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## **PRIVATE PROPERTY RIGHTS OR RIGHTEOUSNESS OF PRIVATE PROPERTY? Property rights regulation and the fight for the right to housing in the Center of São Paulo**

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### **Resumo:**

Over the past thirty years, Brazil has developed a unique urban-legal infrastructure to implement the urban reform. In this paper, I argue that there is a disconnect between the rulings over property conflict and the urban law. Courts have prioritized the use of the 2002 Civil Code as the guiding legislation to rule on land conflicts disputes between private parties. In doing so, courts reinforce the primacy of the private over the public. More importantly, they corroborate with a sense of property-ownership “rightness”, that is, the perception that property ownership is ultimately connected to the rightness of a certain individual character.

## **PRIVATE PROPERTY RIGHTS OR RIGHTEOUSNESS OF PRIVATE PROPERTY?**

### *Property rights regulation and the fight for the right to housing in the Center of São Paulo*

Over the past thirty years, Brazil has developed a unique urban-legal infrastructure to implement the urban reform – a social justice agenda that aims to include disenfranchised communities in the city through promoting equitable access to urban land, housing, infrastructure, public services and healthy environment. One of the key points of this agenda is the use of private property for the promotion of the collective good, a principle known as social function of property (SFP). The SFP principle is ratified in the country's 1988 Constitution and further regulated by the 2001 City Statute.

Although this urban-legal infrastructure has been important to curb violation of rights caused by the state, it has not changed the primacy of the private order in urban land conflicts. That is, in practice, the urban-legal order has had little effect on court decisions over litigations between private parties. Often, judges have solely relied on the 2002 Civil Code to decide upon eviction lawsuits filed by property owners. By exclusively grounding their rulings on Civil Code, judges have uncoupled private and public interest regulating property rights, enforcing the primacy of the former over the latter.

In this paper, I argue that there is a disconnect between the rulings over property conflict and the urban law. Courts have prioritized the use of the 2002 Civil Code as the guiding legislation to rule on land conflicts disputes between private parties. In doing so, courts reinforce the primacy of the private over the public. More importantly, they corroborate with a sense of property-ownership “rightness”, that is, the perception that property ownership is ultimately connected to the rightness of a certain individual character. Thus, courts frequently seen defendants as second-class citizens whose claims are not legit faced the violation of property ownership rights.

To understand how the judiciary has dealt with the application of the urban law, I explore the case of the organized squatters' movements (OSMs) of the center of São Paulo, a social movement that fights for housing opportunities in the city center by occupying long-time vacant properties in the area. Specifically, I analyze the eviction case of Maua, an OSM occupation organized by the Housing Movement in the Fight for Justice (MMLJ), the Housing Movement of the Central Region (MMRC) and the Association of Shelterless People of São Paulo (ASTC-SP). Maua's intricate judicial process makes it an interest case for analysis. Its eviction ruling shows that the principle of social function of property is a loose argument in court. Nevertheless, going to court was an important resistance strategy for Maua occupants. Although claiming the SFP principle was not enough to avoid an eviction ruling, going to court

provided Maua leadership with extra time to negotiate with public authorities and mobilize the public opinion in their favor.

To conduct this research, I relied on the participant observation and archive research methods. Participant observation allowed me to understand OSMs' strategies and tactics, the politics around the center of São Paulo, and the everyday life of those who live and/or participate in an OSM occupation. Between July and August of 2017, I interned at the Institute @Brasil21, a Brazilian NGO based in São Paulo. At the time, the Institute had just set a partnership with the Movement of Shelterless Workers of the Center (MSTC) and hired me to carry out fieldwork research at the MSTC occupations. Besides conducting research, my role involved working at the organization of the Mission Center and participating in meetings, assemblies and other events organized by the MSTC. Finally, I also participated in the events in support of the Maua Occupation. To complement my field observations, I researched newspapers archives to contextualize the local politics in São Paulo and the official discourse about the redevelopment of downtown. In addition, I also researched Maua's judicial rulings to understand the juridical reasoning used to justify the eviction decision.

This paper is organized in four sections, including this introduction. Section two provides an overview about the urban reform movement and the urban-legal infrastructure it helped to create. Section three delves into the case of the Maua Occupation and section four concludes this paper.

## CLAIMING THE CITY: URBAN REFORM MOVEMENT AND URBAN-LEGAL INFRASTRUCTURE

The urbanization process in Brazil was dramatically fast and socio-economically unequal. In less than 40 years, the population changed from mostly rural to a majority urban. In 1980, 69% of the population lived in cities, compared to 26% in 1940. Just during the 1970s, the number of new city residents, most of them immigrants from rural areas, increased by 30 million people. In 1960, only the cities of Rio de Janeiro and São Paulo had total population greater than 1 million people. By 1980, other eight cities had reached the 1-million mark. (MARICATO, 1996)

This rapid urban growth reproduced in the cities the patterns of socio-economic inequality and exclusion that still prevails in the country.<sup>1</sup> Brazilian cities became characterized by socio-spatial segregation and informal occupation. The housing alternatives of the majority of the urban population – mostly low-income – were limited to *favelas* (slums) or isolated peripheries that were far from work and education opportunities. In addition, the quality of the built environment and public services in these neighborhoods was extremely poor. Besides being often located close to environmentally fragile areas - like steep hillsides and flood areas – they also had low coverage of urban infrastructure (power, water, sanitation) and services (public transportation, schools, health care centers). Lastly, most housing was auto-

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<sup>1</sup> Income inequality in Brazil is extremely high. Between 2006 and 2012, the richest 1% of the population received more than a quarter of all income generated in the country. In the same period, the richest 5% appropriated of almost a half of the country's total income. For more on the stability of income inequality in Brazil, see Medeiros, Souza and Castro (2015).

constructed by their residents, increasing the hardship of these low-income workers since they had to spend their scarce time and resources building their homes. (CAMARGO, 1976; BONDUKI e ROLNIK, 1979; KOWARICK, 1980; MARICATO, 1996; CALDEIRA, 2000; TORRES, FERREIRA e BITAR, 2003; FERRO e ARANTES, 2006; OLIVEIRA, 2006)

City sprawl, poverty concentration, housing deficit, environmental degradation, and unequal access to public services and urban infrastructure became common features of all major cities in the country. Thus, upon the weakening of the military regime in the mid-1970s, social movements mainly formed in the urban peripheries and favelas started to push the state to improve the living conditions of impoverished communities.<sup>2</sup> Although these movements were focused on specific issues (*lutas*),<sup>3</sup> their claims ended up structuring a national social justice agenda known as the urban reform.

The urban reform is a redistributive agenda that bases the concept of right to the city in the Brazil (DE SOUZA, 2001; LEFEBVRE, 2008). It aims to include disenfranchised communities in the city through promoting equitable access to urban land, housing, infrastructure, public services and healthy environment. It also seeks to make city government more democratic through increasing public participation in decision-making.

During the drafting of the 1988 Constitution, social movements and other organizations that were previously mobilizing around specific urban issues created the National Movement for the Urban Reform (MNRU) – a broad coalition that advocated for the inclusion of the urban reform agenda in the constitutional text. Since the internal charter of the Constitutional Assembly allowed the proposal of popular amendments that had the support of at least 30,000 registered voters, MNRU proposed a popular amendment on the urban reform. The movement was able to gather about 160,000 signatures in favor of the amendment, resulting in the inclusion of a chapter on urban policy (Articles 182 and 183) in the 1988 Constitution. (CARDOSO, 1987; VIGEVANI, 1989; SILVA, 1991; MARICATO, 1994; FERNANDES, 2011)

The Articles 5 and 182 of the 1988 Constitution set a new legal foundation over property rights and the urban policy, establishing the initial urban-legal infrastructure for the urban reform in Brazil. The Article 5, Items XXII-XXIII, confers the right to property to all Brazilians and foreign residents, determining that all properties must comply with their social function. The Article 182 of the constitutional chapter on urban policy establishes that the municipal government is responsible for implementing the urban development policy whose main goals are to enable the full development of the social function of the city and grant the welfare of city residents. The Paragraph 1 of the same Article determines that the municipal master plan is the urban-legal instrument that guides the urban development policy, and the

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<sup>2</sup> The universe of stakeholders and organizations in these movements was quite diverse. It included low-income residents organized in local neighborhood associations, unions, pastoral chapters organized by the Catholic Church, professional organizations like the Institute of Architects of Brazil, housing activists, academics and students partnering with local community organizations, newly created political parties and so on. For more on Brazilian urban social movements, see Sader (1988), Cardoso (2011) and Baiocchi (2017).

<sup>3</sup> For example, movements specifically focused on increasing the number of kindergarten schools ("*luta por creches*"), improving the public transit service ("*luta por transportes*") or accessing water and sewage piping service ("*luta por saneamento*").

Paragraph 2 establishes that the urban properties accomplish their social function when they abide by the city's master plan.

The 1988 Constitution, thus, conditions the private use of the property to the municipal policy of urban development through the compliance with the city's master plan. It also determines that the policy of urban development must ultimately promote the full development of the social functions of the city and the welfare of its residents. Hence, the use of private property must favor the collective good of the city, adding to the full development of its social functions, the safety and welfare of its residents, and the balance of its natural environment. As Fernandes (2011) points out, the inclusion of the principle of the social function of property (SFP) in the 1988 Constitution created a new legal paradigm over property rights in Brazil, shifting it from the individualistic perspective established by the Civil Code to a collective one based on the social function of the property and the city.

The accomplishment of the cities' social function through the fulfillment of the municipal master plan makes the concept of the social function of property unclear, nevertheless. According to the Article 182 of the 1988 Constitution, the municipal governments are the entities responsible for formulating their master plan, which implies elaborating their local definition of social function of property. As a result, every municipality has a different conception of the SFP principle. In 2015, there were 2,786 municipalities with master plans (IBGE, 2015), implying that there are currently at least 2,786 different urban development policies with different understandings of the SFP principle.

Since the enactment of the 1988 Constitution, Brazil has implemented a series of urban-legal changes to enable the urban reform and the full development of the social function of the cities.<sup>4</sup> The main piece of legislation approved with this intent is the 2001 City Statute (Federal Law 10,257) which further regulates the constitutional chapter on the urban policy, formally recognizing the right to the city as one of its goals.<sup>5</sup> The Statute specifies the guidelines for the implementation of the SFP principle by city governments, as well as establishes urban-legal instruments to promote low-income housing opportunities and regulate local real estate markets.

The Statute also regulates the democratic management of the city (*"gestão democrática da cidade"*), that is, the public participation in the city government. It requires mandatory public participation in the formulation, implementation and monitoring of plans, programs and projects of urban development. As a result, master plans, urban development programs and redevelopment projects that do not fulfill such participation requirement are subject to litigation.

So far, the City Statute has not been revolutionary in terms of shifting city governments' priority towards the urban reform agenda, but it has granted to urban-reform advocates a seat in the negotiation table (ROLNIK, 2011). As Fernandes (2011) and Rolnik

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<sup>4</sup> Besides the approval of new legislation, such reforms included the creation of new administrative structures, like the Ministry of the Cities and the National Council of the Cities. For an in-depth discussion, see Fernandes (2011).

<sup>5</sup> The City Statute defines right to the city as: "the right to urban land, housing, environmental sanitation, urban infrastructure, transportation and public services, work, and leisure, for the present and future generations". (City Statute of 2001, Federal Law 10,257 § 1)

(2013) have pointed out, the Statute's participation requirement has been an important tool to curb the violation of rights through litigation.

For example, in 2017, the City of São Paulo did not fulfill the public participation requirement for redeveloping Zones of Special Social Interest 3 (ZEIS-3), pushing ahead the demolition of two blocks in the neighborhood of Campos Elíseos without establishing a participative management council nor properly notifying residents and business owners. As a consequence of the rushed intervention, a bulldozer partially demolished an inhabited rooming house, injuring three people and displacing dozens of families. The attention attracted by the accident provided the local community with leverage to temporarily stop the redevelopment plan, nevertheless. A day after the incident, the local court ordered the ceasing of compulsory demolitions and evictions, as well as prohibited the city administration from removing residents without previously offering housing assistance. A week later, the Prosecutor's Office of São Paulo (MPSP) filed a preliminary injunction to stop the redevelopment project given the lack of public participation throughout the planning process. In face of the accident's repercussion, the city administration did not contest the MPSP injunction and, after three months, residents of area elected a management council for the intervention.

Caldeira and Holston (2015) highlight, nevertheless, that the unclearness in the procedural rules of the participatory planning process provided the judicial power with a new role, since judges have to decide on the sufficiency of the public participation throughout the planning process. Moreover, although the judicialization of planning have become a mean to push the urban reform agenda, there is no guarantee that social justice will be the outcome of such processes.

If the City Statute and the municipal master plans have become the standard legal order regulating the development of urban land, they have had little influence on land conflicts involving only private parties. Organized squatters' movements' (OSMs) struggle in courts has shown that the urban legislation created to democratize the right to the city has had little influence on rulings over property rights. My analysis of the Maua Occupation's writ of eviction case suggests that the 2002 Civil Code, rather than the 1988 Constitution, the City Statute or São Paulo's Strategic Master Plan, is the standard legal order guiding rulings over the use of property. As a result, right-claims based on right to housing and the social function of property are ineffective in court. This finding leads to a question about the limits of relying on the creation of urban-legal infrastructure to implement the agenda of urban reform in the country.

## CLAIMING THE CENTER: THE MAUA OCCUPATION AND THE FIGHT FOR THE RIGHT TO HOUSING

The Movement of Shelterless Workers of Downtown (MSTC) first occupied the property located at 356 Maua Street in 2003. The building was an old hotel – the Santos Dumont Hotel – located in front of the Luz Station, one of São Paulo's most important transit hubs and architectural landmarks. The hotel was opened in 1953 and operated until the late 1980s. When MSTC first occupied it, the property had been vacant for 17 years and had a

property tax debt of over R\$2 million. The first attempt of occupation did not last long, thought. The property owners (the Zyngier and Sznifer families) immediately filed in an action to recover the possession of the land and the movement left the property pacifically about a month after the occupation. (PATERNIANI, 2013)

After the eviction, the hotel was left vacant for four years. Thus, in 2007, MMLJ (then MSTC) along with two other OSM organizations – the Housing Movement of the Central Region (MMRC) and the Association of Shelterless People of São Paulo (ASTC-SP) – organized about 200 families to occupy the property for the second time. This time, instead of recurring to litigation, the property owners just filed a police report and did not take any further action until March 2012. A few months before the occupation had completed 5 years – period necessary for claiming adverse possession – the property owners filed in the action to recover the possession of the property. As in 2003, the justice sided with the plaintiffs, determining the eviction of 237 families and authorizing the use of police force, if necessary. Below, I partially transcribe the writ of entry of the Judge Carlos Eduardo Borges Fantacini, from the 26<sup>th</sup> Civil Court of São Paulo (translation and highlights are mine).

“MENDEL ZYNGIER, SARA ZYNGIER E ABRAM SZNIFER move the present ACTION TO RECOVER THE REPOSSESSION OF LAND against **MOVEMENT OF SHELTERLESS CENTER** (*sic*) – **MASTC** (*sic*), IVANETE DE ARAUJO, **CARMEM DE TAL** e OUTROS (...), claiming, in summary, being the lawful property owners of the building at 342, 348, 352, 356, 360 Maua Street which was invaded by the defendants in 03/26/2007, as reported on the police report, inclusively confronting previous writ of possession, res judicata in 12/01/2005.

(...)

The defendants contest the pgs. 236/248, claiming, in summary, that the date of possession added more than a year and a day, and that **the property was found derelict, not following its social function. They entered the property by the reason of need, exercising the social right to shelter**, which the City has failed to comply.

(...)

I DECIDE

The documents prove the facts and the undisputable, public and notorious conduct of the **organized invasion of the property**, which was committed by the second time under the command of the so called “Movement of Shelterless”.

There is no question that the **plaintiffs are the legitim owners** of the property in debate, in which they had exercised **peaceful possession**, that so that this was the 2<sup>nd</sup> case of invasion...

Besides being confessed, the invasion practiced by the defenders is proven on the police report...

**The supposed right to housing must be provided by the state, not by private entities.** Thus, it [the right to housing] does not legitimate the usurpation [of property]. Even though the action had happened more than a year and a day ago, the usurpation does not generate any tenure rights to the defendants, even more because **it was clandestine, violent and precarious**. Inclusively, it **clearly affronted the authority of the res judicata**. In addition, the usurpation action allows, in any case, the interlocutory relieve.

**In rule-based democracies, where the right to property is granted, the Judiciary cannot interfere in the current socio-economic order, hurting property owner's legitimate right to use and benefit of her property and to claim back their ownership from whoever unjustly occupies it on the excuse of a distorted "social justice". I am sure that the Executive has the obligation of assuring the right to housing, but it cannot be on the expenses of the private entities (as the wise popular saying says "one should not make charity with another's hat").**

For what has been exposed, I RULE the plaintiff's demands APPLICABLE, turning definitive the interlocutory order conceded, and I declare the consolidated property possession in favor of the plaintiff. I sentence the defendants to pay for the litigation costs, inclusively attorney fees, that I set in 10% of the lawsuit appraisal." (TJSP, 2012)

In his reasoning, Judge Fantacini uses two premises to rule in favor of the plaintiffs: the seizure of the property was unjust, and the plaintiffs were legitim property owners who were exercising peaceful possession. According to the Article 1,228 of the 2002 Civil Code, "all property owners have the right to enjoy and dispose of their properties, and the right of recover it from the power of whoever unjustly possess or detain it". For Judge Fantacini, MSTC unjustly seized a property that was in peaceful possession of the plaintiff. The seizure was unjust because of the conduct of the "Shelterless Movement" that had "organized the invasion of the property for the second time", affronting the authority of previous court decision; the private entities were not responsible to provide the "supposed right to housing"; the seizure was "clandestine, violent and precarious"; and, finally, "the Judiciary cannot interfere in the socio-economic order". For these reasons, the Judge understood that the plaintiffs had the right to recover the property.



As previously discussed, the 1988 Constitution ties the right to property to the compliance of the social function detailed in the city's master plan. As a result, property rights in Brazil are regulated by two legal orders – the Civil Code, which controls the juridical relationships of the private order, including property rights, and the municipal master plans, which regulates the social function of property based on the public interest. According to São Paulo's 2002 Strategic Master Plan, which was in force at time of the ruling, to accomplish the SFP principle, the use of property had to serve the needs of the citizens in relation to the environmental quality, the social justice, the access to the universal social rights and the economic development; and be compatible with the capacity of the urban-infrastructure, the quality of the environment, and the safety and welfare of the neighbors. (Article 11, Items I-IV)

Judge Fantacini's ruling does not make any reference to the city's master plan nor consider any fact related to the principle of social function of property. For example, the plaintiffs left the property vacant for more four years after the 2003 eviction, clearly indicating that they possessed the property for speculative use. In addition, they owed more than R\$2 million in property taxes to the city of São Paulo – that is, all city tax payers were paying for the plaintiffs' property access to the city services and infrastructure. Judge Fantacini ignores that property owners have obligations toward the collective good, as well as the social benefits that the Maua Occupation brought to a previously blighted city block. The Judge is also insensitive to how the eviction order would affect the families living in the occupation, especially children and seniors. By exclusively grounding his ruling in the 2002 Civil Code, Judge Fantacini uncouples private and public interest regulating property rights, enforcing the primacy of the former over the latter.

The defense of the primacy of the private order relates to a sense of property-ownership "rightness", that is, the perception that property ownership is ultimately connected to the rightness of a certain individual character. In his discussion about the legal mechanisms that enabled massive slum demolition in millennial Delhi, Asher Ghertner points out that a jurisprudence<sup>6</sup> recognizing the property-ownership "rightness" was key to change the definition of who must be considered a proper citizen. In this context, judges started to consider "slum dwellers as a secondary category of citizens whose social justice becomes actionable only after the fulfilment of the property-based privileges of residents of formal colonies: the true citizens of the city" (2015, p. 111). In the case of Maua, although the Judge recognizes that the state "has the obligation of assuring the right to housing" (TJSP, 2012), he states that this right does not overcome the individual right to property.

The writ of entry also demonstrates the Judge's complete disdain towards the defenders' names, reasons and ideological causes. For instance, the name of the movement is repeatedly spelled incorrectly throughout the document and Carmen Silva, one of the MSTC leaderships cited in the document, is referred as "Carmen so-and-so" ("Carmen de tal"). The Judge refers to the constitutional right to housing as a "supposed right" and qualify the movement's fight for housing as a "distorted 'social justice'" that wants to "make charity with another's hat". Finally, Judge Fantacini repeatedly shows his discontent about the defendant's

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<sup>6</sup> Differently from Brazil, India adopts the common law jurisprudence which gives binding precedent to judicial decisions.

challenge to the 2003 eviction ruling, as if the movement had to abide to a “current social-economic order” that keeps the poor submissive to the upper classes (including the judiciary).

From May to August 2012, Maua’s attorney filed four interlocutory appeals to suspend the judge’s decision, until the court of appeals finally accepted to analyze the occupation’s case, temporarily suspending the eviction. Meanwhile, the Maua’s leaderships organized the resistance to the eviction in four fronts. First, they mobilized the occupation families to resist the writ of eviction and stay in the occupation. Second, they opened negotiation with the city and the property owners, aiming to come with an agreement to purchase the property. Third, they reached out to their local network of solidarity – which included other housing movements, human rights and right to the city NGOs, journalists, social activists, and university researchers – to organize public protests against the eviction ruling. Fourth, they tried to gain national visibility through inviting nationally recognized artists to support the eviction campaign. (PATERNIANI, 2013)

Maua’s coordinated efforts in the judicial, political and social fronts were rewarded in 2013, when the Mayor Fernando Haddad released a decree of social interest (DIS) on the Maua building, declaring the city’s interest in using the property for social housing purposes. A year later, nevertheless, the court of appeals decided that the eviction ruling was valid. Since the property owners and the city were in process of negotiation, the plaintiffs did not follow with the eviction order. In 2015, the building was appraised in R\$18 million and the city administration made a deposit of approximately R\$12 million to purchase it. However, the justice ordered a second appraisal in 2017, which was set in R\$26 million. The difference in the appraisal value paralyzed the negotiation process and, in June, the property owners proceeded with action to recover the possession.

In June 2017, the Maua Occupation received another writ of possession ordering the proceeding of the 2012 sentence and authorizing the use of police force, if necessary. In the ruling, the judge mentions the “delay” of four years in the execution of his sentence, as if justice would finally be served (TJSP, 2017). Maua’s resistance strategy this time was fairly similar to the one developed in 2012. While the occupation’s attorney, along with the Public Defenders and the Prosecutor’s Office of São Paulo (MPSP), questioned the writ of possession in court, Maua’s leaderships organized the four fronts of resistance: the mobilization of the families, the negotiation with the city administration and property owners, the activation of the local solidarity network, and the creation of a national campaign.

In late August 2017, I participated in a general assembly at Maua that was both a follow-up meeting about the status of the judicial decision and a mobilization meeting to call families to resist. Ivanete Araújo (Neti) – one of Maua’s founders and leaders – clarified that the risk of eviction was real but urged the families to stay in the occupation and resist the injustice. Throughout the meeting, she invited the various ONGs and housing movement representatives to pick up the microphone and voice their solidarity to the occupation. Indeed, the motto of the assembly became “if you disturbed the Maua, you disturbed everyone” (“mexeu com a Mauá, mexeu com todos”).

For the other OSM leaders present in the assembly, the defeat of Maua could mean the defeat of all occupations in the city. Many voiced their concern over the opening of a

precedent for the displacement of all other organized occupations in the city. In addition, the eviction of almost 240 families from a downtown prime location would also mean an enormous defeat for the agenda of social housing in the center, opening the way for the expulsion of all very low-income families from the area.

In addition, the lawyers and housing activists involved in the negotiation with the city explained that, although the then Mayor João Doria did not nurture any sympathy for the downtown poor, the Maua Occupation had found allies within the city administration that had worked together in the negotiation with the property owners. Lastly, a team from the Observatory of Removal – a research group based at the University of São Paulo (USP) – called all people and organizations present in the meeting to sign the manifest #FicaMaua – a on-line campaign created to give national visibility to the Maua Occupation.

By the time the eviction deadline was approaching, Maua families and supporters camped for two days in front of the courthouse of Sé to protest against the writ of possession. As a result, the tribunal accepted to analyze the Maua's appeal and the occupation gained another 30 days for the eviction, providing Maua's leadership with more time to negotiate with the city and the property owners. Finally, on December 2017, the city reached an agreement with the owners to purchase the building.

## CONCLUSION

The Maua case is an interesting illustration of the disconnection of the judiciary with the urban law. One of the most important victories of the movement for the urban reform was the creation of a legal order tying property rights to the urban development policy through the principle of the social function of property and the city. Maua's writ of eviction shows, nevertheless, that the use of private property has been analyzed solely under the lens of the private order, regulated by the Civil Code. Under this lens, the interest of the property owner is above the social function of the property and the city. Maua's case exemplifies one of the most significant hurdles for the urban reform in Brazil – the consideration by the judiciary of the urban-legal order in rulings related to the private use of the urban land.

Maua's writ of eviction also demonstrates the class bias against the occupation, which is characterized as surreptitious, violent and precarious. This perception about the occupation and – by analogy – its occupants exemplifies the sense of the "rightness" of property ownership observed in the Judge's interpretation of the 2002 Civil Code. In this context, occupation residents are seen as a kind of second-class citizens whose claims should not be prioritized.

Maua residents are, nevertheless, citizens who are strikingly aware of their rights and the benefits of living in the center. Before joining Maua, many residents lived in precarious conditions in downtown slum houses (*cortiços*) so they could be closer to work and have better access to city services. Moreover, they know that vacant buildings serving to land speculation do not fulfill the constitutional principle of the social function of property. In this context, occupying vacant properties in the center is more than claiming the right to the city as established by the 2001 City Statute. Occupying is a form of demanding that the everyday

lives of marginalized communities be placed in the city center, mixed to the institutions and people of power. This is a bold claim for a city like São Paulo, strongly marked by the segregation of its poor population in the periphery.

Finally, Maua Occupation's resistance strategies involve confrontation and negotiation which implies creating alliances within the state. If on the one hand the state is seen as one of the promoters of the displacement process by allowing land speculation, excluding the voices of grassroots movements in the planning process, using violence etc. On the other, the state is the ally that can stop eviction process through negotiating with property owners, halting urban interventions, creating laws and implementing policies that benefits OSM groups. Maua has fought for a place in the city center by using in- and outside state structures. They have used formal spaces of participation such as the court and the city administration's participatory arenas to defend the legitimacy of the occupation, as well as to further the agenda of social housing in the city center. Through continuously negotiating with city administration, the occupation has gained the funding and political support necessary to the expropriation of the old hotel. Maua did not limit its action to formal spaces of participation, though. An occupation is essentially an insurgent space that calls attention to the poverty and inequality in the city. The permanence of Maua is ultimately an act of defiance to a *status quo* that favors privilege over social justice.

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