

# Participatory urban planning in Brazil

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## Abstract

This paper focuses on participatory urban planning as a model of urban reform and democratic invention in Brazil. Its case material regards the formulation and implementation of two sets of urban laws of very broad consequence. First, we discuss briefly the chapter on urban policy in the 1988 Citizen Constitution and the federal law that it mandates. The latter is the Estatuto da Cidade, the City Statute, from 2001, which required that 1600 cities (approximately 30%) of Brazilian municipalities either create Master Plans or reformulate existing ones according to its principles and on the basis of popular participation. Second, we focus on São Paulo's Master Plan (2002) and Zoning Law (2004) that fulfill this requirement and on the Plan's required revision in 2007. By examining this massive constitutionally mandated formulation of urban policy, our aim is to analyse the development of a new paradigm of urban policy that reinvents master planning.

## Keywords

Brazil, citizenship, democracy, neoliberalism, participatory urban planning, planning, urban legislation

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The creation of urban policy in Brazil during the last 20 years is one of the best examples of the efforts of citizens to make planning work for democracy and democracy work in the spaces of the everyday to counter entrenched social inequalities. Today, its developments are simultaneously national and local, involve various types of legislation (from constitutional to municipal), mobilise the justice system, engage citizens of all classes, and express a degree of democratic inventiveness rarely found in the formulation

of public policy anywhere. These initiatives articulate a new vision for ordering urban space. They also entangle state and citizens in new participatory modes of governing the city, as they require citizen participation to produce urban policy in collaboration with

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government. They are marked by both success and failure. These results make Brazilian formulations of participatory urban planning privileged sites to investigate the efficacies of participatory citizenship in the development of new institutions, values and practices of democratic government.

Brazil's metropolises were largely built during the last half century by its working classes without the 'benefit' of planners and architects. Millions built homes; homes aggregated into neighbourhoods; and neighbourhoods in turn formed into vast urban regions. They built these cities physically brick by brick and also socially by organising into insurgent movements to fight for housing, property, infrastructure and services; to fight, in other words, for the right to the cities they were making. Their insurgent citizenship movements transformed Brazil during a long transition from military dictatorship (1964 to 1985) to electoral democracy. The main mark of this democratisation was not, however, the return of electoral politics, which the military regime assiduously controlled until its end. It was rather the explosion of popular participation in urban social movements, neighbourhood associations, trade unions and political parties. It was the invention inside of these organisations of new forms of citizen participation itself that produced a Constitutional Assembly (1986–1988), shaped the resulting Citizen Constitution (1988) and established the importance of text-based rights and innovative legislation in democratic struggles. These achievements generated pioneering forms of participatory democracy in many areas of government. Especially significant are the constitutionally mandated popular councils and assemblies through which citizens of all classes can participate in the preparation of annual municipal budgets and the development of public policy in education, health, housing and urban planning.<sup>1</sup>

After more than two decades of implementation, however, this new participatory planning now raises troubling and paradoxical questions as to whether the working-class production of urban life will continue to define city-making in Brazil through participatory processes or whether it will be gutted by those – executives, legislators and developers – who find ways to ignore or usurp participation.

There is a considerable literature on Brazil's participatory democracy, especially focusing on the popular councils and assemblies that the constitution mandates for the development of social programmes. As a result of laws designed to put the new constitution into practice, all municipalities are required to form councils in the areas of health, education, social services and planning, with representation of governmental, non-governmental and sectorial interests.<sup>2</sup> These councils have gained significant powers in shaping local government (Calderón et al., 2002). Moreover, many Brazilian municipalities used the institutionalisation of councils to carry out experiments in government decentralisation and reform (Montero, 2001; Samuels and Abrucio, 2000; Souza, 2001). Particularly important in the analysis of local participatory innovation in Brazil has been Porto Alegre's model of participatory budgeting initiated in 1989. As a new type of policy-making, it has attracted enormous international attention as it spread by the mid-2000s to approximately 104 of Brazil's more than 5000 municipalities.<sup>3</sup>

This paper focuses on one type of participatory innovation in Brazil, that in urban planning. By comparison with budgeting, participatory urban planning has been the focus of relatively little critical research to date, even though it has been instituted in over 1400 of the 1644 municipalities in which it is constitutionally required.<sup>4</sup> This paper considers its development as a model of urban reform and democratic invention,

especially as articulated in São Paulo. The case material focuses on the formulation and implementation of two sets of urban laws. First, we discuss the *Estatuto da Cidade* (Câmara dos Deputados, 2001), the federal law that the 1988 Citizen Constitution mandates on urban policy. It requires that all municipalities with more than 20,000 inhabitants either create Master Plans or reformulate existing ones according to its principles. Second, we focus on São Paulo's Master Plan (2002) and Zoning Law (2004) that fulfill this requirement and on the Plan's mandated revision in 2007.

While engaging other arenas of democratic participation, we maintain our focus on this constitutionally mandated formulation of urban planning that thousands of Brazilian cities have to adopt. Our detailed examination demonstrates, moreover, that participation in plan making differs in significant ways from other participatory forums. The latter tend to be more specific (housing, health, etc.) and occur through institutions such as councils. Some are deliberative. In contrast, participatory master planning is framed at another scale, necessarily involves a more heterogeneous set of actors and interests, and is consultative. Moreover, it is primarily a matter of the legislative and, now, the judicial branches of government rather than executive. Thus, our aim is to analyse the development of a new paradigm of urban policy that reinvents master planning, requires citizen participation and engages the judiciary as key components in the larger project of Brazil's democratisation. This paradigm brings into productive if frequently conflicting relation principles of social justice and market competition, executive will and judicial authority, democracy and neoliberalism, and participatory citizenship and government intervention. Its analysis in Brazil is therefore pertinent to urban conditions worldwide.

The analysis developed in this paper covers the period 2001–2010. It is based on research undertaken in São Paulo by the authors from July 2001 to December 2002 and during the periods of June to August in all the following eight years. We were participant observers of the entire process of creating São Paulo's Master Plan (2002) and of crucial moments in the elaboration of its Zoning Law (June–August 2004). We attended meetings and public hearings organised to promote popular participation in the formulation of both plans and read the transcriptions of many others at the archives of City Council. We interviewed the central players in the elaboration, including the Secretary of Planning Jorge Wilhelm, Councilman Nabil Bonduki, members of the three coalitions we mention below and a large sample of planners, urbanists, architects and activists.

We also compiled an archive of documents that include: (1) the texts and maps of the different versions of the Master Plan and the Zoning Law, as they moved from the Secretary of Planning to City Council, including proposals for revising the Plan after 2007; (2) a compilation of the suggestions and demands formulated by citizens and directed to the office of Councilman Bonduki; (3) a collection of news reports and paid advertisements addressing the formulation of the plans published in São Paulo's main newspapers and magazines; (4) a collection of publications, official and academic, about the process of making and evaluating the laws, which includes a dozen dissertations and masters theses, many of them written by those directly involved in the creation of the plans. Additionally, we followed different attempts by local NGOs and research institutes to monitor the implementation of the two laws. At the federal level, we accompanied the national 'Campaign for Participatory Master Planning', interviewed the National Secretary of urban

programmes at the Ministry of Cities, Raquel Rolnik, and had access to surveys conducted by IBGE (the Census Bureau) and reports by IPPUR evaluating the national campaign, content and implementation of plans.

### From insurgent social movements to urban legislation

The federal City Statute of 2001 is a remarkable law.<sup>5</sup> It embodies a democratic project of great ambition to redefine not only the priorities of urban planning but also the role of state and society in governing cities and addressing their inequalities. It originated in the popular participation that inspired the National Constitutional Assembly of 1986–1988. With regard to cities, participation rallied around two principles: the right to the city and its democratic management (*gestão democrática da cidade*). During the Assembly, organised social movements of the urban peripheries gathered more than 12 million signatures in support of popular amendments.<sup>6</sup> One proposed by the National Movement for Urban Reform (*Movimento Nacional pela Reforma Urbana*, MNRU) gave origin to the constitution's section 'On Urban Policy'.<sup>7</sup> It constitutes a radical agenda of urban change, including Article 182 that stipulates that the objective of urban policy is 'to organize the full development of the social functions of the city' and that urban property has a 'social function'.

The City Statute is the enabling legislation of this transformative constitutional section.<sup>8</sup> It establishes guidelines and instruments for urban policy 'to realize the social functions of the city and urban property' (Art. 2), that is, to subordinate urban development and property to collective interests and principles of social justice. The City Statute creates powerful instruments to enforce its directives, including those to

regulate the use of urban land and those of management (*gestão*). For example, it features mechanisms to force the development of underutilised urban properties and to legalise land occupied by low-income residents; and it requires popular participation in the formulation and implementation of policies and cooperation between government and private organisations to manage urbanisation.

In these formulations, it is evident that the City Statute fundamentally ruptures pre-existing authoritarian and developmentalist models of governing cities, which supposed the priority of modernisation led by an enlightened elite. On the one hand, the City Statute imagines a society of citizens who are active, organised and informed about their interests, and whose engagement with urban affairs is a means to produce social justice. On the other, it establishes that the state is no longer either solely responsible for implementing projects of urbanisation or the main producer of urban space. Rather, urbanisation should entail a 'cooperation between governments, private initiative, and other sectors of the society' (Art 2, III). The state is now an articulator of public and private interests and a partner in projects of urban development aimed at greater social justice. The City Statute thus imagines a state and society articulated by rationalities of government that are both democratic and neoliberal.

### Democracy and neoliberalism: Two projects of participation

In Brazil, democratisation and neoliberalisation coincided in the late 1980s. Each informed a notion of participation in the paradigm of participatory planning that developed with both coincident and contradictory effects.<sup>9</sup> They became entangled in projects to dismantle the modernist-developmental-authoritarian state as Brazilians

rebelled against deep social inequalities and military dictatorship. Both democracy and neoliberalism drew inspiration from the Constitutional Assembly and its emphasis on citizen participation because central to both is an active citizenry. There is neither effective democracy without popular participation nor neoliberalism without citizen engagement.<sup>10</sup> Moreover, the development of an autonomous sphere of citizen interests is fundamental to both projects for dismantling the interventionist state. Although the individual is for both the seat of rights that ultimately guarantees this autonomy, both emphasise that citizens participate most effectively as an organised citizenry. Thus, the new paradigm of urban planning stresses a politicisation of citizens through participation and a cooperation between government and private initiative.

Although congruent in such aspects, the democratic and neoliberal projects of participation and the views of the state they necessitate are also fundamentally antagonistic. What sets them at odds most clearly is the question of social justice and the concept of substantive versus formal equality it entails. For Brazilian insurgent democracy, social justice is a core principle. It is this concern that most basically structures the City Statute, in which the state appears as the institution in charge of producing social justice through its instruments of equalisation.

From the neoliberal perspective, dismantling the interventionist state and its planning logic is a priority as well. To do so, it emphasises a broad strategy of privatisation, executed under banners of decentralisation, local autonomy and fiscal responsibility. However, social justice is not its priority. Instead, the neoliberal project holds that the state should act like a 'referee in an ongoing transaction' (Gordon, 1991: 45), leaving it up to entrepreneurial citizens to organise themselves and their interests. It insists that individuals are equally free to use their prior

differences in resources to pursue these interests and that neither the state nor the market has a responsibility to ensure an equalisation of capacities among citizens to do so. From this perspective, participation is not a means of equalisation as the democratic project imagines. Rather, participation is a form of freedom of expression and assembly, in which formal citizen equality becomes the foundation for market competitions that may result in new urban inequalities.

These two projects of participation collide in the very instrument that the City Statute mandates cities to develop to achieve its objectives: the master plan. To evaluate this predicament, we first examine the reconceptualisation of master planning in the City Statute and then analyse the making of São Paulo's Master Plan to explore the complexities of popular participation. We show that although participation is clearly at the core of the new rationality of urban planning and has meant the institutionalisation of democratic procedures, participatory urban planning also institutionalises a number of difficulties for the implementation of social justice.

## The resignification of master planning

The passage of the City Statute in 2001 meant that approximately 1644 cities (about 30% of Brazil's municipalities) had either to write new Master Plans or revise existing ones to produce legislation that would be their primary means of urban governance. By 2009, 87% of the cities required to produce master plans had completed them, the majority incorporating the guidelines and instruments of the City Statute.<sup>11</sup> Without doubt, therefore, the City Statute has resulted in a reinvention of planning through a centralised intervention of unprecedented national scale.

As master planning is the hallmark of the modernist and developmentalist model the

Statute aims to replace (Holston, 1989), it is striking that it has become key to the new legislation. In fact, the idea of master planning was absent from the urban popular amendments submitted to the Constitutional Assembly, as the MNRU rejected it as totalising and elitist. However, during debate, conservative deputies associated with neoliberal reform introduced the requirement of master planning into the final constitutional text on urban policy (Bassul, 2005: 5–108). They wagered that it would render the constitution's radically democratic principles of urban social justice difficult, if not impossible to implement. The irony is that in the implementation of the City Statute, members of urban reform movements embraced this requirement as their principal means to refashion urban policy nationally and promote justice through popular participation. As a result, the making of master plans became an affirmation of the state's commitment to redress social inequality.

Created during the first year of President Luiz Inácio Lula da Silva's administration (2002–2010), the Ministry of Cities was decisive in this resignification of master planning. Several planners and architects from MNRU and later from FNRU (National Forum of Urban Reform) who were instrumental in the production and approval of the City Statute occupied key positions in the Ministry.<sup>12</sup> They immediately created a Council of Cities, with high levels of popular participation from 80 citizen groups, to shape policies at the Ministry and enforce the City Statute. In September 2004, the Council approved a resolution to launch a national Campaign for Participatory Master Planning (Novaes, 2011; Rolnik et al., 2008).

Now ardent defenders of master planning, members of the FNRU at the Ministry transformed it from a technical means to impose order into a political instrument to foster social justice and participatory citizenship. Renaming it 'participatory master

planning', they launched the national campaign as their strategy to defeat the prediction that its requirement would make the radical principles of the Statute 'dead letter'. When the Ministry reported in 2005 on the campaign's results, President Lula's introduction referred to the process as 'a true participatory and democratic *mutirão*' (Ministério das Cidades, 2005: 6).<sup>13</sup> Moreover, he defined a master plan as 'a pact [*pacto*] between the population and its territory' and 'a valuable tool for sharing in the management of local space, democratizing infrastructure'. The report describes the process of formulating a master plan through popular participation as 'a political process of the formation of citizenship' (Ministério das Cidades, 2005: 14).

Although no longer a modernist fetish of total order, master planning remains a political touchstone endowed with almost magical powers to right the city's wrongs – now through democratic citizenship and direct engagement in plan making. In both versions, there is a strong belief in the transformative powers of the plan. What is different is the source of power. In one case, it lies in the knowledge and expertise crystallised in the rational order of the plan itself; in the other, in the popular democratic participation the plan mandates.

To succeed, the Ministry determined that it had to maintain influence over the content of the locally produced master plans. In July 2005, the Council of Cities approved Resolution 34 establishing a 'minimum content of the Master Plan' and specifying the principle of its social function. To implement this minimum locally, the Ministry mobilised extraordinary resources nationally. It offered grants to cities to help them create master plans, trained planners and technicians nationwide, circulated templates of master plans, created mechanisms to evaluate the plans produced and formed experts in organising popular participation.

As a result of the Ministry's campaign, stipulations of the City Statute had made their way by the deadline of 2008 into master plans of more than 80% of the cities required to produce them (IBGE, 2010). Apparently, the Ministry of Cities had beaten the conservative wager about master planning. Instead, the Ministry succeeded in mounting an unprecedented national mobilisation of local participation to formulate a new model. However, its very success generated conflicts and unexpected results, especially as producing a master plan is no guarantee of implementation. As the case of São Paulo demonstrates, actual participation in urban planning would complicate the project of achieving social justice through urban planning reform. It would entangle citizens in a competitive process that tends not only to favour prior differences and resources but also to utilise the very instruments of the new planning both to paralyse the process and to consolidate existing inequalities.

### **São Paulo's master plan and zoning law**

The transformation of urban policy into a means to foster citizenship and equality began in the 1980s in a number of Brazil's large cities. Since then, these cities have continually created, tested and circulated new institutional forms, techniques and modes of participation to achieve these goals. The city of São Paulo has played a fundamental role in these experiments. In 1991, it formulated a project for a master plan that, although never passed by City Council, included several planning instruments later incorporated into the City Statute and into the city's Master Plan approved in 2002 – innovations such as 'paid authorization', progressive taxation, 'urban operations' and 'special zones of social interest'.<sup>14</sup> The 2002 Master Plan was the first plan formulated after the City Statute. It included various forms of

popular participation and helped shape the subsequent creation of the Ministry of Cities and the national Campaign for Participatory Master Planning. In examining the case of São Paulo, therefore, we are able to follow not only the experimentation that helped consolidate a new national planning paradigm but also its conflicting results.

The 2002 Strategic Master Plan (*Plano Diretor Estratégico*, Municipal Law 13,430) originated in a project of the PT municipal administration – Partido dos Trabalhadores, Workers' Party – that Mayor Marta Suplicy presented to City Council. The PT is a centre-left political party that emerged in 1980 during the redemocratisation process in association with trade unions and urban social movements. It has sponsored innovative forms of citizen participation at all levels of government. The 2002 Plan was first formulated by the Department of Planning under Jorge Wilhelm and then re-written and substantially modified at City Council after a series of public debates coordinated by Councilman Nabil Bonduki, head of the commission of urban policy and rapporteur of the project. The plan's principles and instruments derive from the City Statute. It is complemented by the 2004 Zoning Law (Municipal Law 13,885) that addresses land use and incorporates regional plans for the 31 submunicipal administrations of the city. Together, they amount to more than 800 pages and almost 600 articles on an enormous range of issues, from land occupation and employment to minority rights and the environment.<sup>15</sup>

The core diagnosis of the Master Plan focuses on two features of urban space that policy should address: inequality and dispersion. Accordingly, the Plan aims to legalise the 'illegal city' – bringing the standards of urbanisation and land regulation of the legal centre to the illegal peripheries – and to break the patterns of dispersed peripheral expansion. Accordingly, it establishes

strategies to promote densification in areas already with infrastructure (usually legal), decelerate the expansion of the city towards new areas in the peripheries (usually illegal), enforce the social function of property, regularise land and infrastructure and implement ZEIS (Special Zones of Social Interest) in the peripheries. It also creates a system of popular participation and implements a new conception of planning based on the notion of a 'pact' among citizens.

As Bonduki, states in the Introduction of the law:

The new paradigm [of planning] starts from the assumption that the city is produced by a multiplicity of agents whose actions should be coordinated not by a model produced in offices but rather on the basis of a pact – 'the city that we want' – that should correspond to public interest. (Câmara Municipal de São Paulo, 2002: 14)

Thus, São Paulo's plan introduces the notion of a pact among citizens that the Ministry of the Cities would later emphasise. In the Plan, policy depends on pacts and pacts on participation, as it establishes that urban policy should be formulated through a process of 'planning, implementation, and control that is permanent, decentralised, and participatory' (Article 260). Accordingly, it devotes an entire section of 34 articles to the 'democratic management of the urban planning system'. It creates biannual Municipal Conferences on Urban Policy as the main form of direct participation, in which citizens will be asked to 'appreciate', 'debate' and 'suggest' proposals presented by the municipality. The conferences should be open to all citizens and to 'delegates', although neither whom they represent nor their method of selection is clear. Additionally, citizens will be called to participate in public audiences, especially to evaluate plans with potentially negative impact.

The law also creates two councils: the Municipal Council of Urban Policy and the

Technical Chamber of Urban Legislation. The former is consultative only and has 48 members, eight elected by the population and the rest selected by the municipal administration, 'entities of civil society', professional associations and economic sectors. The latter is not an elected body and is responsible for publishing technical evaluations of planning projects. In sum, the participation that the Master Plan institutionalises is formalised through published procedures and mostly direct, though there is some delegation. However, the Master Plan creates no mechanisms for making any of its participatory discussions, procedures and proposals binding. In this sense, it is entirely consultative.

Another way in which the Master Plan conceives of citizen participation is through partnerships (*parcerias*). These refer to the implementation of local planning initiatives in which the state shares costs and responsibilities with private organisations. The Plan invokes such partnerships numerous times but leaves them somewhat vague. Supposedly, the state's partners (NGOs, neighbourhood associations, universities, corporations) offer an array of services the state is no longer able to provide but still considers important. In this sense, these partnerships help implement a new rationality of government in which the state is orchestrator and manager. This state articulates pacts among citizens to further public interests and partners with 'organized entities of civil society' to run specific projects.<sup>16</sup> Although these entities are usually called non-governmental, it is clear that they are not exterior to the practices of government but essential to its new rationality.

## Implementing participation

The draft of the Master Plan included two rounds of popular participation: one to develop the version that City Council would debate and a second to develop the City

Council's version for final Council ratification. Both processes had the same defining features: participation was formal, mostly direct and non-binding, and allowed individuals, groups and associations of groups to contribute.

As required by the City Statute, both the Planning Department and the City Council created and implemented mechanisms for popular participation in assessing the Plan. SEMPLA organised a Conference of the City in May 2002 with the participation of around 800 people to launch the project and around 40 additional meetings with a heterogeneous range of organisations and experts. The Commission on Urban Policy at City Council organised 26 public hearings either at the council or in different regions of the city to discuss the plan (Câmara Municipal, 2002: 15). It also organised numerous thematic meetings. All hearings and meetings were consultative, in that the discussions, negotiations and projects they developed had the status of non-binding proposals to the Council, the only body with the authority to create binding municipal law.

According to our participant observation, mostly two types of citizens participated: experts (generally planners and architects) and members of associations. Both involved people who were previously engaged in social movements and urban reform or who had clearly defined interests. Among them, there were no mechanisms of either representation or delegation. Anyone present could speak and, as a result, some hearings lasted many hours as a multitude of speakers (from common citizens to presidents of powerful corporations) lined up to use their allotted time. As Bonduki recognised (interview, 19 August 2003), the process had 'low institutionality' but was effective in intensifying the debate about the content of the plan.

These processes of citizen participation generated unexpected results. When the

project for the Master Plan reached City Council, it was clear that three main coalitions articulated the issues of debate.<sup>17</sup> The *Frente Popular pelo Plano Diretor* (Popular Front for the Master Plan) represented popular movements, planners, consultants and university-based researchers. The *Movimento Defenda São Paulo* (Movement Defend São Paulo) organised the interests of around 50 upper-middle class neighbourhood associations primarily around issues of zoning. The *Frente pela Cidadania* (Front for Citizenship) represented 30 associations under the leadership of Secovi, the powerful organisation of real estate developers – ironically, the only coalition to use 'citizenship' in its name. However, only the last two – coalitions of affluent classes and corporate interests – dominated media coverage and most influenced the outcome. They focused on three specific points: zoning regulations, restrictions in residential areas and taxation of the right to build. In our survey of the media coverage, these issues practically eclipsed the consideration of all other aspects of the plans.

A radical aspect of the Master Plan as the administration originally formulated it was the near elimination of all previous zoning and construction codes in the city. It reduced the previously existing eight zones of use to three: one small and exclusively residential, another small and predominantly industrial and a third corresponding to almost the entire city and defined as 'mixed use'. Accordingly, this formulation extinguished most of the differentiated rules for construction and imposed bold new rules of taxation on the right to build beyond a drastically lowered 'utilisation ratio' (floor to area ratio) of one. Needless to say, representatives of the construction and real estate sectors were among the most active opponents of the Plan. Although Secovi and its partners had to conform to the democratic and participatory rules of the public

hearings – something quite new in Brazilian politics – they were powerful enough to increase the utilisation ratios and to stall discussions of the Master Plan through parliamentary procedures, intense lobbying and media campaigns.

The upper-middle class coalition, *Movimento Defenda São Paulo*, also figured prominently, successfully lobbying to maintain the exclusivity of residential areas of its members against proposed changes in zoning. In contrast, the *Frente Popular* was barely visible in the media. It had its own priority, namely, to define the ZEIS, the Special Zones of Social Interest, and demarcate their areas throughout the city.<sup>18</sup> Both sets of coalition interests were effectively represented in the final version of the Plan. It created two new exclusively residential zones and froze the existing ones until land use got to be addressed by a new law. The plan also increased the types of ZEIS to four, augmented their areas substantially and defined them to facilitate the regularisation of land titles and the re-urbanisation of favelas.

Thus, it appears that direct participation organised the participants into class-based groupings and made it possible for each to get its interests written into the final version of the two laws. Participation remained direct, in the form of general assemblies and audiences, without delegation or representation. Previously organised groups or newly organised coalitions presented their interests and lobbied for them by addressing the administration or the legislators directly and without necessarily talking to each other and negotiating their differences directly. Opposed coalitions acted as if they were dealing with different cities, each focusing on particular interests. Ultimately, it was up to the legislators to orchestrate the different interests and pressures.

This disambiguation of interests led to significantly different levels of participation

and visibility, generally based on prior resources. The skewing was especially pronounced in the process of producing the Zoning Law. The office of Councilman Bonduki received 1103 proposals to modify the initial draft of this law. Seventy-five per cent of them came from the six wealthiest areas of the city, all in the central-southwest. One alone, Pinheiros, where most associations in the *Movimento Defenda São Paulo* are located, was responsible for 25% of the total. Moreover, six areas of the city did not present any proposals, all from the poorest parts of the peripheries.<sup>19</sup> A similar imbalance in participation occurred in the formulation of the Regional Plans. The media amplified this process by reporting almost exclusively on the agendas set by the *Frente pela Cidadania* and *Movimento Defenda São Paulo*. Finally, SEMPLA (2004b) reproduced the imbalance by producing a booklet to explain the Zoning Law to the general population that omits discussion of the ZEIS.

In this process, the issue of what counts as participation itself became a factor of contention. As they had not been previously established, the rules of participation (and even the definition) remained vague during debates on the Master Plan. As a result, the assemblies were entirely open to the participation of both the ‘entities of civil society’ and individuals. Both were allotted time to speak. During debates on the Zoning Law, however, participation had already been legislated by the Master Plan and became more formalised and more polemical. Again, the municipal administration took the initiative of writing the law’s initial draft. This time, however, Mayor Marta Suplicy issued a decree (No. 43,300 of 4 June 2003) defining some parameters for participation in the formulation of the plans. It established that only individual residents and not organisations could vote in the regional assemblies required for the formulation of regional

plans and the land use law. Considering that this condition was against its interests, the *Movimento Defenda São Paulo* submitted a complaint to prosecutors at the Public Ministry, arguing that it violated the Master Plan's principles. The prosecutors agreed, argued the case in court, and won. The result nullified all the assemblies and processes of consultation that had already been realised in accordance with Decree 43,300. In consequence, the first proposal for the Zoning Law and Regional Plans had to be withdrawn from City Council and all the public hearings re-done according to a new decree (No. 44,292 of 19 January 2004) that permitted the participation and voting of representative associations.

Since the most active associations were those from the affluent classes and since they were especially active in the regional assemblies, their interests were over-represented in the new set of hearings that generated the final proposal of the law sent to City Council. Moreover, the participatory process now involved both the judiciary and the Public Ministry. This judicialisation and contestation over terms of participation would become evident again in 2010 during an attempt to revise the Master Plan, as we discuss below.

In 2004 the PT lost its re-election bid for mayor of São Paulo. The change in governing political parties meant a shift in the city administration's approach to popular participation and in its commitment to enforce articles of the Master Plan. Essentially, the administrations that followed the PT did not sponsor significant processes of citizen participation in developing urban planning policy. Moreover, they contravened participatory requirements and, in the end, were defeated at court in their attempted circumventions. However, this victory for the rule of direct participation in planning perversely gutted the efficacy of the Master Plan by paralysing the policy-making process in

judicial entanglements. This outcome reveals a number of principles and paradoxes of the new model of participatory urban reform: it depends on a process of public participation that is required but not binding, that is formal but vague in procedural rules, and that has its clearest policy outcome in municipal laws and related mandates both of which are then susceptible to judicial challenge. It promotes, therefore, a new role for the judiciary, which it also politicises, as judges now rule on the sufficiency of participation in the urban planning process.

These points are evident in the process of revising the Master Plan, required after a period of five years. It shows the extent to which participatory planning is vulnerable to the willingness of the executive and legislative offices of government to consult citizens when it is non-binding and of low formalisation. Ignoring the requirements for popular participation, centre-right Mayor Gilberto Kassab sent a proposal to City Council in October 2007 that substantially altered the content of the Master Plan. The most striking alteration referred to changes in the definition of zones and parameters for land use, significantly increasing the possibility of edification in several areas of the city.<sup>20</sup> Our close reading of the proposal, as well as of the other modifications and additions produced at City Council between 2007 and 2010, indicates that what was at stake was not only a change in core instruments of the law associated with land use and thus with real estate interests, but also a challenge to several of the principles that supported it, including constitutional principles and determinations of the City Statute.

Kassab's proposed revision of the Master Plan and Zoning Law started to be contested as soon as it became known.<sup>21</sup> In addition to discussions about content, a number of organisations disputed the way in which the production of the project had ignored the required procedures of popular

participation. Around 200 organisations, many of which had participated in the formulation of the Master Plan, formed the *Frente em Defesa do Plano Diretor Estratégico* (Front in Defense of the Strategic Master Plan) and started a protest against the new proposal.<sup>22</sup> The *Frente* also initiated judicial actions. The most important was a civil suit brought on 2 April 2008 requesting that debate on the proposal be interrupted at City Council and that the proposal be returned to the executive to be re-elaborated according to the participatory system instituted by the Master Plan.<sup>23</sup> These judicial actions lingered for two years during which the City Council continued to debate the project and, in fact, produced revised versions of the law for vote; the *Frente* continued to protest; and the Electoral Justice Tribunal considered accusations of corruption affecting over 50% of the members of the City Council.<sup>24</sup>

Finally, on 29 July 2010, Judge Marcos de Lima Porta ruled that the ‘democratic management of the city has been wounded’ by the process that the municipality used to formulate the proposed revision of the Master Plan and stopped its consideration by City Council.<sup>25</sup> The sentence stated that the municipality had failed to provide enough information to citizens to allow their participation, failed to communicate broadly with and engage citizens in the process of elaborating the proposal, not made clear the mechanisms of participation and not convened a popular conference to discuss the content of the proposal. It also asserted that the number of audiences (four) and the minutes allotted to each participant to speak (two) were both insufficient considering the size of the population and the complexity of the issues.

This ruling is doubly significant. First, it makes the interpretation of the role of popular participation once again the means to nullify actions of the executive regarding

the production of urban legislation, as was the case in 2003 with the proposal for the Zoning Law. Second, to justify his decision the judge affirms the legitimacy of the main notions of the City Statute, such as the social function of property and the role of popular participation in democratic administration. He does this by citing interpretations of the Constitution and of the City Statute published by members of the urban reform movement. In effect, the ruling confirms that the movement has achieved its goal of creating a new legal paradigm of urban planning, one based on constitutional principals of social justice that are actionable through popular participation and sanctionable through judicial action.

### Challenges to the new paradigm of urban planning

The failed revision of São Paulo’s Master Plan demonstrates that a judicial framework now regulates the production of urban policy in the municipality: the courts and the Public Ministry legitimate and safeguard principles such as the social function of property and the democratic management of cities and allow non-compliance to be contested under their purview. This new legal paradigm of judicially vetted popular participation has thus become a means to force the democratisation of the state even when popular participation is non-binding and of relatively low formalisation. Nevertheless, the paradigm remains vulnerable for three reasons. Without being binding, popular participation in urban planning risks becoming irrelevant because an administration (executive and/or legislative) can both follow the participatory requirements and ignore the results.<sup>26</sup> Moreover, as there is no doctrine of *stare decisis* in Brazil’s judicial system (with some Supreme Court exceptions), a different judge with the same case material may very well rule differently.

Finally, there is no guarantee that the practice of popular participation will produce social justice or respect for the constitutional principles of the City Statute. It is clear that citizen participation has strengthened the participatory citizenship of the rich. If the earlier social movements of 1970–2000 energised the active citizenship of the poor, the new forms of urban planning that resulted are transforming the wealthy into new kinds of active citizens who have the organisational capacity to use the participatory mechanisms of democracy and to mobilise the judiciary to pursue their interests successfully.

These three conditions points to a clear conclusion: although the Constitution and the City Statute have established principles of social justice as planning objectives, their institutionalisation does not sufficiently obligate the actions of the executive and legislative branches of government to ensure implementation. In São Paulo and many other cities, many determinations written into master plans have simply been ignored.<sup>27</sup>

That city executives disregard required participatory processes does not mean, however, that participation was ineffective. As São Paulo's case demonstrates, organised citizens pursue mechanisms of public pressure and judicial action to challenge urban legislation.<sup>28</sup> Thus, it is today the case that the new democratic planning reform is supported by the judiciary, the Public Ministry and a democratic political environment in which opposition movements, organisations and initiatives can freely organise. This is, no doubt, a messy situation that produces complex results. A fundamental goal of the movement for democratic urban reform was to institutionalise popular participation as its mechanism for implementing democratic principles of municipal governance and greater social justice. A decade after the passage of the City Statute, we find that although this institutionalisation is often ineffective, a conclusion just as important is

that a new model of democratic reform through urban planning has now been mandated in law. Being on the books, it is being engaged by citizens who have the organisational resources to demand its application. Thus, a crucial democratising component of this new paradigm of planning is the mobilisation of citizens into organisations that have the resources to take advantage of the legislated institutional spaces of participation.<sup>29</sup> We add to these organisational capacities that of mobilising judicial action.

It seems clear, however, that although working-class city-building generated the new paradigm of participatory urban planning, the new model will not in itself insure that working-class interests define the future of Brazilian cities. Rather, as the underclasses and upperclasses collide in the institutionalised spaces of participatory citizenship to produce and manage city life to their own terms, the wealthy would seem to have significant advantages. To counter, the working classes will need to perfect methods of insurgent planning as a core component of their participation. Indeed, there are indications that this is happening on various fronts, though with mixed results, as for example in contemporary movements for housing rights in São Paulo (see Earle, 2013). Insurgency describes a process of organised counterpolitics that destabilises present configurations of power, defamiliarising their coherence. An insurgent planning must organise working-class citizens not only within the institutional spaces of mandated participation but also, as important, outside of them to be able to stop urban reform that produces inequality. It must insist both in the streets and in the courts on the primacy of constitutional principles of social justice in the development of the city.

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### Notes

1. Our own studies of these developments in city and citizen-making include Caldeira (1984, 2000), Caldeira and Holston (2005) and Holston (1989, 2008).
2. Useful discussions in English of local participatory democracy in Brazil include Abers (2000), Avritzer (2009), Baiocchi et al. (2011), Cornwall and Coelho (2007) and Wampler and Avritzer (2004).
3. In addition to those cited above, see Azevedo and Fernandes (2005), Baiocchi (2005), Wampler (2007) and Baiocchi et al. (2011).
4. See below and, in particular, Bernardini (n.d.), Bueno and Cymbalista (2007), Rolnik (2011), Santos and Montandon (2011) and Villaça (2005).
5. Federal law 10,257 (10 July 2001), signed by President Fernando Henrique Cardoso. Full text available at: <http://www.cidades.gov.br/secretarias-nacionais/programas-urbanos/legislacao/Lei10.257-01.pdf/view?searchterm=estatuto%20da%20cidade>. A detailed history is Bassul's (2005). Studies in English include Caldeira and Holston (2005), Fernandes (2007a), Macedo (2008) and Souza (2001).
6. See Holston (2008) for a discussion of the Assembly and the importance of the constitution it produced for social movements.
7. The MNRU began as a coordination of social movements and professional associations founded in the late 1970s to engage the development of the urban peripheries.
8. Our brief summary here is drawn from a fuller analysis in Caldeira and Holston (2005).
9. We take neoliberalism to be a rationality of government in Foucault's sense; i.e. a way of thinking about the nature of the practice of government and of making it practicable. Neoliberal rationality typically uses technologies of entrepreneurialism, management, audit, and privatisation to diffuse its rule throughout the social fabric (see Gordon, 1991). Although neoliberal projects typically share such general features, neoliberalism – like democracy and liberalism – develops various versions with specific and at times different conceptualisations and practices. Brazilian neoliberalism engages democracy differently than its North Atlantic counterparts.
10. See Rose (1996) for a discussion of neoliberalism's reliance on citizen initiatives.
11. The master plans produced after the approval of the City Statute have been evaluated by the project Rede de Avaliação e Capacitação para a Implementação dos Planos Diretores Participativos undertaken by the Ministry of Cities with IPPUR/UFRJ, the Instituto de Pesquisa e Planejamento Urbano e Regional from the Universidade Federal do Rio de Janeiro. See Ministério das Cidades (2004), Santos (2011) and other essays in Santos and Montandon (2011).
12. They include Olívio Dutra, (first minister) Ermínia Maricato and Raquel Rolnik. In 1987, the MNRU was consolidated into the FNUR, which congregates many organisations interested in urban reform.
13. *Mutirão* is a form of collective labour, usually among neighbours, to complete important tasks, such as the autoconstruction of houses.
14. Although innovative in many ways, the 1991 plan did not include provisions for popular participation. *Diário Oficial do Município de São Paulo*, 36(50), 16 March 1991.
15. The Master Plan is available online at [http://www.prefeitura.sp.gov.br/cidade/secretarias/desenvolvimento\\_urbano/legislacao/plano\\_diretor/index.php?p=1386](http://www.prefeitura.sp.gov.br/cidade/secretarias/desenvolvimento_urbano/legislacao/plano_diretor/index.php?p=1386), and the Zoning Law at [http://www.prefeitura.sp.gov.br/cidade/secretarias/desenvolvimento\\_urbano/](http://www.prefeitura.sp.gov.br/cidade/secretarias/desenvolvimento_urbano/)

- legislacao/planos\_regionais/index.php?p=822. See also Câmara Municipal (2002, 2003), SEMPLA (2004a, 2004b) and Bonduki (2007).
16. One form of partnership is the 'urban operations' aimed at specific and high-profile projects of urbanisation. We do not analyse it here because we have done so in Caldeira and Holston (2005).
  17. See also Bonduki (2007) and Bernardini (n.d.: Chapter 1).
  18. As defined in the Master Plan (Articles 171 to 181) and the Zoning Law (Articles 136 to 144), ZEIS are areas of the city inhabited by low-income residents and eligible for improvement and legalisation according to Plans of Urbanisation. ZEIS areas are subject to special rules of occupation and exemption in the interest of promoting low-income housing and protecting it from real estate speculation.
  19. Data provided by the office of Councilman Bonduki. See also Villaça (2005), especially Chapter 11, 'The illusion of popular participation'.
  20. The proposal included changes to permit higher levels of construction in several areas of the city; altered ZEIS of types 2 and 3 in central areas; and diminished the required proportion of housing of social interests inside of ZEIS. Documents available at: [http://www1.camara.sp.gov.br/cr0309\\_net/forms/frmNoticiaDetalhe.aspx?n=1135](http://www1.camara.sp.gov.br/cr0309_net/forms/frmNoticiaDetalhe.aspx?n=1135).
  21. Although only a revision of the Master Plan was legally acceptable in 2007, Kassab's proposal was framed as a simultaneous change in both laws. This combination was immediately considered illegal by the Public Ministry, and the justice system ordered the city to separate the projects.
  22. The interventions of this Front are documented in its site: <http://www.grupos.com.br/blog/plano-diretor/permalink/36043.html>.
  23. This action was presented by institutions that were part of two previous coalitions: *Defenda São Paulo* and *Frente Popular*.
  24. The Electoral Justice of São Paulo accused 29 City Council members elected in 2008 of receiving illegal campaign donations from an association of real estate developers, Associação Imobiliária Brasileira (AIB), which was especially interested in changing the Master Plan and the Zoning Law. On 19 October 2009, the Electoral Justice revoked the mandate of 14 of these council members.
  25. Processo 053.08.111161-0, page 21, Tribunal de Justiça do Estado de São Paulo, Comarca de São Paulo, Foro Central, Fazenda Pública/Acidentes, 5ª Vara da Fazenda Pública.
  26. That popular participation depends on executive will was confirmed again in early 2013, after the PT returned to city hall and immediately started an ample process of popular participation aimed at revising the master plan.
  27. See Santos and Montandon (2011) for a broad evaluation of master plans nationally and Bernardini (n.d.) for São Paulo.
  28. See Earle (2013) for an analysis of different tactics that social movements develop to pursue their agenda, using both institutionalised spaces for participation and more transgressive strategies.
  29. On the importance of this point, see also Bernardini (n.d.: 161), Bueno and Cymbalista (2007: 21), Fernandes (2007a: 188; 2007b: 218), Maricato (2010: 22).

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