

ARTICLES

Order, Progress and *Carioca* Environments: A Preface to Study Space V

Colin Crawford*

Study Space is an ongoing series of field seminars designed to allow faculty and senior graduate students from multiple disciplines, with the center of gravity in law, to “evaluate human habitats and habits in the 21st century.” The fifth iteration of this series, which I started while the co-director of the Center for the Comparative Study of Metropolitan Growth at Georgia State University College of Law, in Atlanta, took place from July 11-18, 2010. Participants, who included professors and senior graduate students in anthropology, law, philosophy, political science and sociology, came from Argentina, Brazil, Colombia, Guatemala and the United States.

The theme of Study Space V was “Inclusive and Sustainable Rio: Cultural Diversity, Property and the Environment.” For this particular focus, I owe a special debt to Dr. Maria Clara Marquês Dias, a meta-ethicist and the Director of the Center for Social Inclusion at the Federal University of Rio de Janeiro’s Institute for Philosophy and Social Sciences, whose co-authored essay appears in this volume. Her guidance and organization made Study Space a particularly memorable experience for all of the seminar’s participants, as did the help and support of the Center for Social Inclusion, which she founded and directs. The thematic conception Clara and I developed together was a week that sought to give participants, some of whom had never before visited Brazil, a birds-eye view of some of Rio de Janeiro’s most dramatic urban transformations and their social, environmental and economic consequences.

It was a propitious moment to be in Rio de Janeiro intending to consider such themes. Brazil had not long before been designated as the site of the 2014 World Cup (with important matches to be played in Rio) and Rio itself as the site of the 2016 Olympics.

* Robert C. Cudd Professor of Environmental Law and Executive Director, Payson Center for International Development, Tulane University Law School.

Major land use changes were beginning to occur or about to occur as a result of these impending mega-events, such as the government's program of police-led "pacification" of many of the center city shantytowns – the *favelas* – to rid them of control by drug and gun commerce and other illegal activities. It was our suggestion that many of the initiatives related to these events, then beginning or even well under way, at bottom reflected struggles over land use law and policy as well as the social dimensions of those laws and policies.

We wanted to help participants understand how these transformations would affect not only the way land was used and developed – questions, for example, of urban infrastructure, public mobility and public safety. We also wanted to help them appreciate the historical and social context of such changes since, in Rio de Janeiro as elsewhere the public and private choices made about land use typically reflect larger social, cultural, economic and political conflicts. In addition, it was important to us to point to the consequences of urban transformations, that is, to examine how manipulation of the built environment was and would continue to affect the physical environment. This is an important relationship to study anywhere, but given Rio's location, unique natural beauty and natural resources, we felt it was especially important to stress the connection between built and physical environment. Rio sits in the midst of a major tropical rain forest system, the Atlantic Rainforest, which has been systematically degraded by human activity for nearly five centuries¹, and its distinctive landscape is dominated by major water resources. To that end, we took participants all over the sprawling city. We led them with biologists deep into the Tijuca National Forest to see illegal land occupations there by rich and poor alike, and traversed the metropolitan region from the inner reaches of Guanabara Bay, where traditional artisanal fishing practices are being swept away by activities related to the Brazilian petroleum industry. We spoke with members of Brazil's talented and aggressive federal Public Ministry, who battle illegal, government-sanctioned undertakings in the name of economic development, even when in violation of its own laws, about their efforts to protect fragile environmental resources. We then concluded the week with a visit to Sepetiba Bay far in the southwest, a major water resource rarely visited by foreigners, and one seriously degraded by indus-

1. See generally WARREN DEAN, WITH BROADAX AND FIREBRAND – DESTRUCTION OF THE BRAZILIAN ATLANTIC FOREST (Univ. Cal. Press 1997).

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trial policies first imposed by military dictators and continued by democratically elected governments. Over the course of the week we spoke with academics and students, activists and government officials. Participants left exhausted but, Maria Clara and I hoped, at least had a sense of the *carioca*² context in which land use matters and their ancillary effects were being negotiated at the end of the first decade of the 21st century. As a result of our many lectures and visits, we thus strove to help participants understand where money is spent in Rio de Janeiro today for land development, to ask who gets displaced as a result, who will have access to that land after it is repurposed, and on what terms.

The essays in this volume are a partial response to some of the questions we raised. As will be seen, themes from the week emerge in many of the essays published in this volume, which focus largely on situations of social inequality, of spatial and socio-economic exclusion and efforts to combat them, and analyze some of the policies that permitted and continue to permit inequality to persist. In addition, many of the essays examine these themes through a comparative lens. Finally, it is important to observe that most of the essays are animated by the changes in Rio de Janeiro, many of which are occurring in anticipation of the global spotlight that will be shined upon the city and Brazil during the 2014 World Cup and the 2016 Summer Olympic Games.

Maria Clara Dias and Luis Eslava, for example, look at the way that programs of urban reform may perpetuate stereotypes about the poor and “undeveloped” people who live in “undeveloped” and poor areas, to the continuing disadvantage and prejudice towards Rio’s poor and the places they live. To this end, they examine the increased emphasis on public security not as necessarily a positive social intervention, but as the response to an increasingly fractured social fabric. They then go on to analyze current, ongoing social reform efforts, such as the Police Pacification Unit policy that aims to impose “order and progress³” on the city’s infamous *favelas*. Their conclusion compels us to rethink the logic and purpose of such programs, suggesting that they need be reformulated to focus on the human needs of people as individuals with talents and potential, and on listening carefully and deliberately to the wide diversity of human interests, activities and desires, rather than viewing the socially less powerful as sub-

2. A resident of the city of Rio de Janeiro is known colloquially as a *carioca*.

3. This is of course the legend that appears on the Brazilian national flag (*ordem e progresso*).

jects of displacement and sources of illegal activity or. Constance Anthony is similarly concerned with the social consequences of spatial management by officials. She thus explores similarities in forced removal and urban spatial marginalization by offering an extended look at what at first glance seems like an unusual comparison: Los Angeles and Rio de Janeiro. Anthony's analysis powerfully demonstrates that the "developed/developing" country designations may prevent us from admitting that our "developed" countries may have more in common than we would like to think with the "developing" countries when it comes to structure a society that exploits the abilities of but does not give equal rights and opportunities to its poorest citizens.

Antonio Barreto Rozo also undertakes to explore how notions of "order and progress" play out in socio-legal contexts. Barreto Rozo's essay takes a historical look at some of the legal and philosophical tools for maintaining elite political, social and economic power. Barreto Rozo explores these themes by analyzing positivist ideas in two very different South American locations and socio-legal traditions at the end of the 19th and beginning of the 20th century, namely Brazil and Colombia. But despite their differences, as Barreto Rozo shows, the justifications for privileging some social interests over others using positivist notions of "progress" and "civilization" were surprisingly similar. Thus, he documents how ideas about how to "achieve civilization" were used in the culturally and socially more heterogeneous Brazilian tradition and the more homogenous Colombian tradition to similar socio-legal effect.

Alan White also finds similarities in different socio-legal orders, despite very different legal frames for the same problem. White examines the question of how we value property that is to be privatized or for which services are to be upgraded so as to avoid gentrification dynamics that force out lower-income residents. In White's examination of the challenge of establishing a social price for property instead of a market price, he documents how the social price idea, explicit in the Brazilian constitutional order and Brazilian law, is also implicit in some U.S. jurisprudence. White's analysis concludes, somewhat ruefully, that any successful effort to achieve social pricing may, whether the rule is explicit or not, be equally challenging and hard won.

By contrast, Marc Poirier's comparative look at what it means to acquire home ownership – especially among the poor and under-resourced parts of the population – in Brazil and in the

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United States, finds more differences than similarities in two property law traditions. Poirier's essay achieves exactly what any comparativist hopes comparative study will yield: that is, he uses what he learned in the study of a foreign legal tradition to inform and shape his thinking about his own tradition. Moreover, Poirier's essay does exactly what this organizer of Study Space intended in designing the seminar's concept: his daily experience in Rio de Janeiro informed his scholarly work. Poirier thus describes his astonishment at the ways he heard our speakers and those we visited using the Portuguese word *moradia*, which is typically translated as "housing." Poirier describes how, in conversations with *favela* residents and Brazilian academics about the "regularization" (*regularização*) of the spaces in which they lived, that is the process of giving them some legal claim to the space, they seemed to be describing more than just the triumph of securing individual home ownership. In his understanding, in the Brazilian legal tradition *moradia* and similar concepts also revealed efforts to establish a firmer connection to their community and the larger society. Poirier compares this unfavorably to the U.S. tradition, in which, as he says, "themes of individual benefit, concern, and economic or personal satisfaction dominate the discussion of homeownership. Themes of community and communal interest such as those expressed in *moradia*, the social function of property, and the right to the city are largely absent or are masked." This leads him to use the Brazilian example to make a powerful and sustained plea for a greater social, cultural and political understanding of how providing homes to the homeless in the U.S. should be analyzed and undertaken.

Becky Jacob's essay takes a decidedly personal tone, and focuses on one particularly bad morning in her life while we were all in Rio, to extract some interesting observations about the inconsistency of enforcement and simultaneously the importance of appearances in the Brazilian legal system. Jacobs's essay is deceptive; its jocular tone belies some very pointed observations about rule compliance and how legal order is established or overlooked in Brazil.

In conclusion, some thanks are in order. At the outset of this preface, I mentioned the intellectual guidance provided by Maria Clara Dias. But Dr. Dias also contributed importantly in practical ways on the ground before and during Study Space V to make the week an especially fruitful one intellectually and also a personally enjoyable one for all participants. Two talented and hard-working

graduate students, Fábio Oliveira and Julianna Guimarães, aided her in this; I am extremely grateful to both of them for their good humor, intelligent contributions and their hard work. Dr. Rômulo Sampaio graciously contributed some of his time to the week's organization and I am grateful to him and to FGV Direito-Rio – the law school in Rio de Janeiro of the Fundação Getulio Vargas – for the use of classroom space and their comfortable facilities. Dr. Sampaio's assistant, Mariana Monjardim, was tireless in her work for the seminar as well, and deserves much thanks for helping make the week a success. Georgia State University College of Law Dean Steven Kaminshine deserves thanks for supporting the Study Space project, as does Georgia State's Center for the Comparative Study of Metropolitan Growth. Finally, the essays in this volume appear because of the early interest and subsequent work of Inter-American Law Review Editor-in-Chief Eric Boos (2012) and of his successor, Jamie Lynn Vanaria (2013), as well as their entire editorial team. I am deeply grateful for their enthusiasm about these essays and the IALR's continuing interest in the Study Space project.