggles, contemporary societies have gradually come to protect the weakest parties and stakeholders, namely, the infirm, children, the elderly, women, and so on – in short, all those excluded from the original limits of the anthropocentric humanism typical of Rousseau's time. It is certain that the notion of human rights has expanded and diversified over time, with new rights – for example, to health, education, work, and retirement – being recognized and subsequently expanded, culminating in the wide range of UN treaties, declarations and conventions. In particular, the right to property, originally considered as a natural right, is no longer conceived as an expression of the very essence of human nature.

However, Lefebvre also argued that, in so far as the rights of citizens are concerned, the original limits of Rousseau's theory urgently need to be redefined so that the realm of civil society can be expanded, reinforced, and empowered so as to absorb the realms of state and politics. The original citizenship rights were clearly made explicit: the right to move freely in the national territory; the right of opinion with the exception of the legal provisions in force; and above all the right to vote, that is, the right to political representation. Lefebvre stressed that, despite their bourgeois origin, such notions and rights should not be underestimated – as happens in the stance of radical groups, which are often dismissive of the rule of law as a mere instrument for socio-political domination – given the conditions of their effective materialization in socio-legal and political systems, and especially given their wide implications on people's daily lives. The role of representative democracy as the process *par excellence* for the representation of diverse

social interests, as a historical commitment, and as a fundamental factor in the formation of nation-states at a global level cannot be neglected either. Moreover, in the same way that significant socio-political developments have been promoted to update the contemporary notion of human rights, the notion of representative democracy has undergone important, though still insufficient, reforms.

Nevertheless, Lefebvre insisted that, with the profound socio-economic changes that have taken place in the past two centuries, the gap between the updated rights of man and the still anachronistic set of rights of citizens has increased enormously, thus jeopardizing the very existence of the democratic order. Especially in the contemporary context of economic globalization and so-called political neo-liberalism, and given the way technological changes and mass migration, among other factors, have generated new forms of dependency and interdependency among nation-states, societies, and individuals, the rights of citizens can no longer be reduced to that vital minimum recognized by the 1789 Declaration and as such frozen as manifestations of that particular historical period. Lefebvre argued that, more than ever in the history of humankind, contemporary men and women are a synthesis of their social, family and professional lives, and individual differences can no longer be ignored. However, contemporary citizens can no longer be defined only by their family name and their place of residence, but they should instead be defined by the way they belong to a web of distinct social practices in their family, profession, and habitat – in a city, region, and country – with the state order thus establishing links with multiple cultures as well as obligations towards a pluralist society.

It is in this context that the relations between the members of society, as well as the relation between those (the nation) and the state, have to be redefined beyond the terms of Rousseau's original social contract. This relation – that of social citizenship – requires the stipulation of new legal-political conditions beyond the traditional rights of democratic representation. To stipulate such rights initially implies negotiating them, in order to subsequently formulate a new political contract of social citizenship which cannot be reduced to the right to vote, nor indeed to its political dimension, leaving aside other important social and cultural dimensions.

Lefebvre reminded us that citizenship is always a source of obligations – for example, paying tax, declaring income, and serving in the military – but the traditional, still legal dominant concept does not include political rights other than the right to vote, the mere choice of a representative. If Rousseau distinguished between politics and the social pact, considering politics to be a mere circumstantial effect of the 'general will' underlying the social pact, Lefebvre proposed a contemporary formula for social citizenship, expressing a 'social project' which requires a new political contract between the state and citizens in order to reduce the gap between state and government, and between the institutional power and the power of civil society.

In short, the quality of the condition of citizenship today implies the recognition of other political rights which have emerged in the past two

centuries, and which are closely related to the requirements of everyday life in the modern world, but which have not yet been fully made explicit and materialized.

In his work, Lefebvre suggested some of these interrelated political rights still need to be fully recognized: the right to information; the right of expression; the right to culture; the right to identity in difference and in equality; the right to self-management, that is, the democratic control of the economy and politics; the right to public and non-public services; and above all the 'right to the city'. The 'right to the city' would basically consist of the right of all city dwellers to fully enjoy urban life with all of its services and advantages – the right to habitation – as well as taking direct part in the management of cities – the right to participation. In other words, Lefebvre stressed the need for the full recognition of use values in order to redress the historical imbalance resulting from the excessive emphasis on exchange values typical of the capitalist production of the urban space. This vital link between cities and citizenship has become an imperative given the escalating urbanization of contemporary society at a global level.

The challenge is to discuss the conditions for the formulation of such a political contract in the context of rapid urbanization, and for this purpose it is crucial to promote a critical analysis of the role played by the legal-political order in the process of urban development. The reform of the legal order is one of the main conditions for changing the exclusionary nature of the urban development process, as well as for confronting one of the most serious social phenomena in developing countries, that of informal urban development.

However, revealing and exciting as his ideas are, the fact is that Lefebvre's concept of the 'right to the city' itself was more of a political-philosophical platform and did not directly explore how, or the extent to which, the legal order has determined the exclusionary pattern of urban development. To Lefebvre's socio-political arguments, another line of arguments needs to be added, that is, *legal* arguments leading to a critique of the legal order not only from external socio-political or humanitarian values, but also from within the legal order. Lefebvre's work has given us fundamental elements to understand the socio-economic, political, ideological, and cultural aspects of the urbanization process. However, there is no articulated discussion on the critical role of law in the urbanization process to be found in his work.³ Such a full understanding of the crucial role played by the legal order is the very condition for the promotion of a profound legal reform, which in turn is the condition for the promotion of urban reform leading to social inclusiveness and sustainable development.

It is in this context that the Latin American experience, and particularly the case of Brazil, needs to be better understood. Perhaps more than anywhere else in the world, Lefebvre's concept of the 'right to the city' has been extremely influential in Latin America, and since the mid-1970s a consistent socio-political mobilization has tried to realize it in both political and legal terms.

LAW, URBANIZATION AND URBAN POLICY IN BRAZIL

Rapid urbanization in Latin America has taken place under the still dominant paradigm of liberal legalism. A long-standing civil law tradition has determined the definition of individual rights, especially concerning individual property rights, and therefore it has also determined, and constrained, the scope for state intervention to promote land use and development control, as well as to create a legal-urban order in which socio-environmental needs and collective rights are also taken into account. With land property being conceived almost exclusively as a commodity, the economic content of which is to be determined by the individual interests of owners, any social use values over the use of urban land and property are limited, as are the possibilities for the state to act in the determination of a more balanced and inclusive public order in cities. Typical of the civil law tradition is the absolutization of individual freehold rights, to the detriment of other forms of leasehold or collective forms of real rights, not to speak of other legal institutes such as rental housing. Moreover, traditional civil law still affirms the notion that building rights are mere accessories of property rights, as well as the principle that the state cannot capture the surplus value resulting from public investment that is incorporated into the values of individual properties. This civil law tradition in the determination of urban property rights – and of land and property prices – has been further aggravated by the excessive bureaucratization of contractual and commercial practices, particularly those concerning the requirements for property registration and access to formal credit.⁴

Such a classical legal tradition regarding the definition of property rights has been supported by the long-standing ideology of legal positivism, affirming the state monopoly of the production of the legal order, within a conservative political context that still recognizes traditional representative democracy as the exclusive process for the formulation of the legal-institutional order. However, given the various historical forms of socio-political exclusion of the vast majority of the population from the decision-making process of the urban order, throughout the urbanization process the public order in most Latin American cities has been reduced to a limited state order which is insufficiently democratic, if not authoritarian. As a result of liberal legalism, rapid urbanization has been to a large extent the effect of *laissez-faire* policies regarding the process of land use and development.

It should be noted that, in those few cities where there has been some significant attempt at state intervention through urban plans, zoning and laws, an incipient tradition of technocratic planning has been formed, but it has been based on elitist urban legal provisions, the enforcement of which cannot be fully promoted given the lack of capacity of most local administrations. Nevertheless, if this recent planning tradition has been inefficient from the perspective of the objectives of spatial organization and social inclusion nominally declared, it has been extremely efficient in guaranteeing the maximization of capital gains in the land and property market – thus determining

the place of the urban poor in cities, that is, in those areas excluded from the market such as in slums and in peripheral areas, on public land, risky areas and in environmentally protected areas. Moreover, even within this new legal tradition the same old idea has been affirmed that any capital gains resulting from urban planning laws and policies would be acquired rights of the property owners.

It should also be briefly mentioned that the development of this legal-urban order has been dissociated from the development of a legal-environmental order, which, although it affirms social interests and collective rights, still expresses a naturalist approach to the environment, which often seems to be an abstract space. As a result, most environmental laws in the region have not confronted the problems of the concentrated land structure nor the social conflicts over property rights historically existing in Latin American cities.

It is as a result of this tension between the paradigms of dominant civilism and incipient technocratic urbanism that urban informality and socio-spatial exclusion have been fomented, and it is in this context that law, including urban law, has been one of the main factors determining urban illegality. Far from being inoffensive, the nature of state action or its failure to act has determined the exclusionary nature of urban development in Latin America, combining property speculation, widespread vacant urban land, environmental degradation, widespread gated communities, and above all the proliferation of precarious informal settlements.

Two other factors have aggravated this situation even further. On the one hand, even where there has been commitment to the promotion of social inclusion and socio-environmental sustainability, the legal-urban order still lacks full support in the legal-institutional and legal-administrative order in force. Nominally recognized rights have not been properly enforced due to the lack of adequate processes, instruments, and mechanisms, and the legal-institutional order has not expressed the existing urban-territorial order, especially by failing to give an adequate treatment to the governance of metropolitan areas. Conditions of urban management have suffered from the lack of clear distinctions between public and private values. On the other hand, the long-standing tradition of legal formalism has reduced the scope for progressive judicial interpretation by the courts, and most judges still embrace the conservative civil law paradigm that has long been taught at most law schools.

This exclusionary and segregated legal order has been increasingly questioned in several Latin American countries, as can be verified by both a growing process of informal justice and legal pluralism and the renewed social mobilization in some of these countries towards the promotion of legal reform calling for the recognition of the 'right to the city' as the condition for urban reform. As a result of these processes, a new legal-urban order has been gradually formed in the region. In particular, since the 1970s, and especially since the mid-1980s, Brazil and Colombia have indicated some promising ways for the promotion of legal reform in the region, as well as for an overall reform of the prevailing legal paradigm for urban development.

A NEW STATUTE FOR BRAZILIAN CITIES: CONSTRUCTING THE
'RIGHT TO THE CITY' IN BRAZIL

Although Latin American countries have been promoting legal changes in different ways and at different paces, there are several guiding principles which are common to the socio-political processes claims for urban and legal reform, and which have been materialized in the national constitutions and legal orders. The most important one is that of the socio-environmental function of property and of the city, which is an expression of the broader principle according to which the regulation of urban development is a public matter that cannot be reduced to either individual or state interests. Moreover, a whole new range of collective rights has been discussed and gradually, to different extents, accepted by the legal orders of several Latin American countries, aiming to constitute a new legal-urban order to regulate the processes of urban land use and development. The main intertwined collective rights that have been gradually expressed through this new order are: the right to urban planning; the social right to housing; the right to environmental preservation; the right to capture surplus value; and the right to the regularization of informal settlements.

The other structural principle of this new legal-urban order is the indivisibility of urban law and urban management. This principle has been expressed through three integrated processes of legal-political reforms, namely the renewal of representative democracy, through the recognition of the collective right to a wide participation in urban management, especially at the local level; the decentralization of the decision-making processes, not only through the strengthening of local government and inter-governmental relations but also through the confrontation of the metropolitan question and the need for intergovernmental articulation so as to overcome escalating urban, social and environmental problems; and the creation of a new legal-administrative framework to provide more clarity to the principles underlying the new relations that are taking place between state and society, especially through public-private partnerships and other forms of relations between the state and the community and voluntary sectors.

In other words, this growing socio-political movement of legal reform in Latin America has been based on the two pillars Lefebvre proposed as the core of the 'right to the city', namely, the right to habitation and the right to participation.

It was in this context of paradigmatic changes that, on 10 July 2001 a ground-breaking legal development took place in Brazil with the enactment of Federal Law no. 10.257, entitled 'City Statute', which aims to regulate the original chapter on urban policy introduced by the 1988 Federal Constitution and in which the 'right to the city' is explicitly recognized as a collective right. The promulgation of the 1988 Federal Constitution paved the way for the progress of the legal reform movement, especially by recognizing the above-mentioned collective rights, by affirming the central role of local government, and also by declaring that representative democracy is to be

reconciled with participatory political process (Fernandes, 1995). Throughout the 1990s, several Brazilian municipalities have started to effect the constitutional provisions and principles in their own redefined legal-urban orders, and Brazil became a laboratory of sorts for new strategies of local governance and direct democracy; in particular, the ground-breaking experience of the participatory budgeting process was introduced in some cities. However, there were still legal controversies over the new constitutional provisions, and conservative legal arguments were formulated in order to undermine the innovative local political-institutional strategies of urban management. For this reason, throughout the 1990s the social movements and NGOs, reunited under the umbrella of the 'National Forum of Urban Reform', kept pressing for the approval by the National Congress of a federal law governing urban development and policy, regulating the constitutional chapter and thus clarifying the outstanding legal problems.

The 2001 federal law provides consistent legal support to those municipalities committed to confronting the grave urban, social and environmental problems that have directly affected the daily living conditions of the urban population. Resulting from an intense negotiation process which lasted for more than ten years, within and beyond the National Congress, the City Statute confirmed and widened the fundamental legal-political role of municipalities in the formulation of directives for urban planning, as well as in conducting the process of urban development and management. The City Statute deserves to be known at the international level because it is an inspiring example of how national governments can effect the principles and proposals of the UN-HABITAT Global Campaigns on Urban Governance and on Secure Tenure for the Urban Poor. It is impossible to underestimate the impact the new law can have on Brazil's legal and urban order, once its possibilities are fully understood and its provisions effectively put into practice.⁵

The City Statute has four main dimensions, namely a conceptual one, providing elements for the interpretation of the constitutional principle of the social function of urban property and of the city; the regulation of new legal, urbanistic and financial instruments for the construction and financing of a different urban order by the municipalities; the indication of processes for the democratic management of cities; and the identification of legal instruments for the comprehensive regularization of informal settlements in private and public urban areas. Combined, these dimensions provide the content of the 'right to the city' in Brazil, as well as indicating the conditions for the materialization of the new social contract proposed by Lefebvre.

In conceptual terms, the City Statute broke with the long-standing, individualistic tradition of civil law and set the basis of a new legal-political paradigm for urban land use and development control in Brazil, especially by consolidating the constitutional approach to urban property rights, namely the right to urban property is assured and recognized as a fundamental individual right provided that a socio-environmental function is accomplished, this function is that determined by urban legislation. Moreover, the legal

order in force also determines that the city itself has to fulfil a socio-environmental function. It is particularly the task of municipal governments to control the process of urban development through the formulation of territorial and land use policies in which the individual interests of land-owners necessarily co-exist with other social, cultural, and environmental interests of other groups and the city as a whole. For this purpose, municipal government was given the power, through local laws and several urban planning and management instruments, to determine the measure of this – possible – balance between individual and collective interests over the utilization of this non-renewable resource essential to sustainable development in cities, that is, urban land. All Brazilian municipalities with more than 20,000 inhabitants had to approve their Master Plans by the end of 2006, and more than 1300 such municipalities are currently involved in this fundamental law-making process.

In order to effect and widen the scope for municipal action, the City Statute regulated the legal instruments created by the 1988 Constitution, as well as creating new ones, thus consecrating the separation between property rights and building rights and the principle of surplus value capture. All such instruments can, and should, be used in a combined manner aiming not only to regulate the process of land use development, but especially to induce it according to a 'project of the city' to be expressed through the local Master Plan – thus translating into spatial terms the 'social project' proposed by Lefebvre. Municipalities were given more powers to interfere with, and possibly reverse to some extent, the pattern and dynamics of formal and informal urban land markets, especially those of a speculative nature, which have long brought about social exclusion and spatial segregation in Brazil. In fact, the combination of traditional urban planning mechanisms – zoning; subdivision; building rules, and so on – with the new instruments introduced – compulsory subdivision/edification/utilization order, extra-fiscal use of local property tax progressively over time; expropriation sanction with payment in titles of public debt; surface rights; preference rights for the municipality; onerous transfer of building rights, and so on – has opened a new range of possibilities for the construction and financing of a new urban order which is, at once, economically more efficient, politically fairer, and more sensitive to social and environmental questions.

Another fundamental dimension of the City Statute concerns the need for municipalities to integrate urban planning, legislation, and management so as to democratize the local decision-making process and thus legitimize a new, socially orientated urban-legal order. Several mechanisms were recognized to ensure the effective participation of citizens and associations in urban planning and management: in Executive Power (consultations, creation of councils, committees, referendums, reports of environmental and neighbourhood impact, and above all the practices of the participatory budgeting process), Legislative Power (public audiences, popular initiative to propose bills of urban laws), and in the Judiciary (civil public action to protect the legal-urban order, which is considered to be a diffuse interest and a collective

right, *locus standi* being given to NGOs and associations). Moreover, the new law also emphasized the importance of establishing new relations between the state, private and the community sectors, especially through partnerships and urban/linkage operations to be promoted within a legal-political and fiscal framework, the principles of which are still to be more clearly defined.

Following the enactment of the 2001 City Statute, the legal-urban order in Brazil has been further improved through the enactment of the federal laws regulating inter-municipal consortia, public-private partnerships, and the creation of a national fund for social housing, the latter being the result of a popular initiative. An important bill of law is currently being discussed at the National Congress, updating the legislation on land subdivision and on land regularization.

Last, but not least, the City Statute also recognized the collective right to the regularization of informal settlements on public or private land and improved the legal instruments to enable the municipalities to promote land tenure regularization programmes and thus democratize the conditions of access to urban land and housing. As well as regulating the constitutional institutes of special *usucapiao* (adverse possession) rights and concession of the real right to use (a form of leasehold), to be used in the regularization of informal settlements in, respectively, private and public land, the new law went one step further and admitted the collective utilization of such instruments. The section of the City Statute that created a third instrument, the special concession of use for housing purposes, was vetoed by the President on legal, environmental and political grounds. However, given the active mobilization of the National Forum for Urban Reform, the Provisional Measure no. 2.220 was signed by the President on 4 September 2001, recognizing the subjective right (and not only the prerogative of the Public Authorities) of those occupying public land until that date, under certain circumstances, to be granted the concession of special use for housing purposes. The Provisional Measure also established the conditions for the municipal authorities to promote the removal of the occupiers of unsuitable public land to more adequate areas. This is a measure of extreme social and political importance, but its application will require a concentrated legal, political and administrative effort on the part of the municipalities to respond to the existing situations in a suitable legal manner that is compatible with other social and environmental interests. Another Provisional Measure was passed in 2006 – no. 292 – in order to facilitate and expedite the regularization of informal settlements on public land belonging to the Federal Union.

It is interesting to remark in passing that, insofar as the matter of informal settlement regularization is concerned, the City Statute consolidated the legal-political path opened by the 1988 Federal Constitution, which fundamentally differs from the Hernando de Soto-inspired formalization policies that have been given wide support internationally, not least by international banks, ideological think-tanks and development agencies. As I have discussed elsewhere, de Soto's influential ideas have proved wanting in many respects (Fernandes, 2002c), and they are fundamentally conservative in the light of

the more progressive provisions of the Brazilian legal order described earlier. This is the main legal path that has been followed by several Brazilian municipalities since the early 1990s, and by the Federal Government since 2003.

The approval of the City Statute consolidated the constitutional order in Brazil regarding the control of the process of urban development, aiming to reorient the action of the local state, the land market and society as a whole according to new legal, economic, social and environmental criteria. It clearly laid the legal foundations of the 'right to the city' in the country.

However, its effective materialization in policies and programmes will depend on the reform of the local legal-urban orders by the municipalities. The role of municipalities is crucial so that the exclusionary pattern of urban development can be reversed. In fact, this new legal-urban order in which law and management are integrated has already made possible the gradual promotion of urban reform in several municipalities – Porto Alegre, Diadema, Santo Andre, São Paulo, Belo Horizonte, Recife, and so on – in which laws, plans, projects and programmes have been formulated so as to combine land, housing, urban, tax and socio-economic policies aiming to promote social inclusion and spatial integration. Much more needs to be done, however, to redress the accumulated urban crisis and housing deficit.

At the national level, the effort towards better intergovernmental articulation gained strength with the creation, in 2003, of the Ministry of Cities: for the first time, federal government is confronting in an articulated way the problems regarding social housing, environmental sanitation, public transportation, and land affairs. An original programme to support the sustainable regularization of consolidated informal settlements has been implemented.⁶ A most important development was the promotion, in October 2003, of the National Conference of Cities, culminating a process in which 3500 municipalities participated and involving thousands of delegates representing all stakeholders, to approve all the items of a new national urban and housing policy. In April 2004, the National Council of Cities was installed in Brasilia, and it has decision-making power on matters related to the national urban and housing policy. It has been meeting regularly ever since.

This has not been an easy process and there are many significant problems to be tackled, but it is undeniable that there has been a gradual effort to effect the City Statute – and the 'right to the city' – in Brazil.

THE WORLD CHARTER OF THE RIGHT TO THE CITY

The socio-political process that has led to the promotion of urban and legal reform in Brazil has also fomented a broader, more international mobilization.

The original proposal for a 'Charter for Human Rights in Cities' was presented by Brazilian NGO FASE at the VI Brazilian Conference on Human Rights still in 2001, shortly before the City Statute came into force. In fact, the discussion of the City Statute in the National Congress took over 12 years, and the FASE document also had the aim of boosting the law-making

process. It was inspired by the general international instruments already existing on civic, political, economic, social, cultural, and environmental human rights, but it was particularly inspired by the 'European Charter for the Safeguarding of Human Rights in the City' (presented in Saint-Denis in May 2000 and since adopted by more than 200 European cities) and by the 'Treaty for Democratic, Equitable and Sustainable Cities, Towns and Villages' approved in 1992, at the World Environment Summit in Rio de Janeiro. The main objective of the original FASE document was to expand the political platform for the action of those social urban movements in Brazil calling for the promotion of urban reform and social inclusion in the country, as well as providing conditions for better integration and articulation of both urban issues, social claims, and existing socio-political movements.⁷

As a result of the formal recognition of the 'right to the city' by the 2001 City Statute in Brazil and the presentation of the initial FASE document during the World Social Forum in 2002, several NGOs and urban social movements, especially from Brazil and other Latin American countries, started drafting the text currently called the 'World Charter on the Right to the City'. This draft was discussed and expanded in 2004, at both the America's Social Forum in Quito and the World Urban Forum in Barcelona, with emphasis being placed on issues such as democratic urban governance; popular participation in urban management and budgeting; the recognition and effective implementation of existing economic, social, cultural and environmental rights recognized by international law; and the adoption of a socially fairer, inclusive, and more sustainable model for urban economic development so as to strengthen the urban-rural partnership and reduce poverty.

In 2005, at the World Social Forum in Porto Alegre, Brazil, a specific 'Workshop on the Right to the City' was attended by hundreds of people from a diverse range of backgrounds representing international, regional, national and local organizations, and social activists. At the same time, the Brazilian Minister of Cities formally subscribed to the process of discussion and implementation of the 'World Charter on the Right to the City'.

The ultimate objective of the 'World Charter on the Right to the City' is to establish effective legal monitoring mechanisms and instruments to ensure the enforcement of recognized human, social, and citizenship rights. It is based on the arguments that general declarations of rights are fundamentally important but not sufficient; that socio-political values and rights at all levels, from international to local, should also be legal, collective rights; and that individuals and social movements should be given *locus standi* to defend these rights in court as a *sine qua non* condition for the recognition of human and citizenship rights, promotion of social justice, and strengthening of a truly democratic order.

The proposed 'World Charter on the Right to the City' recognizes that, given the current context of escalating urbanization – and of growing urbanization of poverty – the existing, though dispersed, international law norms in the areas of economic, social, cultural, and environmental rights should be

better articulated and further expanded into a broader, more clearly defined framework, that of the 'right to the city', resulting in the approval of a more specific document of international law that will guide socio-political action as well as policy and decision-making.

Also in the proposed Charter the concept of the 'right to the city' draws on the general Lefebvrian concept – the right of all urban dwellers to collectively enjoy the benefits, cultural plurality, social diversity, economic advantages and opportunities of urban life, as well as to actively participate in urban management – and it is supposed to be realized according to the national, local, and/or specific realities. At the root of the concept, there lies the notion of the socio-environmental function of property and of the city, as well as the principle that the full exercise of citizenship rights in the city implies people's effective participation in planning, policy-making, decision-making and management. In Latin America, since the mid-1970s urban reform movements have stressed the principles of sustainability, democracy, social justice and the fulfilment of the social function of property and of the city.

If approved by the UN, the 'World Charter on the Right to the City' would confer legitimacy on organized socio-political and political-institutional action, serving as a political, social, economic, and environmental reference in the creation of public policies; as a set of principles orienting the processes of production and management of cities compatible with the affirmation of human and citizenship rights; and as an international law establishing rights and obligations to determine the action by public, state, community, and private agents so as to ensure the proper, equitable, and sustainable distribution and use of urban land and resources. Conceived in such a manner, the 'right to the city' is independent of all the human rights internationally recognized and seen as an integral and indivisible collective right. To assure the full realization of the social function of the city as a diffused interest, *locus standi* should be conferred on any individuals, group of residents or social organizations to act not only in the defence of the collective interest of some determined group, but also in the defence of this very social function of the city.

Following the World Social Forum in 2005, there has been growing interest in, and mobilization around, the proposed 'World Charter on the Right to the City', increasingly beyond the Latin American context; a meeting on the subject was organized in the 2006 World Urban Forum, in Toronto, and an international workshop is being prepared to discuss a socio-political and institutional platform for its international implementation and to define strategies for its legalization by the UN. UN-HABITAT and UNESCO launched a joint initiative entitled 'Urban Policies and The Right to the City' in 2005, and it has since explored Lefebvre's concept, with a dialogue, to some extent, with the social mobilization for the World Charter.⁸

CONCLUSION

The construction of a new legal-urban order in Latin America is a process full of contradictions and challenges, and, although the legal basis of the 'right to the city' have been laid in a most promising way in the Brazilian case, none of the recent legal developments can be taken for granted.

Urban law has been placed where it has always belonged, that is, at the heart of the political process, and it is the quality of this legal-political process that can determine the extent to which the 'right to the city' will be effectively undertaken.

In fact, in Brazil, the increased politicization of urban law has indeed made room for broader popular participation in the defence of social interests and collective rights, but for the same reason the enactment and enforcement of new urban laws and programmes have faced increasing resistance on the part of conservative interests and some serious backlashes have been verified. Important local elections have been lost, ground-breaking programmes have been discontinued, forced eviction has taken place in some cases, and bills of law altering the City Statute have been proposed.

In this context, the materialization of the possibilities of the new legal-urban order in the region will always depend on several socio-economic and institutional factors, national and global, but above all it will require renewed social mobilization in urban areas. In the last analysis, however, the future of the new law will fundamentally depend on the wide mobilization of Brazilian society, within and without the state apparatus, so as to effect Lefebvre's long-claimed 'right to the city'.

As Lefebvre fully understood, the 'right to habitation' cannot be dissociated from the 'right to participation', and it is only through a broader, strengthened legal-political arena that the terms of a new political contract of social citizenship can be drafted for Brazilian cities and citizens. There is a lesson here for cities elsewhere.

NOTES

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1. Data on the urbanization process in Brazil can be found in several sources, the main one being the site of the Brazilian Institute of Geography and Statistics – IBGE (<http://www.ibge.gov.br>).
2. I have been writing on informal settlements in Brazil for over 20 years; see, for example, Fernandes (1993, 2000a, 2002a, 2002b).
3. Although Lefebvre dedicated four volumes to the study of the state apparatus – *De l'État* – his work does not consider the legal dimension of the political process per se (Lefebvre, 1976); for an intellectual biography of Lefebvre, see Shields (1999) and also Hess (1988).
4. For an analysis of the role played by law in Brazil's urbanization process, see Fernandes (1995, 2000b); for an international analysis, see Fernandes and Varley (1998).

5. For an English translation of the City Statute, see <http://www.polis.org.br>.
6. For a critical analysis of the National Programme to Support Sustainable Land Regularisation, see Fernandes (2006).
7. For the English text of the World Charter on the Right to the City, see <http://www.polis.org.br>; for a general discussion of the document, see Osorio (2005).
8. See, among other documents, <http://portal.unesco.org/shs/en/ev.php-URL>

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