

Title	Conflicts of fear: reflections of privatization in public areas in Rio de Janeiro
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CONFLICTS OF FEAR: REFLECTIONS OF PRIVATIZATION IN PUBLIC AREAS IN RIO DE JANEIRO

Abstract:

Fear has invaded our lives and cities. Together with the structural changes at the present time, after the substitution of the state of welfare by neoliberal, the scenery is intensified facing a period of economical instability and a state pointed out as neglected to promote social universalist policies. Crime comes up as parallel institution in search for other ways of survival in the cities, in this meaning the urban violence is strictly related to fear.

The emphasis on the thesis of violence attributed by means of communication reinforces the construction of the imaginary of the city as dangerous locus. Its reflections have generated new ways of sociability, intensifying the spatial segregation and social discrimination already clear in some countries, as in the peripheral ones, or bringing new figures and worry to the central ones. Gated communities, safety chambers in privatized streets and areas, gratings everywhere and the spread of shopping centers are the example of homogeneous new tendencies as a trial of protection in an environment built by the city daily speech as chaos. The privatization of the public space is an apparently consensual reality, what makes the academy aware of the idea that the city hasn't been a local of changes any longer.

This essay aims to present and evaluate these reflections in the metropolitan region of Rio de Janeiro. Its objective, however, is not to discuss directly the social-spatial dimension or the challenges they have brought to the formation of the Brazilian democracy. The intention is to elucidate that conflicting ways of perception of the city by society are present, taking as a reference lawsuits that demand the privatization or not of residential public streets. Despite being made invisible by several actors, the conflict does exist and part of society calls in question the traditional form of public space conception to the detriment of practice and privatization here presented. So as to show these conflicts different actions were analyzed in different areas of the metropolis, as in its localization as in the social economical differentiation, exposing the struggle of civil society. Actions, which present the most varied conflicts related to the questioning, were selected. Interviews with the involved ones are equally inserted in the analyses, because they make a better interpretation of arguments easier for or against the privatization. As for the position of the state, it shows when, where and why it legitimates this practice in determined places. Even other agents have reached

The contribution here not only intends to clear the conflicts, but also show the meaning of the political struggle of these agents interacting with the national public institutions, allowing to expose a new way to the practice of planning.

CONFLICTS OF FEAR: REFLECTIONS OF PRIVATIZATION IN PUBLIC AREAS IN RIO DE JANEIRO

1 Introduction

This paper, based on a Master Dissertation still in progress, intends to study the privatization of public space. Through it we will point out the role of the actors involved in this matter, as well as their causes and their consequences to all aspects related to urban life, be them social, economical, cultural, political or even legal, demystifying some evidences that, at first sight, show to be consensual.

Privatization, as a new form of appropriation of the soil utilization and urban regulation, can be considered as consequence of two phenomena. The first one is a of structural nature, because it refers to specifically political characteristics, or rather, from the present thoughts of the State hegemonic power, that is based on liberal principles. We mean that this State has its principles linked to the view that for a good development of a country, the market must work freely, without the direct intervention of the State. Therefore, the State must have the functions minimized, being suitable only as legal and educational basis. (CARNOY, 2005), beginning to attribute them to the private agents.

The second aspect comes in parallel to the first one and is related to the theme of fear. The sensation of fear, emphasized through the uncertainty of the coming future and urban violence divulged every day, invaded the urban scenery, contributing for spreading the issue in question. We can consider it as responsibility of several social actors, as media, the market (we will highlight here the property market), the public power and even the civil society. Through their actions these actors nurture the sensation of fear when emphasizing matters related to the economical instability of the country and urban violence. Also, through these aspects, one builds the idea of a likely responsible for this anguish and disorder the city seems to be in. The individuals who carry this symbol start to be seen as a dangerous class and they ought to be apart from the rest of the society.

We aren't here referring only to the private condominium as a key phenomenon of this new form of urban soil appropriation, but to all and any form of using the city that restricts the right to go and to come of all or that shows the privatization of that, which in the past, was considered of public nature. The focus and understanding of the presented phenomenon repercussion also comprises the existence of fenced public squares, public streets closed with wooden gates and sentry boxes, shopping centers and also the utilization of private security and electronic

instruments that have the purpose of protection, segregation and self reclusion. These are the tendencies we have seen to proliferate as the new way to “plan” the city and, this way, they are being presented as the only way to the called huge and new urban problems. In this meaning the privatization of the public areas appears as a natural and consensual tendency facing the risks in cities.

In this present paper we will highlight exactly the impacts, questioning whether the privatization was really in our cities daily routine and definitely accepted as strategy for escape and protection. Would the privatization be the only way to plan the cities of the present scenery covered by an instable economical environment and by the violence? Is everybody for this tendency transforming it in a consensual phenomenon?

By using this controversy we can notice that the privatization of public areas causes conflicts among the involved ones, not consensus. In other words, we want to expose that there is demand by the society that manifests against the process of privatization and for the traditional way of the public space conception. As Caldera (2000) mentions, there is still ambiguity and disagreement on the social practice of the cities. Some of them, in fact, struggle for staying in their traditional districts, as well as stand out the appeal to the old lifestyle offered by the modern city. There is the desire for the permanence in tradition to the detriment of transformation; therefore a way that applies the social thoughts by dialects becomes necessary.

It is also necessary to make clear that what matters to be discussed is the one of Rio de Janeiro city and its metropolitan region. The last three decades and its peculiarity, other societies contingently mentioned appear in order to make the understanding of the facts feasible. The way for the research is made through the analysis of lawsuits whose object of the procedure is related to privatization of residential public areas in the city of Rio de Janeiro. At this first moment the region of Barra da Tijuca will be stood out, a local of real estate capital expansion, where the phenomenon is more precisely observed. After that the analysis will be expanded to the other neighborhoods that comprise the metropolitan region.

By following these steps we want, in the end, to affirm that the social process continues to be inexhaustible product of conflicts, whether they are part of the civil society or inside the State itself. Understanding the position of the civil society and this State, in relation to the practice on the agenda, becomes indispensable task for us to find a way that is relevant to the practice of urban planning and that, at the same time, dialogue with the historical moment we have been facing.

2 Construction of privatization legitimating

The privatization of public areas shows to be a concrete reality in Rio de Janeiro. Condominiums, security cameras, fences everywhere are present elements in several parts of the city: in slums, in suburbs, in expanding urban areas or in high-income family places. All of them, with no exception, independently of the social class they belong to and the cultural level, have adopted methods of physical safety to protect from that nowadays is seen as a threat to the city.

By this point of view the city is noticed as a chaotic place, of physical and patrimonial disorder and where the other unknown presence might threat people's integrity. The sensation of fear is, therefore, developed crescently and, the same way, cultivated by the media and by the property market. They, through attitudes, many times unintentionally build in the society imagination the idea that the city is really a battlefield and that the omitted State is unable to solve the huge urban problems.



Photo 1: Public Street fenced in a dwelling complex in Rio de Janeiro periphery (São Gonçalo).



Photo 2: Public street in the suburb of rio de janeiro (Vila da Penha)



Photo 3 : Public street with wooden gate, do Rio de Janeiro (Maricá).



Photo 4: Public street with sentry box and private security in a high-income neighborhood in Rio de Janeiro (Leblon).

Because of these factors, progressively, fear is taking control of the city and their inhabitants lives. Fear of assaults, kidnappings, fear of the uncertain future, fear of life and death. This sensation of uncertainty appears from the awareness of conscience about the interruption between the present and the future, or rather, from the Impossibility to predict, since the family environment, from the everyday life to what can be tomorrow. “The disruption of the axle that gathers past-present-future, where great part of social fears that characterizes the world at the present area (...)” (MARTINEZ: MEDINA, ARBELAEZ, 2003). KOWARICK (2003) points out this tendency, calling it a risk notion. For him, the idea of mobility necessarily brings the idea of risk. The anguishing expectation of a danger likely to appear from nowhere be it financial or a physical or a sentimental threat, imposes solutions that limit the spatial circulation.

In the Brazilian case the fear is highly related to urban violence, under debate as a category from the 80s (CARVALHO, 1995). In Rio de Janeiro, for example, the beginning of the design of this new presented scene can be characterized as a beginning due to the conquest of Constitution in 1988, when “new human being” took on the road and the period of democratization was then reinitiated. The advance of technology and electronics allowed popularization of means of communication, especially TV, putting on evidence ways of consumption, products and ideals that the population till then, excluded from these appliances couldn’t notice in the legal city.

Access to the population’s education brought generalized knowledge about rights and duties and also young people started growing up building and realizing new ideas not spread to everybody yet (PERALVA, 2000). Such fact called the attention and the desire to consume this lifestyle as a way to try the approach and recognition through the society.

The great detached impasse set by Carvalho (1995) is that the State, in spite of having recognized institutionally the notion of citizenship to all inhabitants of the city through this process, was unable to make a social and economical life possible to all citizens. Where the

State failed, so, was inserted then, crime and “clientelist” party machine prevailed, the churches and for survival in the city. This way, they work, as parallel nets of subordination present in society. We face distinct orders (SILVA, 2006) making the Brazilian social pact impossible, or rather, the sharing of the rules in our society. These changes transform the day-by-day existence in a series of risky meetings. The scary characteristic of the new strangers makes them become the core of worry with the organization (BATISTA, 2003).

In that connection the failure of the State ends up being considered one of the causes of violence by the several social actors, for its inefficacy in struggle with crime and drug traffic, making it to perpetuate as a great contemporary impasse. The disbelief in State as a institution and the failure of its role to keep the presence of universal rules in society, aid the proliferation of this feeling of fear, being reflected directly on the structure of our public space. That’s exactly when, at this moment, according to Couto (2003) we ascertain the emergency of a new urban scenery. Scenery in which the privatization of public spaces started to be emphasized and the Brazilian’s habits altered significantly due to the scars, products of the urban violence for the last thirty years (BASTOS & SCHMIDT, 2006).

The property market, in its turn, holds these arguments and is using them as main strategy of marketing. The privatization and militarization of the city appear on these agents’ speeches as a further factor to favor the exploitation of the furthest areas from the carioca urban center already consolidated or even incorporate this tendency in the most traditional parts of the city. They are as indispensable “ objects” to keep its constant capitalist dynamism. This point becomes concrete if we analyze the news on O Globo on 17 September 2006 and on October 1 2006. Six new buildings in Barra da Tijuca, seven in Jacarepaguá, two in São Cristóvão, two in Lapa and seven others spread around the carioca South part (MARQUEIRO, 2006; ANSELMO, 2006). Commonly, all of them keep close characteristics concerning safety, exclusivity, leisure and nature. They are, altogether, private condominium and bring as a message in their leaflets and or folders for sale sentences that make us believe that “ living safe is intelligent”.

These attitudes, as we are going to see in more details, explicated the social segregation that till then occurred in the colonial Brazilian society in between lines.

Similarly, these same attitudes restrain the acceptance of plurality as an urban feature and, above all, Brazilian.

Talking about the means of communication, in a general way, we can state that it has worked on the same meaning. With the news being broadcasted every day by TV, newspapers, magazines, radios, Internet, among all, the perception of this phenomenon by the civil society has reached dramatic levels. These agents’ speeches is radical, in such a way that it puts us close to real situation that makes impossible to think about the fact. We have lost the ability to reflect or even criticize through the widespread news, marking an ideology that makes us

unable to think differently from the imposed one. According to Gomes (2004), this is a language problem, because it could not be of use to describe the reality in details. Language is a resource that must be used for us to be out of the real plan. Media, through repetition of facts and of almost perfect image, duplicates the reality, building in the common sense the idea that the city is a really dangerous locus, the place of uncertainty and chaos.

Such attitudes contribute to generate neurosis, which later, are going to create necessities. In this specific case they support considerably the safety equipment industry, opening doors for a new promising market. The service of armor plating in Brazil, for instance, has increased 1065% in seven years according to the Brazilian Association of Armor Plating (ABRABLIN) due to urban violence. We can possibly state the same about any other equipment made for this purpose.

It's essential to notice that these attitudes do not show any act by these agents that hints at claim or a protest about matters such as the right to go and come freely, the right to public property over the private one and the right to the city and to the urban. Debated and transcribed, above all, in our Constitution. Similarly, also they do not show any reaction in relation to the set of ideas of the hegemonic power that is in the core of the present State, whether it is pro or com. What we notice, on the contrary, are attitudes taken only by economical interests that envisage to allure the public and financial credibility through sensationalist news. That is the rationality that hides more questioning debates inside the civil society, and particularly inside the Academy, to the detriment of individual interests of the most powerful agents.

The security equipments, condominiums and the city militarization set by the property market and by the media shouldn't deviate our attention from its main message that evokes fear, suspicion and segregation. The safety architecture (CALDERA, 2006), that produces explicit means to keep the undesired ones, and independently of the fact, put by these actors as the only and consensual rule for the inhabitants as a escape from the city. This solution, that apparently seems to be followed to the letter, when associated to " the valorization of the isolation and reclusion (...), It's developing a city in which the separation comes to the first plan and the quality of the public space and social meetings that are feasible in them has already considerably changed (CALDERA, p. 297, 2006).

Systematically, that's through this everyday game that the property market and the media also participate of the violence social building and the continuous presence of fear and the unexpected threat. This hysterical speech returns to society, interacts in society and also produces in society reactions that gradually, by increasing in an accusatorial growth, can lead us to authoritative demands of order (MISSE, 2006). By these ways they can build and enjoy simplified sceneries and isolated facts in such a way to generalize them and make the

population believe that these events are, effectively, a set of facts full of violence all over the city. Such speeches contribute to the formation of opinions and the construction of perception many times simplified and stereotyped, able to precede the social practices (DE CERTAU, 1984), making a new scenery available for them.

They are, in the end, by the strength of these actors, that the privatization of public areas seem to have legitimated in the country as a solution for protection through danger we find in our cities every day and facing a state seen as weak and neglectful to accomplish their legal duties.

3 The conflicts

Not only consents are present in the argument about the privatization. The sentry boxes on public streets, the condominium and the reclusion, presented only as only solutions to the planning of the modern cities, they have been questioned quite a lot in many cases. Lawsuits against the privatization of the streets on the part of the residents are neither rare nor isolated cases, they are present everywhere and wherever the phenomenon is being incorporated. However, as we pointed out, on the previous item, we also know they are disguised due to the media own power and its daily work of violence exaltation and, also, due to the property market marketing strategies and the safety devices crescent industrialization. These conflicts start, this way, to cause inexpressive repercussions and many times are not looked upon with favor by those who blindly believe in these powerful agents' words.

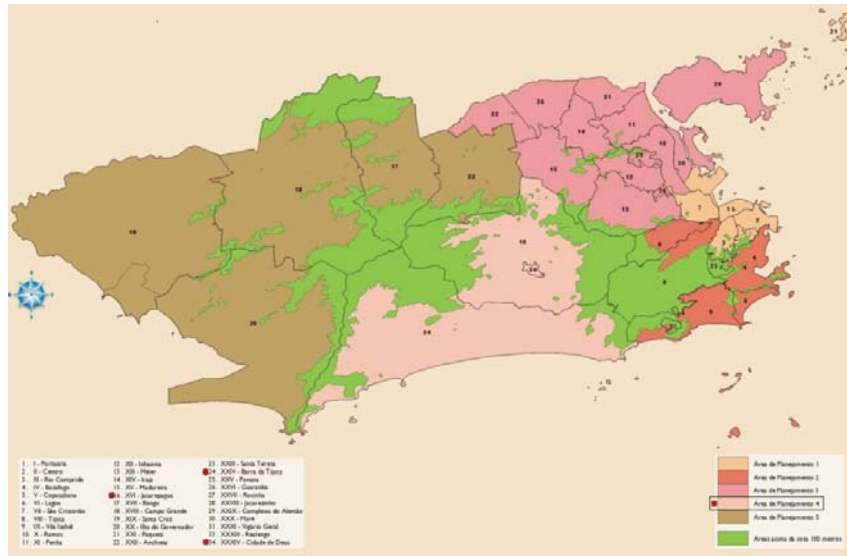
On this item we will stand the conflict out as a way to support our reflections to the academic community involved in the task of thinking the city and, possibly, elucidate some issues that can help decisions to be taken on the part of the civil society and the Brazilian state. We believe that insisting on the matter is fundamental to help the perception in the city not only as a battlefield but also as a local contradiction and diversity.

On this project we are considering conflict the claims made by the civil society who lives in places marked by privatization to the state of law. On one hand, are those who consider the intervention of the private scope in the city as necessary, on the other, those who consider that it is the public power to guarantee basic rights to citizens. This attitude shows that, besides being such conflicting issue in Brazil, as in some citizens' imagination as in the own legislation, the state is seen as a fundamental mediator able to alter the facts extension significantly. The table below points out the conflicts chosen for the study, highlighting the places where they happen and the privatization modeling, that is to say, if they are in private condominium or on streets of strictly public nature.

	Localization	Typology
Case 01	AP4 - Barra da Tijuca	Public street
Case 02	AP4 - Barra da Tijuca	Public street
Case 03	AP4 – Freguesia	Public street
Case 04	AP4 – Jacarepaguá	Gated community
Case 05	AP4 – Jacarepaguá	Public street
Case 06	AP4 – Jacarepaguá	Public street
Case 07	AP4 – Itanhangá	Public street
Case 08	AP4 – Barra da Tijuca	Gated community
Case 09	AP4 - Barra da Tijuca	Public street
Case 10	AP4 – Taquara	Public street
Case 11	AP4 - Barra da Tijuca	Gated community
Case 12	AP4 - Barra da tijuca	Gated community
Case 13	AP4 – Freguesia	Gated community
Case 14	AP4 - Barra da Tijuca	Gated community
Case 15	AP4 – Barra da Tijuca	Public street
Case 16	AP4 - Anil	Public street
Case 17	Região metropolitana – Nova Iguaçu	Gated community
Case 18	AP4 – Barra da Tijuca	Public street
Case 19	AP4 - Jacarepaguá	Public street

Table 1: Places of conflicts in the urban planning area 4.

18 out of the 19 exposed cases, take place in Rio de Janeiro .The 18 ones, on its turn, are all spread around the considered Director of the city plan “planning area 4”. This area is subdivided in three other administrative regions. Barra da Tijuca, (that comprises eight districts), Jacarepaguá (comprising 10 districts) and Cidade de Deus (comprising one neighborhood). By separating the mentioned cases above among these administrative regions, 10 of them are comprised in the administrative area of Barra da Tijuca, that is to say, 55, 5%. We will focus on 10 specific cases at this first part of the project, showing their peculiarities and how debate is formed then.



Map 1: Map of the city of Rio de Janeiro, according to Director Plan, with its divisions “PLANNING AREAS” and its “ADMINISTRATIVE REGIONS”. Outstanding the planning area 4 (AP 4) site where it is focused in its neighborhood the analysis of conflicts.

3.1 Barra da Tijuca administrative region: getting to know the outstanding neighborhood

The administrative region of Barra da Tijuca, from the planning area 4 (AP 4), Rio de Janeiro Director Plan, has as components the neighboring districts of Joá, Itanhangá, Barra da Tijuca, Camorim, Vargem grande, Vargem pequena, Recreio dos Bandeirantes and Grumari, together with the two other administrative regions from AP4 (Jacarepaguá and Cidade de Deus) and Santa Cruz e Campo Grande (AP5), being known as the last frontier of the city urbanization. For long the agricultural usage and extensive properties were kept in it, which had been extinguished as urbanization made pressure, from the 60s.

In 1969 the administrative region of Barra da Tijuca, the detached one, was an occupation plan object accomplished by Lucio Costa. His plan, in spite of having recognized important environmental reserve areas, principally on the present situation we have lived in, brought great reflections that should not be unnoticed. The modeling, based almost entirely on the modern urbanism principles, brought an occupation base don segregation of usage, on dependence about individual transportation, especially due to the mass transportation need still marked today. The urban traditional mesh was vigorously denied, full of spaces destined to the public use, to casual meetings and fairs.

Even so, its long avenues and the non-proximity between the buildings were unable to impede the appearance of slums in the region as well as the racial segregation. The Rio das Pedras slum, nowadays being considered one of the most significant from the Rio de Janeiro

metropolitan region is around, showing that Lucio Costas' pilot plan did not know how to predict sensible alternatives to the great urban expansion part of working labor force that started seeing this zone as another possibility of work.

Since that time, that is to say, from the 70's the property market action in the region as a whole, principally in Barra da Tijuca administrative region, is evident, getting the reputation of "Eldorado" for the construction of new properties, especially residential ones. The number of residents, for instance, increased from 5.779 in 1970 to 174.353 in 2000, what shows a variation of 2917% in 30 years (INSTITUTO PEREIRA PASSOS).

The pioneer phase of the occupation process in Barra da Tijuca - first focus of occupation due to its greatest proximity to the already occupied site - was marked by the appearance of the first gated communities in the city, endowed with safety and infrastructure. Such fact started a tradition in the neighborhood and a new lifestyle was made real in the city. It is not dated from that time the presence of urban privatization in Rio de Janeiro, but it is certainly from that moment that the debate stood in the means of communication, among the studios ones and among the civil society in Brazil. Later on, the great commercial towers appeared, following the shopping centers, which widely reinforced the characteristics we had seen appearing in the place. Values such as leisure, nature, welfare, convenience, modernity and above all, safety, were the main tackled by the market. Through this game we one could see the possibility to sell the new products, comparing them to the central region - we mean the urban mesh until then consolidated - that showed to be more chaotic day by day, disorganized and violent by the media viewpoint.

Nowadays Barra da Tijuca still keeps on being the target of enterprises that envisage these arguments and, at the same time, is responsible for the new enterprises launched in the city. In 2004 it was responsible for 69,3% of the units launched in the city (INSTITUTO PEREIRA PASSOS). It could be enough if it was analyzed in details the ongoing publishing campaigns or even wander around observing the stone masons. Not rarely some news appear showing that commonly present characteristics resemble aspects of urban privatization.

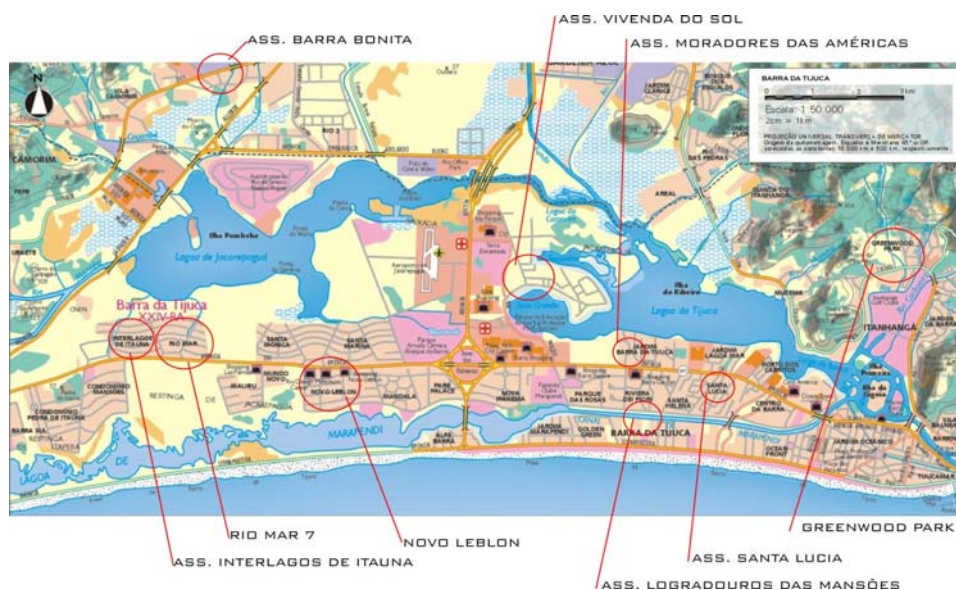
The expressiveness given to BARRA DA TIJUCA by media is also impressive. Recently, the newspaper O Globo dedicated a whole supplement to the district, standing it out as the local of the future (MEZZO, 2006). It was pointed out as the district that most develops in the city, offering greater number of activities dedicated to leisure safety. They are, although, 50 gated communities, five great shopping centers, 25 small size commercial centers and 52 movie theaters. With the purpose of Legitimacy the reasons that give the region motives to smile, the supplement interviewed many people who live and have business in Barra da Tijuca collected their statements. They show that, in spite of being a new district and having a new urban culture within it, it is able to keep the most traditional characteristics of the carioca life, as the wonderful

presence of nature and the sea as main leisure. In force, The most important property area businessmen's statements contributed the same way, by setting the planned characteristics of the region, to the detriment of disorganized development of the other parts of the city and pointing out that through the district expansion the property market has managed to modernize, getting distinction worldwide as a sector of vanguard in Brazil.

For these reasons Barra da Tijuca offers a unique richness for the analysis, because in spite of being a new expanding district, full of characteristics that give it a culture concerned about the private scenery, getting together what on this paper we are trying to consider the main representative elements of urban privatization, that is the place, which, so far, collects the highest level of conflicts incidence facing privatization. It is a curious paradox and therefore, deserves awareness. The table below stands out 10 conflicts found, specifying the most general characteristic of each one, inclusively the position of the Brazilian legal state in relation to lawsuits.

	Specific local	Typology	State's position
1	Américas Dwellers Association	Public Street	For the public area
2	Logradouros das Mansões Dwellers Association	Public Street	For the public area
3	Greenwood Park Association	Public Street	For the private area
4	Interlagos de Itaúna Friends and Dwellers Association	Gated community	For the private area
5	Jerson Pompeu Pinheiro Sreet Dwellers Association – RIO MAR 7	Public Street	For the private area
6	Vivenda do Sol Association	Gated community	For the private area
7	Quintas do Rio Dwellers Association	Gated community	For the private area
8	Novo Leblon	Gated community	For the private area
9	Barra Bonita Dwellers Association	Public Street	For the private area
10	Santa Lúcia Association	Public Street	For the private area

Table 02- conflicts that will be analyzed in Barra da Tijuca's Administrative Region.



Map 02- map of Barra da Tijuca Administrative Region with localization of exposed cases on table 02.

The outstanding conflicts are similar for being specifically concerned about residential sites. The parts of civil society (citizens and dwellers association) involved in conflicts use the same arguments, independently of their properties localization, not being the time, for this only reason, a division to expose them at this moment. This division will only be made when we handle the position of the law state. For such analysis, we will analyze two big groups: the first cases are the ones where the state is for the private scope, the second one is for the public scope. Through this way, it is easier to debate the particularities of the causes to, later on, point out due conclusions.

3.2 Citizens x Dwellers Association

The actors of these actions, are, altogether individuals who, for legal reasons or not, (most times), see themselves in on legal dwellers associations and consequently, are obliged to afford the expenses and duties to which they consider unfounded. That's, therefore against these associations that the civil society individuals sue. They claim not to consider parts of the dwellers association in their neighborhood and they don't even agree with the taxes they are charged, that's because they don't consider to be benefited from the services rendered. Many times, they also use as an argument the fact that they already pay the public service taxes, the compulsory taxes for the basic

services of cleaning and security and therefore, paying a second tax would mean double payment, what is considered an illegal situation.

Supported on these arguments they ask the taxes of associated not to be considered mandatory, and that the supposed debts assumed by another involved part are not considered by its illegality and inconsequence.

The dwellers association, as the another side of the conflict, are localized as in gated community as in public streets that get wooden gates and restrict access in most cases. All, with no exception, to the ones here mentioned. They are voluntary and non-profitable organizations, that compromise to improve the local lives by providing cleaning services, safety and leisure for those who make part of that. In some cases the dwellers association itself sues a determined group of citizens who refuse to pay the established taxes about the services once rendered. However, the position each part of the civil society takes on the lawsuit (petitioner or appellate) will not bring changes to the analysis, because the arguments of both parts showed to be the same in any of them.

Nowadays the dwellers association have specific laws, to which indicate the right to associate exists for those who consider necessary or convenient, respecting the ones who do not desire to make part of it. The law is still clear about the difference between a dwellers association and the payment of condominium taxes. The latter ones are mandatory and contents of property acquisition legal documents. The obligation of the payment of condominial shares is destined to legally built condominiums. Dweller associations, the ones that do not have such character, can not consider as compulsory the charge (FEDERAL CONSTITUTION- ARTICLE 51, XX). We can see here that the taxes charged by the dwellers association, according to the Brazilian Great law, are optional.

3.3 Group 1: State For Privatization

According to table 02 we find on this group cases localized as in gated communities as in streets of public characteristics. On them cases 03, 04, 05, 06, 07, 08,09 and 10, independently of the typology assumed (whether it is public street or gated community) the judge opposition is considered from the abridgement of law that follows:

In respect to the principle that forbids the enrichment for no reason dwellers associations can demand from the non members, equalitary to the other members to share the costs of services rendered by the them and of the local dwellers common interest (note number 79, of the predominant jurisprudence abridgement).

This presupposition points out some peculiar characteristics, among them that admitting different position would be to go against the provision of article 884 from the civil code, because the property localized in dwellers association areas ends up being valued due to improvements made by the association itself. Consequently, it states that the obligation to contribute with the association must be for all who have services rendered, independently whether they are getting advantages in the whole, established that anyway the reflections of these services are extended to everybody, with no exception. They emphasize that allowing someone not to pay for the rendered services is to make the advantages development possible, principally economical, to determined individuals or groups.

In spite of always reminding the existence of the provision 5, XX from the Brazilian Federal Constitution, which considers that's no one can be obliged to associate or even to remain associated" transcribed as highlights the summary number 79 of article 884 from the Brazilian code. It's considered that the situation of these atypical condominiums is quite different, once the association promotes activities and benefits that effectively assist the non members who live there. This position delegates that the economical interests have been seen as priority when compared to articles that hint attitudes of mostly collective and democratic character.

As a way to minimize or even not to be considered legal infringe, the state, in some lawsuits, affirmed that all residents of the neighborhood of a determined association join it. One does not intend to have the associative compulsority, that's here it is they do not intend to oblige the renitent dweller to be a member of the association or to make part of the deliberation and execution means, or even the promoted activities. They only envisage to declare the obligation of payment concerning the proportioned improvement to their properties and consequently to the respective inhabitants, constituting not only the retribution to the obtained advantages.

Another relevant topic is about the perception of the dwellers association involved in conflicting lawsuits. Even being considered in the presence of the Brazilian Great chart a non-profitable institution and free association it is not pointed out, following these principles by the legal state that analyzes the cases inserted in this item. They focus that a condominium, even atypical (streets having sentry boxes or allotment) characterizes a communion and benefiting from the improvements made and supported by the other dwellers, does not participate contributively of it.

They affirm that, in spite of not being a legally established issue, it must be understood as an ethical solidarity issue, being placed beside the motiveless enrichment.

The state itself, also in the lawsuits, states as necessary the private services utilization, as cleaning and safety, pointing them out as improvements and benefits that aim to supply deficiencies of the public power.

We understand that this point of view states that security and cleaning services, being considered improvements are able to aggregate monetary value to the property. At the same time, the speech of the state power shows that it assumes its inefficacy as promoter of basic services, what shows that it also should be indicated as responsible agent for the legitimation of the privatization of the sectors and the public sector is indispensable for life in cities nowadays. The state, inevitably, puts itself beside the media and the property market, establishing as strictly true the news about urban violence increased each minute. Its speech makes clear that as violence as the urban chaos are tasks that must be fought against through devices and electronic services made available by the market and with privatization.

We can't omit some of the reflections already debated in other studies, as for example Caldera (2000). The difference in this specific case is in charge of the state itself and not only of visual attitudes and physically noticed in our cities. By giving priority and more credibility to services which distinguishes the private scope, especially focusing the private safety, it is set a challenge to the power monopoly that was so far the state genuine use, pointed out by Weber (1999) as fundamental characteristic of the modern state nation. We can say the same about the Brazilian tradition. Always, since the discovery, we have had our culture and legislation marked by the legitimate control of duties and public rights (SILVA 2003). Seeing the state taking different positions to the way we follow, raises surprising questions. These statements raise a great controversy, involving the inquiry whether, definitely, we have reached the end of modern era and, now, going through the first decades of making the new era real.

3.4 Group 2: State For the public scope

The cases 01 and 02 from table 02 are inserted in this group; in both of them the situation occurs in public streets in Barra da Tijuca neighborhood.

The position of the state in this case is quite clear and follows the traditional lines of our legislation. We want to affirm, by using these words that the state understands that one can not confuse a real condominium with a dwellers association formation. Being non-profitable and free choice for the participation, according to article 53 from the Civil Code, a dweller association can not mean privatization of streets and services made available in its work-oblying everybody to contribute to these taxes would be considered illegal for infringing the provision 5, xx, from the Brazilian Federal Constitution that considers that “ no one can be obliged to associate or to remain associated”. It means to supply for this association, to follow the same legal parameters of a real condominium, without being, this way, legally constituted.

Another incised from article 5 mentioned so as to restate the position taken. Incise II, from the Federal Constitution states that” nobody will be obliged to do or not to do something other than

by virtue of law” and number XVII establishes to be entire the freedom of association for legal purposes.

The set of public parks in free access to all citizens, independently of the situation it is in. The 1916 Civil Code, in force when the association constitution, on article 66, considers as public property and the people common utilization the streets and the squares: having the present civil code, from 2002, on article 99 - Incised I, The same content. Several activities and protests can be made on streets without having to inquiry anyone for this. By being public the street belongs to everybody, distinguishing from a condominium, which is a private property.

Legally, a gated community has all it an allotment divided into proportional fractions to all owners who make part of it. From the moment this allotment is a private property it must and has the necessity to be kept by the condominium, without disrespecting any public and human right. Differently, the street, even if a dwellers association keeps it does not have fractioning indications, what by itself would already let clear a point against the payments of the taxes once charged.

Going deeper under the debate, the State here involved points out that in these cases, the justification to be contributing to the local improvement and that not paying taxes would mean motiveless enrichment, or rather, the individual would be benefiting from the effort of the association to which it renders services and getting advantages from the improvement made, it shows to be quite frail in the way that essential services, such as cleaning and safety, are rendered by the public power, from which the payer already is charged. Besides this, the public power has the responsibility to guarantee the necessary services to life in community.

We would add ere that, in spite of neither of the cases having been mentioned, the City's Statute (2001), regulation to articles 182 and 183 from the Brazilian Federal Constitution should be extremely important for the decisions reach concerning the issue we are dealing with here. The Chapter I, article 1, in its aspect that aims to regulate the use of urban property in behalf of the collective welfare would be expressive to restate the position for the public scope. Grazia de Grazia (2003) still pointed out other two basic principles of the urban movement of reform, a movement that triggered the struggle for conquering the Statute: the city democratic management and the function and right to the city and the citizenship. Both directly related to the cases of privatization of the public streets. The streets controlled by dwellers association are in the majority closed by wooden gates, watched out by cameras and private security guards. These physical and symbolic barriers impede the local to be effectively used as a public welfare, causing embarrassments to those who walk around there and impeding their rights to

go back and forth. In large scale they also contribute to the segregation, and consequently, impede the democracy ideal effectiveness described by the federal law.

The same Statute makes evident in some moments, which it is indispensable to strengthen the public power for it to act on the regulation and occupation of this urban land in a way to consider the interests of the community. As Cardoso (1997) mentioned this position affirms to the relevance of the public power and its attributions, principally to the urban planning and that the efficiency extension needs to be chased so that the Statute most objectives are followed. On the conflicts here analyzed the judicial law is put beside the public scope, indicating that, to it, one must still give credibility and trust.

4 CONCLUSION

The diversity is the mark of the city, characteristics that impresses unique rhythm and shape, principally in a country like Brazil, constituted by miscegenation of diverse culture and races. The Brazilian image is composed of innumerable kinds of traces, lines, colors, graphic signs, songs, accents, letters, numbers, clothes, scents, sentences, mass, volume, movements, etc. Living on it the interpersonal capitalist relations with nepotism, the legal rights with their cloisters, religion with science, family with the growing individualism, the individual isolation with the international communication and, in terms of physical space, hyper built centers, skyscrapers with slums, palaces and slums tenements, avenues with small squares. There, the traditional architecture lives together with the ultra modern one side by side.

Because of this paradox and this diversity the conflict is (and must be), present in the cities. As Mongin (2003) affirms, the urban reality would be impossible without the existence of these conflicts. They are responsible for the urban society richness and allow the evolution of the societal system. From the conflict, the questioning is originated, the claims and possible ways to be followed by decades, or even, centuries.

For these reasons, studying the conflicts facing the privatization process shows to be important. As a matter still under debate and that was not totally incorporated, it has possibilities to contribute to the formation of the society. It might indicate ways and values, as well as to show which of them are being incorporated in Brazil.

The evidence that the privatization was not legitimate, as the discourse of media and the property market shows, is exactly the existing disagreement among the members actors of the civil society as among the actors who represent the judicial power of the Brazilian state. Our task becomes, as planners, to notice the matter in the whole and to articulate it with the actions of the civil society.

In spite of existing these disagreements we can consider to have already got some hints that a position is being taken. The conflict, also present in the conception of the state, then shows its policies, raising some issues. Taking into account that in most cases the gain of the point was given to the private scope (eight out of ten analyzed), we could suppose that our society tends to take an attitude that focuses economical values in detriment to causes that express values supported on citizenship and democracy the way modernity revealed. What does the city mean to this state?

What takes this state to dislegitimate their own laws and ideals in detriment to a cause that, apparently, shows itself by the theoretical and legal means clear?

Anyway, still being under debate and involving constant conflicts, we, professionals, who think about the city, have the definitive task for these positions to be or not made effective and for them to follow one or another direction. The conflict, therefore, must be exposed, put under debate in order to be seen the way it occurs and why it occurs. After that, all citizens must interpret it.

That is still necessary to emphasize another question, which is bound to the Statute of the city in Brazil. Its conquest was considered a victory for the society and the urban life. It allowed the conjecture of a new conception of seeing and making the city of planning other proposals that could permit an environment to face the present one, marked by privatization, by the enormous inequality and by segregation. Much was discussed until it was reached and legally instituted; therefore, we have seen its frailty so far.

Referring to the privatization of the public scope, it would be a great reference and baseline, but it is not even mentioned by those who judge to be necessary the action of the public power in the city.

Foreseeing these conflicts here mentioned, would be beyond making evident that the legitimating of the privatization is not concluded yet. We are, equally, raising the issue that the statute of the city has hardly been widespread and hardly used in its most general principles. It needs to be incorporated, definitely, in all aspects related to the urban public life. It also needs to be incorporated by the judicial power in dealing with urban matters, it needs to be incorporated in other debates by the academic community so that, consequently, it is incorporated by the common sense in its most trivial actions.

We understand that it is extremely difficult to break all these cultural barriers – nepotism, prejudice, corruption, “clientelism”, private sector privilege, etc - the ones we carry throughout the centuries of our lives. A long way that demands the development maybe, a new culture. A

considered difficult task, but the one that can, little by little be reached together with the civil society aid through the processes that accumulate new logics to govern the Brazilian cities.

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