

THE RIGHT TO THE CITY

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I write and teach about cities. At one level, cities exist separately from their inhabitants. They inspire travelers, compete for capital and labor, and manage an ever-shifting relationship with neighboring cities, their state, and the federal government. But I want to focus on another level of city character and identity here. Instead of focusing on cities as autonomous entities, we might focus on cities as aggregations of individuals who shape, and are shaped by, their urban environment. These individuals struggle with their own social and racial identities.

The identity and character of cities in America have been profoundly influenced by race. In the past, laws mandating the segregation of African American and white urban residents through racially discriminatory housing and lending policies created racial geographic boundaries within cities and between cities and suburbs. The impact of this racial segregation in cities can be seen in the creation and persistence of an urban African American underclass in some cities as well as many urban neighborhoods marked by racial homogeneity and economic underinvestment.

The racial climate in the United States in more recent years has been decidedly different. Overt racial discrimination in urban housing opportunities is, at the surface at least, a historical phenomenon. Laws and social mores have evolved past the acceptance and endorsement of racial discrimination in housing and economic opportunities. Neighborhoods have more racial diversity and African Americans have access to suburban housing opportunities. The housing choices of an African American homebuyer are arguably limited only by her economic resources. In many respects, urban American life has truly moved toward a colorblind society. One prominent manifestation of this colorblind ideal is the excitement surrounding the success of presidential candidate Barack Obama. "Win or lose, Barack Obama has changed America. It's one thing to believe in a picture we'd like to be true – a society moving toward a colorblind ideal – and something entirely different to live each day with a personification of that ideal."¹ This sentiment captures a local aspiration of a colorblind society reflected in neighborhoods containing a few African American families. Similarly, this quote captures a national

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1. Marc Fisher, *Change Is in the Air, at the Polls*, WASH. POST, Feb. 14, 2008, at B01.

aspiration of a colorblind society even though Senator Obama is but one racially diverse political figure.

This story of racial progress in America, unfortunately, is too broad and too simple. The cracks in the colorblind racial ideal are gaping at the national level as we think about the steps the United States must take to harmonize current relations among racial groups as well as redress past racial harms. The cracks are also evident at the neighborhood and city level to attentive observers. Neighborhoods are nominally integrated, but too many African American residents in a community often create a reason for economic and social concern among other white residents. Many neighborhoods remain racial enclaves and too often these same neighborhoods are characterized by economic and social underinvestment.

At the same time, Americans in general have become ever more hostile towards racially based claims for urban improvement. The challenge is how to craft political, social, and economic claims of racial inequality in a country where such claims are increasingly challenged as anachronistic and isolated to the prejudices of a marginal group of uneducated bigots. In short, how can we improve conditions in America's cities, which have been so profoundly shaped by race, without reference to race?

The Brazilian racial and urban experience offers lessons for the United States. Brazilian cities face a similar challenge as those in the United States; that is, how to frame political, social, and economic claims of racial inequality in an ostensibly nonracial country. Brazil is commonly viewed as one of the world's few true racial democracies where race is considered an inappropriate focus for concern because it is irrelevant to opportunity. A "Brazilian identity" is paramount, individual racial identities are minimized, and legal segregation based on race is not part of the historical experience. And while Brazilians are acutely aware of any slight variation in skin color, a dark skinned person can become socially "white" through economic or social success. In short, class, rather than race, shapes opportunity in Brazilian life.

Cracks exist, however, in the Brazilian racial mythology. There is a correlation between darker skin color and lower socioeconomic status. There is also a correlation between darker skin color and concentrated housing opportunities in economically underserved areas, particularly favela areas — urban communities of squatters on private or public lands. Favela residents have no legal title to their land, but the communities are so widespread and long-standing that their continued presence is more of a permanent urban reality than a temporary trespass.

Recent constitutional and national statutory provisions offer new hope for Brazilian cities and present lessons for the United States. Brazil has adopted an urban movement called the right to the city, and has incorporated key components of this movement within its Constitution, a national City Statute, and many local urban laws and policies. The 1988 Brazilian Constitution incorporates three key features within its chapter on urban policy: the social function of property, the social function of the city, and the opportunity for urban squatters to obtain title to land they

occupy.² Far from a socialistic pledge of common ownership, the social function of the city and the social function of property explicitly create obligations to the greater community as a consequence of property ownership within the more prevalent tradition in Brazil of individualized private property ownership and its attendant freedom to exclude, develop, and alienate. It forces individuals and cities to wrestle squarely with the longstanding dual nature of what it means to own property, especially in densely populated urban areas. It chips away at axiomatic assertions of exclusion, development rights, and alienation rights through private ownership of property, and forces individuals, policy makers, and courts to grapple expressly with the relevant social and economic tradeoffs that accompany property ownership. The City Statute establishes specific guidelines for implementing the social function of the city and the social function of property provisions of the Constitution, as well as includes provisions expanding on squatter's property rights. At the local level, expressions of the right to the city range from broad public participation in municipal budgeting in Porto Alegre to favela improvement programs in Belo Horizonte.

These Constitutional and statutory provisions in Brazil are helpful to urban racial claims in the United States in two main ways. First, the right to the city is an urban development vision that is arguably race neutral but will have a dramatic impact on improving the lives of darker skinned people. Second, the right to the city makes explicit the tension between private rights of property ownership and the obligations of property owners to the community. This express social function of property and the social function of the city forces courts and policy makers to craft solutions to resolve, rather than mask or obfuscate, this tension. There is some tradition of social obligation attendant to property ownership in the United States, such as nuisance law. But these social obligations are more often implied than express, and more often cause property owners to claim that the government is placing an unfair and exceptional burden on their individual ownership rights than enforce an accepted social norm. By struggling explicitly with existing distributions of property resources and the ownership and quality of squatter communities, and crafting this struggle in terms of access for all to a livable city, Brazil's adoption of the right to the city movement suggests lessons for the future of cities in America and their inhabitants.

2. C.F. art. 182-83.

