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UNIVERSITY OF CALIFORNIA

Los Angeles

Legalized Displacement:

Analyzing Eviction Apparatuses in Brazil

A dissertation submitted in partial satisfaction of the

requirements for the degree Doctor of Philosophy

in Urban Planning

by

Fernanda Jahn Verri

2022

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2022

ABSTRACT OF THE DISSERTATION

Legalized Displacement:
Analyzing Eviction Apparatuses in Brazil

by

Fernanda Jahn Verri

Doctor of Philosophy in Urban Planning
University of California, Los Angeles, 2022
Professor Anastasia Loukaitou-Sideris, Chair

Brazil is internationally known for having a very progressive legislation and inclusive policies when it comes to land and property rights. Despite all the legal mechanisms created by recent legislation to reverse exclusionary patterns of land use, nonetheless, the Brazilian judiciary is ordering the eviction of thousands of marginalized families. In this dissertation I argue that these removals and violations of citizens' constitutional right to housing must be understood as part of what I call *legalized displacement*; namely, land dispossession practices that are not only a direct result of real estate speculation, including the financialization of the housing sector, but of a much broader discriminating process, in which the courts are playing a major role. Drawing from Porto Alegre, a city with a participatory planning tradition, this dissertation explores post-millennial eviction apparatuses in Brazil, including the logics, actors, and laws behind displacement both within the

formal and informal housing markets. My goal here is to investigate how these removal practices are being validated – especially through urban-legal paradigms and judicial discourses – and contested – particularly in the light of the attempt of democratizing the judicial process with the creation of conciliation courts on collective land conflicts. The questions that guided this dissertation are: 1) how are evictions pursued by the Brazilian judiciary today and how are they contested; 2) how are legal frameworks of land use and property rights being used to justify displacement; and 3) what is the role of conciliation courts, formal spaces of land disputes in Porto Alegre, in challenging collective dispossession. To answer my questions, I employ archival research, spatial and discourse analysis, semi-structured interviews, and participant observation. I find that the courts barely cite paradigmatic urban and land legislations in their rulings, relying instead on specific articles from civil procedure codes, bureaucratically regulating possessory actions. I also conclude that judges are mobilizing political ideologies that condemn alternative tenure models. Finally, my last chapter shows that the new model of justice through conciliation courts does not result in a real redistribution of power and resources, as marginalized groups are still ignored and eventually dehumanized in these mediation hearings.

The dissertation of Fernanda Jahn Verri is approved.

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2022

Para Vicente,
a alegria da minha vida.

Table of Contents

ABSTRACT OF THE DISSERTATION	III
TABLE OF CONTENTS	VII
TABLE OF FIGURES	X
TABLE OF TABLES	XII
TABLE OF ACRONYMS	XIII
ACKNOWLEDGMENTS	XV
CURRICULUM VITAE	XVIII
INTRODUCTION	1
<i>DISSERTATION TOPIC</i>	<i>1</i>
<i>RELEVANCE</i>	<i>2</i>
<i>RESEARCH OBJECTIVES</i>	<i>5</i>
RESEARCH QUESTIONS AND HYPOTHESES	5
<i>RESEARCH BACKGROUND</i>	<i>7</i>
HOUSING & LAND USE AND LEGISLATION IN BRAZIL.....	8
THE CASE OF PORTO ALEGRE	12
<i>DISSERTATION LAYOUT</i>	<i>19</i>
THEORETICAL BACKGROUND	21
<i>THEORETICAL FRAMING</i>	<i>21</i>
<i>KEY LITERATURES: FINANCIALIZATION, DISPLACEMENT, AND PROPERTY MANDATES</i>	<i>22</i>
FINANCIALIZATION OF THE HOUSING SECTOR.....	24
RACIALIZED DISPLACEMENT	27
REGIMES OF PROPERTY	29
RESEARCH DESIGN	32
<i>METHODOLOGY</i>	<i>32</i>
<i>CONCEPTUAL “SITE” OF RESEARCH: JUDICIAL DISPLACEMENT AS THE CONCEPTUAL</i>	<i>34</i>
<i>THE CONCEPTUAL AND METHODOLOGIC ARRANGEMENT</i>	<i>34</i>
<i>METHODS AND DATA</i>	<i>35</i>
<i>GENERALIZATION</i>	<i>42</i>
<i>POSITIONALITY AND RESEARCH ETHICS</i>	<i>43</i>

JUDICIAL DISPOSSESSION IN BRAZIL:	47
--	-----------

AN OVERVIEW OF COURT-ORDERED EVICTIONS IN PORTO ALEGRE	47
---	-----------

<i>INTRODUCTION: THE CASE FOR COURT-ORDERED EVICTIONS</i>	<i>47</i>
<i>OBJECTIVES OF THE EMPIRICAL RESEARCH</i>	<i>49</i>
<i>METHODOLOGY</i>	<i>51</i>
<i>QUANTITATIVE ANALYSIS</i>	<i>51</i>
<i>SPATIAL ANALYSIS</i>	<i>55</i>
<i>THE ORGANIZATIONAL STRUCTURE OF BRAZIL'S LEGAL SYSTEM</i>	<i>56</i>
<i>STRUCTURE OF BRAZILIAN JUDICIARY</i>	<i>56</i>
<i>STUDYING DISPLACEMENT THROUGH TJRS EVICTION COURT RECORDS</i>	<i>62</i>
<i>PROPERTY AND POSSESSION UNDER BRAZILIAN LAW</i>	<i>64</i>
<i>RESULTS: AN OVERVIEW OF JUDICIAL DISPOSSESSION IN BRAZIL</i>	<i>69</i>
<i>PORTO ALEGRE AND ITS SPATIAL PATTERNS OF EVICTION</i>	<i>69</i>
<i>QUANTITATIVE ANALYSIS OF TJRS EVICTION LAWSUITS: THE MAGNITUDE OF COURT-ORDERED DISPLACEMENT IN PORTO ALEGRE</i>	<i>86</i>
<i>CONCLUSION: THE ROLE OF THE JUDICIARY IN PRODUCING - AND CONTESTING - DISPLACEMENT</i>	<i>100</i>

EVICTION REGIMES AND PROPERTY RIGHTS:	103
--	------------

SQUATTER OCCUPATIONS AND THE PARADIGM OF PRIVATE PROPERTY	103
--	------------

<i>INTRODUCTION: EVICTION AND PROPERTY RIGHTS MANDATES</i>	<i>103</i>
<i>OBJECTIVES OF EMPIRICAL RESEARCH</i>	<i>105</i>
<i>METHODOLOGY</i>	<i>108</i>
<i>DISCOURSE ANALYSIS OF EVICTION COURT RECORDS</i>	<i>108</i>
<i>ACCOUNT OF KEY ACTORS LINKED TO EVICTION LITIGATIONS</i>	<i>112</i>
<i>BRAZIL AND ITS NEW URBAN LEGAL ORDER</i>	<i>113</i>
<i>URBAN POLICY LEGISLATION</i>	<i>114</i>
<i>URBAN LAW AND ITS ECHO WITHIN THE LEGAL SYSTEM</i>	<i>117</i>
<i>RESULTS</i>	<i>122</i>
<i>RECORDS</i>	<i>122</i>
<i>DECISIONS IN FAVOR OF SQUATTER SETTLEMENTS</i>	<i>122</i>
<i>DECISIONS AGAINST SQUATTER SETTLEMENTS</i>	<i>124</i>
<i>INTERVIEWS</i>	<i>129</i>
<i>CONCLUSION</i>	<i>156</i>

PROCESSES OF DEMOCRATIZATION AND PARTICIPATION WITHIN THE BRAZILIAN JUDICIARY:	159
---	------------

MEDIATION OF COLLECTIVE LAND CONFLICTS	159
---	------------

<i>INTRODUCTION: DEMOCRATIZING URBAN PLANNING, DEMOCRATIZING ACCESS TO JUSTICE</i>	<i>159</i>
<i>OBJECTIVES OF EMPIRICAL RESEARCH</i>	<i>161</i>
<i>METHODOLOGY</i>	<i>163</i>
<i>PARTICIPANT-OBSERVATION</i>	<i>163</i>
<i>INTERVIEWS WITH ACTORS PARTICIPATING IN THE MEDIATION HEARINGS</i>	<i>165</i>

<i>WORKING GROUP ON COLLECTIVE LAND CONFLICTS AT CEJUSC</i>	166
<i>URBAN CITIZENSHIP, DEMOCRACY, AND PARTICIPATION</i>	169
<i>COLLECTIVE POSSESSORY ACTIONS AND SPACES OF MEDIATION</i>	172
<i>CEJUSC MEDIATION HEARINGS</i>	173
<i>INTERVIEWS WITH ACTORS INVOLVED IN CEJUSC'S COLLECTIVE POSSESSORY ACTIONS</i>	187
<i>CONCLUSION</i>	197
CONCLUSION:	200
THE POLITICIZATION OF THE JUDICIARY AND THE JUDICIALIZATION OF RESISTANCE	200
<i>JUDICIALIZATION OF POLITICS</i>	201
<i>FROM DEMOCRACY TO JURISTOCRACY</i>	203
<i>THE POLITICIZATION OF PLANNING</i>	204
<i>JUDICIALIZATION OF RESISTANCE</i>	205
<i>LEGAL REMEDIES</i>	207
<i>JUDICIAL INSPECTIONS</i>	207
<i>REQUEST A CONCILIATION HEARING</i>	208
<i>PUBLIC CIVIL ACTION (COLLECTIVIZE CASES)</i>	208
<i>FINAL COMMENTS</i>	208
APPENDIX A	211
<i>INTERVIEW QUESTIONNAIRE</i>	211
BIBLIOGRAPHY	212

Table of Figures

Figure 1: Organizational chart of the judicial system in Brazil.....	59
Figure 2: Legal structure of Rio Grande do Sul Court of Appeals (TJRS).....	61
Figure 3: Map of Brazil highlighting the state of Rio Grande do Sul	70
Figure 4: Map of Rio Grande do Sul highlighting the city of Porto Alegre.....	70
Figure 5: Map of Porto Alegre by neighborhood and properties contested in TJRS.....	70
Figure 6: Map of Porto Alegre’s population density and contested properties in TJRS by neighborhood.....	71
Figure 7: Map of Porto Alegre’s White population and contested properties in TJRS by neighborhood.....	71
Figure 8: Map of Porto Alegre’s average household size and contested properties in TJRS by neighborhood.....	72
Figure 9: Map of the average monthly income of Porto Alegre’s residents and contested properties in TJRS by neighborhood	72
Figure 10: Map of Porto Alegre’s owner-occupied housing units’ rate and contested properties in TJRS by neighborhood.....	73
Figure 11: Map of Porto Alegre’s renter-occupied housing units’ rate and contested properties in TJRS by neighborhood.....	73
Figure 12: Map of the average square meter price for sale in Porto Alegre and contested properties in TJRS by neighborhood	74
Figure 13: Map of the average square meter price for rent in Porto Alegre and contested properties in TJRS by neighborhood	74
Figure 14: Map of properties whose ownership and/or possession was being contested in eviction lawsuits filed in TJRS (2001–2018) for Porto Alegre by neighborhood.....	76
Figure 15: Map of the rate of contested properties in TJRS per resident by neighborhood.....	77
Figure 16: Map of the rate of contested properties in TJRS per household by neighborhood.	77
Figure 17: Map of eviction lawsuits filed in TJRS (2001-2018) by subject in Porto Alegre	79
Figure 18: Map of eviction lawsuits filed in	80
Figure 19: Map of eviction lawsuits filed in TJRS (2001-2018) by verdict in Porto Alegre.	80
Figure 20: Map of eviction lawsuits filed in TJRS (2001-2018) by institutional plaintiff type in Porto Alegre.	82
Figure 21: Map of eviction lawsuits filed in TJRS (2001-2018) by institutional defendant type in Porto Alegre.	82
Figure 22: Map of eviction lawsuits filed in TJRS by year in Porto Alegre.....	83
Figure 23: Map of eviction lawsuits filed in TJRS (2001-2018) involving the Public Defender’s Office.....	83
Figure 24: Map of eviction lawsuits filed in TJRS (2001-2018) mobilizing key laws in Porto Alegre.....	85
Figure 25: Map of eviction lawsuits filed in TJRS (2001-2018) mobilizing keywords in Porto Alegre.	85

Figure 26: Eviction lawsuits filed in TJRS (2001-2018) for Porto Alegre by year and subject.	87
Figure 27: Adverse possession lawsuits filed in TJRS (2001-2018) for Porto Alegre by year and by objective.	90
Figure 28: Eviction lawsuits filed in TJRS (2001-2018) for Porto Alegre by reason and verdict.	91
Figure 29: Eviction lawsuits filed in TJRS (2001-2018) for Porto Alegre by year and verdict.....	93
Figure 30: Eviction lawsuits filed in TJRS (2001-2018) for	93
Figure 31: Eviction lawsuits filed in TJRS (2001-2018) for Porto Alegre by type of institutional plaintiff and verdict.	95
Figure 32: Eviction lawsuits filed in TJRS (2001-2018) for Porto Alegre by type of institutional defendant and verdict.	95
Figure 33: Eviction lawsuits filed in TJRS (2001-2018) for Porto Alegre involving the Municipal Housing Authority (DEMHAB) and the municipality by verdict.	96
Figure 34: Eviction lawsuits filed in TJRS (2001-2018) for Porto Alegre	97
Figure 35: Eviction lawsuits filed in TJRS (2001-2018) for Porto Alegre by law and verdict.....	99
Figure 36: The first conciliation hearing on collective possessory actions.....	173
Figure 37: Shed at Vila da Beira do Rio's Friends and Residents Association in Porto Alegre.....	178
Figure 38: Dois de Junho squatter occupation in Porto Alegre.....	182
Figure 39: Dois de Junho squatter occupation in Porto Alegre.....	183
Figure 40: Dois de Junho squatter occupation in Porto Alegre	184

Table of Tables

Table 1: Number of interviewed actors by group	39
Table 2: Data extracted from the analyzed TJRS eviction court records	53
Table 3: Property, possession, and related procedures under Brazilian law.....	64
Table 4: Number of eviction court records involving squatter groups filed in TJRS.....	110
Table 5: Number of interviews by group	166

Table of Acronyms

AM	Residents' Association
BNH	National Housing Bank
CC	Civil Code
CDRU	Possessory Rights Law (<i>Concessão de Direito Real de Uso</i>)
CDU	Possessory Rights Law (<i>Concessão de Direito de Uso</i>)
CE	State Constitution
CEEE	Rio Grande do Sul Electric Power State Company
CEJUSC	Judicial Center for Conflict Solution and Citizenship
CF	Federal Constitution
CNJ	National Council of Justice
COHAB	Rio Grande do Sul Housing Company
CPC	Code of Civil Procedure
DEMHAB	Porto Alegre's Municipal Housing Authority
FCP	<i>Fundação da Casa Popular</i>
FERU	Rio Grande do Sul State Forum of Urban Reform
FIFA	<i>Fédération Internationale de Football Association</i>
FRACAB	State Federation of Community Associations and Neighborhood Friends
IBDU	Brazilian Institute of Urban Law
IBGE	Brazilian Institute of Geography and Statistics
IPE	Rio Grande do Sul Workers' Pension Fund
MCMV	<i>Minha Casa Minha Vida</i>
MNRU	<i>Movimento Nacional pela Reforma Urbana</i>
OAB	Brazilian Bar Association
OP	Participatory Budgeting
PREZEIS	Regularization Plan of Special Social Interest Zones
PRF	Land Regularization Program
PROPUR	Graduate Program in Urban and Regional Planning
PT	Workers Party
REURB	Urban Land Regularization (<i>Regularização Fundiária Urbana</i>)
SAJU	Legal Assistance Service linked to the Federal University of Rio Grande do Sul
SFI	Real Estate Financing System
SINDUSCON	Rio Grande do Sul Civil Construction Industry Union
SNHIS	<i>Sistema Nacional de Habitação de Interesse Social Social</i>
STF	Supreme Court
STJ	Federal Court of Appeals
STM	Superior Military Court
TJ	State Court of Appeals

TJRS	Rio Grande do Sul Court of Justice
TRF	Regional Federal Court of Appeals
TSE	Superior Electoral Court
TST	Superior Labor Court
UAMPA	Porto Alegre Unions of Residents' Associations
UCLA	University of California, Los Angeles
UFRGS	Federal University of Rio Grande do Sul

Acknowledgments

First, I would like to thank the two academics who inspired me to pursue my doctoral studies in urban planning, Celia Ferraz de Souza and João Rovati. Professor Rovati, in particular, instigated in me an obligation towards marginalized groups. I am also grateful to the amazing scholars who helped me navigate the Brazilian judiciary, including Andrea Teichmann Vizzotto, Karin Palombini Grehs, Janaína Oliveira da Costa, Roberta Silveira Pamplona, Maína Tschiedel Pedrotti, Jaqueline Corrêa da Silva, Valentina Fonseca da Luz, Jéssica Rodrigues Sant’anna, Maria Paula Bebbá Pinheiro, and Claricia da Rosa Domingues. A special and sincere thanks to my research subjects, especially the housing leaderships (and their lawyers) I have interviewed in Porto Alegre for their willingness and openness while talking to me, despite the dark times.

Moreover, I thank the dozens of undergraduate and graduate students I had the opportunity to teach at UCLA as a doctoral candidate. They definitely made me even more passionate about teaching. I also need to thank the colleagues and friends I made in various departments at UCLA such as Ana María Durán Calisto, Andre Comandon, Andrew Klein, Anne Brown, Aujean Lee, Clara Bois, Dimitar Anguelov, Hilary Mason, Hugo Sarmiento, Jaehyeon Park, Jessica Bremner, Justin McBride, Karna Wong, Kenton Card, Kim Steele, Mark Vestal, Paloma Giattonini, Rebecca Crane, Sarah Soakai, and Sean Kennedy. I would like to thank each one of them for the knowledge and support shared with me throughout these last years.

I dedicated this dissertation to my son, but I could have also dedicated it to the two special persons I met at UCLA: Camila D’Ottaviano and Dian Irawaty. The first, even after being back in São Paulo, has always been an endless source of generosity and wisdom to me. The latter became my best friend in Los Angeles and was responsible for maintaining my sanity throughout our shared journey at UCLA as an international student.

I am extremely grateful to the members of my dissertation committee, Anastasia Loukaitou-Sideris, Paavo Monkkonen, Helga Leitner, and Ananya Roy for all their feedback and support. Thank you, Anastasia, for welcoming me to the Urban Planning department and for continually being so efficient, available, and helping me with my dissertation, but also with never-ending bureaucratic issues. Thank you, Paavo, for your relevant insights as well as for sharing with me a special interest in Latin American cities. Thank you, Helga, for your patience, critical contributions, and for always taking the time to meet with me. And thank you, Ananya, for being my ultimate academic inspiration and my intellectual mentor. I must also show all my gratitude to Eric Sheppard, whose humbleness, intelligence, and kindness further motivated me as a student, instructor, and researcher.

I could not have finished this dissertation without the sponsorship from the Brazilian government, through the Coordination for the Improvement of Higher Education Personnel (CAPES), between 2014 and 2018; from the University of California, Santa Barbara, through the Blum Center; from the Lemann Foundation; and from UCLA. I must acknowledge the financial support received from the Dissertation Year Fellowship, UCLA International Institute, LAI Tinker Foundation, and the Luskin School of Public Affairs, in particular the Urban Planning department.

Finally, I would like to thank my family and friends in Brazil for, in addition to being my greatest cheerleaders, understanding my absence during difficult times. Clarissa Rech Meneguzzi and Rachel Silveira Adolpho, thank you for persistently showing up and being the best virtual confidants, despite the different time zones. Thank you to my parents, Beatriz and José Marcus, who even without fully understanding what I do or what I study, never hesitated to support and push me forward. I also would like to express my endless gratitude to my bright and beautiful sister, Gabriela, who made me a better social scientist and a more engaged and critical citizen by setting a higher bar.

To my partner, Maxime, I am forever grateful for your patience, love, care, and encouragement throughout these busy years. You dropped everything to come to live with me in the United States almost eight years ago and not even once has questioned my decision. Without a doubt, you are the main responsible for this achievement. Thank you for always making me feel at home. Lastly, even though Vicente, our happy, sweet, and lovely son, was born when I was almost at the dissertation finish line, his arrival sparked in me a new appreciation for life, work, and political struggle.

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CHAPTER 1

Introduction

Dissertation Topic

Brazil is internationally known for having very progressive legislation and inclusive policies when it comes to land and property rights. In fact, the country remains the only one in the world to have the right to the city (Lefebvre & Nicholson-Smith, 1991) encoded in its constitution, under the logic that all private properties in Brazilian urban areas must fulfill a social function (Fernandes, 2011). Moreover, housing is considered a constitutional right in Brazil since 1988. Nonetheless, especially in the wake of the sporting mega-events, such as the 2016 Olympic Games and the 2014 Fédération Internationale de Football Association (FIFA) World Cup, Brazil is being accused of violating its citizens' constitutional right to housing (Rolnik, 2014). Additionally, and despite progressive legal mechanisms created by recent legislation (such as the 2001 City Statute to reverse exclusionary patterns of land use), the Brazilian judiciary still orders and executes forced evictions of thousands of marginalized families.

In this dissertation I argue that these removals and violations of citizens' constitutional right to housing must be understood as part of what I call *legalized displacement*; namely, land dispossession practices that are not only a direct result of real estate speculation, including the financialization of the housing sector but of a much broader discriminating process, in which the courts are playing a major role. More specifically, I conceptualize these processes as *judicial dispossession*, by which I mean eviction mandates ordered by the courts. As the socio-physical arrangement that best represents and grounds the processes that I am studying, *judicial dispossession* is a critical result of *legalized displacement*. I am conceptualizing legalized displacement as an outcome of judicial land dispossession. That is a result

of court-ordered removals. Evictions, in this case, are understood as legitimate actions and inserted in broader processes of racialized capitalism under the neoliberal state. As products of land speculation, housing commodification, and discriminatory initiatives – often led by the state itself –, these legalized displacement practices can implicate both formal and informal tenants.

By framing my research problem around judicial dispossession, thus, I am invoking all the institutional, geographical, and temporal scales associated with legalized displacement. Although I am suggesting that judicial dispossession is a consequence of judiciary decisions for evictions, courts are not the only institutional actor implicated here. Judicial dispossession can be read as a direct outcome of eviction mandates ordered by the courts. However, what makes it legitimate is not only the fact that it is ruled by judges. These practices are embedded within governmental, legal, and policy apparatuses. As Bhan highlights, displacement is occurring “through democratic processes rather than in their absence” (2016, p. 9). What is significant about such mandates, however, is not only that they are ruled by judges, but that these practices are embedded within the governmental, legal, and policy systems. Focusing on Porto Alegre, a city with tradition in participatory planning, this dissertation explores current eviction apparatuses in this city, using the judiciary as the spatial and conceptual frameworks. Judicial displacement represents both a conceptual and methodological arrangement for this dissertation. In other words, I am not only using the courts as the site of my investigation, but I am also looking at evictions through legal lenses.

Relevance

First, as mentioned at the beginning of this chapter, Brazil has one of the most inclusive legal and policy frameworks of land use, and it is impossible to think about housing and property rights without looking at the case of Brazil. Not only have several scholars around the globe paid close attention to

the intellectual debates on urban reform in the country, but many foreign governments have also incorporated many urban planning mechanisms developed by Brazilian policymakers. Porto Alegre's participatory budgeting experience is a prime example of that, as the participatory municipal governance program originated in the city in the late 1980s and was replicated by over 1000 cities around the globe (Peck & Theodore, 2012, p. 22). Yet local authorities in Brazilian cities seem to now ignore the lessons of social justice and democracy that the country has shared with the rest of the world over the past decades. Hence, at stake here is not only a re-framing of rights but the violation of the constitutional right to housing through judicial mandates that are challenging recent reformist laws on land and property rights. In this sense, my dissertation aims to contribute to housing rights movements by clarifying the discourses that are being mobilized by the courts both for and against evictions. By better understanding the main drivers behind court-ordered removals, I hope my research will assist social justice activists to develop legal remedies and other strategies to fight displacement.

Second, university-based researchers, especially after the hosting of the 2016 Olympic Games, are mapping some of the forced evictions targeting informal settlements taking place in several Brazilian cities.¹ Nonetheless, there are still many unknowns about the dynamics behind judicial land displacement, especially when it comes to evictions not targeting informal tenants. By addressing and collecting data on evictions taking place within the formal housing market in Porto Alegre, this research helps to clarify the real extent of tenancy and mortgage-related displacement in Brazil.

¹ See reports from Observatório das Metrôpoles, ObservaPOA, and LABCidade.

Third, studying these removal processes matters because evictions are not only a form of impoverishment, but they are its very source. However, what is at stake here is not just the reproduction of urban poverty itself. There is also the fact that dispossession is serving as a political instrument to expel the disfranchised from the city. But worse than leading to social losses like displacement and exclusion, inadequate housing, poverty, and homelessness can actually cause civil deaths.

Finally, I am calling into question the false distinction being made between evictions in the context of the Global South – perceived mostly as violent conflicts usually only involving the State and informal tenants – and similar processes in the Global North, which Harvey calls “legalistic dispossession” (2010, p. 18). On one hand, nations like Brazil, South Africa, and India are also witnessing market-promoted or more “subtle” eviction practices. On the other hand, so-called developed countries are often the stage of brutal government-sponsored removals as well. In fact, while I am grounding my analysis in the case of Porto Alegre and looking at judicial dispossession in contemporary Brazil, judicial dispossession is not limited to this country. The rhetoric being used to justify legalized displacement is present not only in Brazilian cities but transcends national borders. We are witnessing new forms of evictions in the global context of financial capitalism and the neoliberal state (Sassen, 2014; Rolnik R. , *Urban warfare: Housing under the empire of finance*, 2019; Yiftachel, 2020). Hence, I contribute to key and new literatures that suggest that evictions are increasingly being understood as acts of *governance* rather than a violation (Ghertner, *Rule by aesthetics: World-class city making in Delhi*, 2015).

Research Objectives

This research focuses on eviction apparatuses in Brazil, including understanding the logics, the actors, and the laws and other legal tools behind judicial displacement both within the formal and informal housing markets. To achieve this objective, I investigate how these removal practices are being validated – especially through urban-legal paradigms and judicial discourses – and contested – particularly in the light of the attempt of democratizing the judicial process with the creation of special conciliation courts focused on collective land conflicts.

In other words, my goal is to understand how urban displacement is taking place today in Brazil despite the country's constitutional recognition of the right to the city and its internationally acclaimed land legislation. I am doing a conjectural analysis of contemporary eviction apparatuses (the complex set of actors and drivers mobilized by these eviction practices) in Brazil, centering my study around the judiciary. Seminal scholars have documented and explored in length previous eviction apparatuses in the country, focusing predominantly on the relationship between informal tenants and local authorities (Valladares, 2005; Perlman, 2010). My contribution, hence, is to examine the structuring logics of displacement practices starting in 2001, following the promulgation of two key texts: first, the 1988 Federal Constitution, which established the right to housing, and second, the 2001 City Statute, which instituted collective adverse possession.

Research Questions and Hypotheses

I will analyze the eviction apparatuses in Brazil, including how they are being justified and challenged, by looking at the case of Porto Alegre, one of the largest cities in the country.² I have

² Porto Alegre is the fifth most populous metropolitan area in Brazil, with a population of 4,276,475 people, according to data published by the Brazilian Institute of Geography and Statistics (IBGE, 2018).

chosen Porto Alegre because of its participatory planning tradition. The city has a past of progressive housing policies, community participation programs, and social justice movements that overlapped with the tenure (for over a decade) of the *Partido dos Trabalhadores* (Workers Party, PT) in its municipal government. As discussed in the next sections of this chapter, the socialist administration helped to establish several housing movements in the city. Nonetheless, different from other parts of the country (Holston, 2008; Bois, 2018; Pimentel Walker, Arquero de Alarcón, Penha Machado, & Lemes Avanci, 2020), I suggest that housing movements and informal tenants in Porto Alegre are failing while using the legal arena to struggle for housing and fight against eviction.

Therefore, drawing from Porto Alegre's housing movements and tenants' particular experience in resisting displacement, but also analyzing more broadly how evictions look like in Brazil today and how they are being supported and legitimated, this research aims to answer three main questions:

- 1) *How are evictions pursued by the Brazilian judiciary today and how are they contested?*

I hypothesize that some of the drivers of contemporary evictions in Brazil are directly related to the commodification of housing, recent legislation on land use, and political ideologies that privilege some regimes of property over others. The current eviction apparatuses in Brazil are produced by these different processes involving the market and the State, in which the judiciary plays a major role, not only by mediating these conflicts but often by ignoring or misusing key and innovative texts and land laws when ordering and executing these eviction mandates. Moreover, I argue that, besides displacement targeting informal settlements, there is a growing movement of tenancy and mortgage-related eviction cases in Brazil.

2) *How are legal frameworks of land use and property rights being used to justify displacement?*

I argue that, although tenant security is also threatened by real estate speculation and other financial maneuvers, the State, particularly the judiciary, plays a major role in practices of dispossession. I claim that some legal instruments created by recent legislation have provided the courts with “legitimate” excuses to issue eviction notices. Lastly, I hypothesize that judges are mobilizing political ideologies that condemn certain property regimes in favor of other property models, defying land use legislation in their rulings.

3) *What is the role of conciliation courts, formal spaces of land disputes in Porto Alegre, in challenging collective dispossession?*

I claim that, although formal spaces such as conciliation courts were established to supposedly expand the access to justice and democratize land disputes in Porto Alegre, these extra-legal assemblies ultimately still benefit property owners, including the municipality and state government. I argue that, while the official purpose of the meetings held at the Judicial Center for Conflict Solution and Citizenship (CEJUSC), led by the Rio Grande do Sul Court of Justice (TJRS)³, is to create a more welcoming environment for informal tenants and seek an extra-legal resolution to land struggles, these meetings are just a performance. This space still replicates the hierarchy and mainstream arguments found in ordinary litigations and judicial rulings and that the claims of informal tenants are often disregarded and invalidated.

Research Background

³ TJRS is an appeal court and it analyzes the cases filled in all the state of Rio Grande do Sul, including Porto Alegre, the state’s capital

An assessment of Brazil's trajectories of land legislation and housing policies reveals that the State always had a fundamental part in both protecting and impairing the access to shelter of the urban poor. Like in all Latin American countries, the government in Brazil has had a central role in the housing sector. In this sense, the 1988 Federal Constitution and the 2001 City Statute (discussed below) were paradigmatic. These laws opened a new chapter in Brazilian history of property rights, creating an innovative urban-legal framework to democratize access to adequate housing in the country and correct centuries of non-egalitarian and discriminatory land practices.

Nonetheless, these recent legislations might also have had perverse consequences. Initiatives targeting land regulation, associated with social housing programs, might have increased social-spatial segregation and the risk of legalized displacement. One on hand, these instruments gave more power to local authorities, including the Judiciary, to displace and relocate people based on their settlement conditions (e.g., people living on hillsides or floodable areas). On the other hand, these laws, by enforcing the right to urban property, making more people eligible to land titles, also inflated the urban land market in Brazil and made millions more vulnerable to financial manipulations within the formal housing market.

Housing & Land Use and Legislation in Brazil

Still in the colonial period, the 1850 Land Law shifted completely the ways in which land was obtained and regulated in Brazil. According to Rolnik (1997), this decree represents the basis of land struggles in the country, separating the right to access land from its effective use and occupation. From 1850 until recently, the only way parcels could be acquired in the country was through purchase. This action made “illegal occupation” the single option available for poor families to inhabit the territory and criminalized the only way they had to access shelter (Stédile & Loconte, 1997). In fact, many

contemporary informal settlements are in *terras devolutas* – namely the uncultivated land that, due to its lack of market value, was transferred back to the State during the shift from Empire to Republic in 1889. In the early twentieth century, almost 80% of the national territory was covered with *terras devolutas* (Holston, 2008).

In terms of housing policies, prior to 1930, the housing stock in Brazil was only supplied by the private market (Azevedo & Andrade, 1982). In 1946 the State established the first federal institution focused on affordable housing provision, the *Fundação da Casa Popular* (FCP). Despite FCP's low performance, the institution helped to disseminate the idealization of homeownership ("*sonho da casa própria*"), initiated with President Vargas's (1930 – 1945) national development project. Bonduki (1998) claims that under the Vargas administration, housing would start to represent both a fundamental condition for the reproduction of the labor force and an element to shape workers' ideological, political, and moral behavior. In the following decades, from 1964 to the early 1980s, the military dictatorship, through the National Housing Bank (BNH), financed approximately 2.4 million new dwelling units, but over two-thirds of them targeted the middle-class market (Maricato, 2000). The remaining units were directed towards poor families and fitted the regime's project of slum clearance, as favela residents could be relocated to the newly built social housing complexes, and the informal settlements, considered a political embarrassment, were rapidly demolished (Wakely, 2018).

In 1988, the Brazilian Legislative passed the new Federal Constitution, giving municipalities more power on urban land management and regulation, similar to what was occurring in other Latin American countries. The document also reaffirmed the social function of landed property, "along with the recognition and integration of informal settlements into the city, and the democratization of urban governance" (Rolnik, 2011, p. 242). Although there was not a comprehensive national housing policy

since the extinction of BNH, in 1986, several programs with a local scope were created. This was the case of *Pró-Moradia*, a national program created in 1995 to finance dwelling units for low-income families (including the purchase of construction materials, upgrading of infrastructure, and legalization of land). The program represented a new hope for the urban poor, especially for those living in informal settlements. Nonetheless, this optimism did not last long as, in the following years, the few and disarticulated housing projects implemented by the federal government “tended to emphasize finance-based solutions rather than solutions that were specifically targeted at the very poor” (Valença & Bonates, 2010, p. 168).

After years of negotiations and mobilizations at all levels, the Brazilian Legislative passed the new Federal Constitution in 1988, giving municipalities more power in terms of urban land management and regulation. In addition to making housing a constitutional right, the document also created the concept of the *social function of property* “along with the recognition and integration of informal settlements into the city, and the democratization of urban governance” (Rolnik, 2011, p. 242). By including the idea that all urban properties must fulfill a social function, Brazil remains the only country in the world that has encoded the right to the city in its constitution.

In the early 2000s, the federal government also passed another important piece of legislation focusing on land and property rights, the paradigmatic 2001 City Statute. According to Alfonsin (2001), the 2001 law epitomizes the coronation of a decade of struggles for urban reform in Brazil emphasizing the constitutional right to housing and reiterating that property rights should be subjected to the social function of property. Macedo argues that, in terms of private property, the Statute “innovates by establishing preemption rights for local governments, whereby areas of interest can be demarcated in local Master Plans and potentially acquired by local governments for projects of social

interest, such as low-income housing” (2008, p. 262). In addition, Fernandes argues that this Legislation offered local authorities a whole new set of instruments “to reverse to some extent, the pattern and dynamics of formal and informal urban land markets, especially those of a speculative nature” (2007, p. 213). One of these instruments is the *usucapião coletivo* (collective adverse possession law), allowing not only single actors but also communities occupying vacant private property uncontestedly and continuously for at least five years to jointly claim its ownership. The Statute also created “grants for special use”, allowing communities to claim possession of *public* land.

Fernandes also argues that these and other tools, such as the extra-fiscal use of local property tax progressively over time, the expropriation sanction with payment in titles of public debt, and the onerous transfer of building rights have opened a new era when it comes to land use and property rights in Brazil. He claims that “a new range of possibilities for the construction and financing of a new urban order which is, at once, economically more efficient, politically fairer, and more sensitive to social and environmental questions” (2007, p. 182). Nevertheless, these instruments might also have had the opposite effect, boosting spatial segregation in the country.

The 2001 City Statute’s emphasis on property rights and land regularization might have made it more difficult for the urban poor to resist displacement. Alfonsin and her co-authors highlight that land titling programs, for example, have incited the interest of major construction firms and investors in informal settlements, creating a bigger land market in Brazil (2003). Furthermore, although one of the purposes of these new laws was to protect tenants by inhibiting the occupation of “unsuitable” areas (e.g., hillsides and floodable areas), these texts might also have granted judges with more legal excuses to order and execute forced evictions in different contexts as well.

Finally, other major changes concerning access to land and housing came at the turn of the 20th century. When President Lula assumed the presidency in 2003, due to his past as a former union leader and the fact that he was representing PT, much was speculated in terms of his plans concerning the housing sector in Brazil. Nevertheless, as Valença and Bonates argue, he followed “a more cautious path, introducing changes piecemeal” (2010, p. 170). The new president made substantial investments in social housing programs, but, similarly to his predecessors, Lula understood that “the system of social housing provision had to follow an entrepreneurial format” (2010, p. 171). Most of these resources were concentrated on projects developed by the Ministry of the Cities, institutionalized in 2003 – responsible for urban policies, including land regularization, housing, and transportation projects – and the *Sistema Nacional de Habitação de Interesse Social Social* (SNHIS), the National Social Housing System established in 2005 and formed by the Ministry of Cities, managing the implementation of housing policies focusing on low-income tenants. With the objective of providing dwelling units for the poor, the government created in 2009 the well-known program *Minha Casa Minha Vida* (MCMV). Through this initiative, the State started to subsidize the acquisition by low-income households earning up to ten times the minimum wage of dwelling units mostly built by the private sector. The program expanded the access to housing by lower-income individuals in the country. However, it also boosted real estate speculation and gentrification in Brazilian cities.

The Case of Porto Alegre

The capital of Rio Grande do Sul state, Porto Alegre, has a history of progressive housing policies and participatory planning programs. The city was the first capital in the world to apply the *Orçamento Participativo* (Participatory Budgeting, OP), implemented by PT in its first year of office in 1989. Through this program, citizens could participate in the decision-making process regarding the

allocation of municipal resources and investments. The OP also boosted popular articulation among the urban poor around themes like urban infrastructure, housing, and illegal tenancy.

Porto Alegre was also one of the first cities in Brazil to execute the *Direito de Uso* (right to use) with the promulgation of the *Lei Orgânica Municipal* (Municipal Organic Law) in 1990, allowing people to claim the right to stay put in public land if they had occupied this land since 1989 or earlier. As shown in the previous paragraphs, this right would only be established at a national level eleven years later with the creation of the 2001 City Statute. Like other cities in Brazil, in Porto Alegre, access to land and housing was always one of the main concerns of residents. At the OP assemblies, for example, housing was claimed by the population as the number one priority five years consecutively, between 2000 and 2005 (Baierle, 2007). Although housing rights movements emerged in the city prior to the military dictatorship (1964 – 1985), especially through associations like *Federação Riograndense das Associações Comunitárias e de Amigos de Bairro* (FRACAB) (Local Federation of Community Associations and Neighborhood Friends) and *Associação de Moradores* (AMs) (Residents' Associations), their political consolidation occurred, in fact, in the 1980s, when the military regime was already weakened.

The FRACAB depended on government resources and, thus, when the military took power, the institution adopted a compliance strategy. According to Baierle (2007), as soon as the first housing movements emerged in Porto Alegre, there was already an executive and bureaucratic structure prepared to govern them. In other words, during the military regime, these entities had not a demanding character, but an associative and recreational one. Although the *Direito de Uso* (right to use) of public lands was not officially established by then, the author claims that since most of the irregular settlements in Porto Alegre were located in “unsuitable” areas (e.g., riverside, hill slopes, and environmental preservation zones), the municipal authorities' approach to these settlements was to

buy and proclaim them as areas of “public interest”, allowing illegal tenants to stay or ordering their removal, depending on people’s “political behavior”.

This situation would change in the last years of the military dictatorship when community entities began to question the authoritarian nature of the relationship between the associations and the regime. As a result, the early 1980s was a period in which workers and residents’ organizations would start to mobilize, culminating in the creation, in 1983 and 1987 respectively, of the *União das Associações de Moradores de Porto Alegre* (UAMPA) (Porto Alegre Unions of Residents’ Associations) and the non-profit organization CIDADE connected to the Architects’ Union.

When PT assumed Porto Alegre’s municipality, in the late 1980s, the party assisted housing rights movements in the city in their articulations. The consolidation of the OP also helped the movements to consolidate their claims around issues such as the occupation of public and private land and the access to urban infrastructure and basic services. Nonetheless, the promulgation of the already referred 1990 Law,⁴ instituting the *Direito de Uso* (CDU) for public land, did not result from a political consensus, but from the pressure of organizations like UAMPA, CIDADE, and the *Serviço de Assessoria Jurídica Gratuita* (SAJU), a Free Legal Assistance Service linked to the Federal University of Rio Grande do Sul (UFRGS). The 1990 Legislation was created around two main ideas: to incorporate community participation in the planning and management of Porto Alegre and the adoption of legal instruments associated to the social function of property.

⁴ The progressive legal instruments established by the new 1990 Legislation were developed based on experiences like the *Plano de Regularização das Zonas Especiais de Interesse Social* (PREZEIS) (Regularization Plan of Special Social Interest Zones) in Recife, a pioneering law created in 1987, stipulating the demarcation of settlements designated to low-income tenants.

In 1993, the socialist government created the *Programa de Cooperativas de Auto-Gestão* (Self-Management Housing Cooperatives Program), under Porto Alegre's Municipal Housing Authority (DEMHAB) supervision, encouraging the formation of self-management housing cooperatives. The program gave not only technical support but legal assistance to these housing groups, helping them in all phases of housing production, including land acquisition. Fruet (2005) argues that since their formation, housing cooperatives in Porto Alegre had three different origins. They were either based on labor unions, residents' associations, or "land invasion" (*ocupações*). Different from labor unions and community-based cooperatives, the author highlights that what brings people from cooperatives born out of irregular land occupation together is usually their spatial distribution as illegal tenants living next to each other often join forces to regularize their situation in the areas they are occupying.

As a result, the main – if not the only – reason that motivates the formation of these land invasion-based cooperatives, mostly formed by very poor and informal workers, is to obtain legal property titles. Fruet (2005) also claims that these land invasion-based cooperatives are not as articulated and organized as the other two types of housing cooperatives and, thus, have more difficulties in enduring. That is why their partnership with the municipality in the 1990s and early 2000s was fundamental for these housing groups to succeed. Especially when it came to land acquisition, the alliance with DEMHAB was crucial for the cooperatives, in the sense that it provided more credibility for the housing movements while they were dealing with landowners.⁵

While in the municipal government, PT's strategy regarding land disputes in Porto Alegre was very clear: not expropriate, but mediate negotiation between squatters and landowners. This decision

⁵ Baierle (2007, p. 53) shows that in 1985, fifteen landowners owned approximately 21% of Porto Alegre's vacant urban parcels, which in turn accounted for more than half of the plots in the city.

was based on the fact that the amount paid as reimbursement to landowners in expropriation processes, historically has had catastrophic impacts on the municipal budget. Therefore, DEMHAB incorporated a “facilitator” role, serving as a mediator, helping movements to bargain land prices, and guaranteeing a smooth transaction between cooperatives and landowners (Fruet, 2005). Nevertheless, Fruet (2005) also recognizes that the partnership between housing cooperatives and the municipality was more successful in terms of obtaining the legal property titles than raising the resources to build housing itself, especially due to the municipality’s financial constraints.

Besides working with the housing cooperatives in acquiring property titles, the socialist government also executed an ambitious land regularization policy in Porto Alegre’s central areas, called the *Programa de Regularização Fundiária* (Land Regularization Program, PRF) (Osório, 1998). Baierle (2007) argues that slum upgrading, and land regularization policies led by PT’s municipal administration resulted in a gradual decline of housing informality. According to him, in 1988 people living in informal settlements corresponded to 25% of Porto Alegre’s population. Ten years later, this rate declined to less than 20%, and approximately half of these tenants were already enrolled in the PRF. Although PRF registration did not ensure that the families would have access to formal land titles, it meant that the right to stay put and access to basic services were guaranteed.

In 2000, the CDU law was altered, allowing, under certain conditions, holders of this right to sell their property, via DEMHAB, to buyers in a similar (precarious) situation. Since almost 90% of the informal settlements in Porto Alegre in 2004 were in public areas (Baierle, 2007), the application of CDU could potentially benefit many tenants living in informality in Porto Alegre. According to Baierle (2007), from 1995 to 2004, the municipality issued 4,231 CDUs. When PT stepped out of office, the next government, led by the mayor José Fogaça, representing a Central-Left Party,

converted CDUs into a housing financing program, also creating a legal framework to support these actions. This meant that if previously families had to pay a symbolic monthly “rent” of 8.00 BRL (approximately 2.00 USD), under the 24-Year new mortgage program and even with local subsidies the families would have to disburse monthly up to 150.00 BRL to the banks.

In addition, it was also reported in the court records I analyzed during my preliminary research, that in 2003, the municipal approach towards occupations changed. In court documents, I found out that Porto Alegre’s municipal government would no longer help the squatters to stay put (i.e., by expropriating private land and giving use rights to squatters) to “avoid illegitimate land appropriations”.⁶ The new government’s zero-tolerance position against squatters can be also illustrated by some programs⁷ implemented to encourage illegal tenants to regularize their situation and threatening the ones that did not apply for housing subsidized mortgages with eviction.

If at the municipal level, the new government was not willing to negotiate with housing movements anymore, at the federal level the scenario was different. President Lula, representing PT, assumed the presidency in 2003 and invited the leaders of housing movements to advise him; he created programs like *Crédito Solidário* (2004) and *MCMV Entidades* (2009) to finance the construction of housing units by housing cooperatives. However, differently from what occurred with the DEMHAB’s Housing Cooperatives Program, now public subsidies tended to be used to build the dwelling units instead of

⁶ Original Portuguese passage: “Além do mais, no ano de 2003, a opção política do município de Porto Alegre, de não mais proceder à desapropriação da área invadida, em especial para fins de evitar apossamentos ilegítimos” (TJRS, 2017, p. 43).

⁷ E.g. *Dono da Casa* (“The House Owner”), *Moradia Legal* (“Legal Housing”), *Fique Legal* (“Become Legal”), and *Água Certa* (“Right Water”). With the latter, the local administration incentivized people to regularize their water access situation, by installing individual and collective water meters in the housing complexes. If the sum of water consumption indicated in the individual meters was less than the collective consumption (which supposedly proved the existence of “water theft” and schemes), the families were investigated by the program *Caça-Fraudes* (“Scam-Hunting”), encouraging “honest” dwellers to denounce the “dishonest”.

being invested to purchase the land. Due to the lack of funds to cover both phases of housing production, the cooperatives usually had no other choice but to build their dwelling units in occupied land (and later) negotiate with the State (Wartchow, 2012).

Finally, PT's municipal support of the local cooperatives and other programs targeting informal settlements in the city were crucial for guaranteeing access to adequate housing for the urban poor in Porto Alegre, given the fact that during most part of PT's municipal mandate, the federal government did not advance much in terms of housing programs. Most housing policies developed nationally in the 1990s and early 2000s, as mentioned earlier, focused on market initiatives, and did not efficiently target low-income families, since many of them were not even eligible for bank loans.

At the same time, though, PT's assistance towards housing movements, particularly to land "invasion"-based cooperatives, may have demobilized these movements as housing rights groups got used to working *with* the government, instead of *against* it – dropping political confrontation strategies and engaging in more institutionalized means of struggle. Although Sanches and Soares (2018) claim that due to decades of divestment, squatting has historically become *the* housing policy, in the last years housing rights movements have also used more institutionalized channels to fight for housing. Drago (2011), for instance, argues that in the case of housing cooperatives subsidized by *Crédito Solidário*, the housing groups that worked with the government for assistance, assumed bureaucratic roles, ultimately engaging less in political confrontation.

In Porto Alegre, housing activists have been reacting to the eviction apparatuses in ways that require them to engage with the local government and to negotiate their claims in the courts. In this sense, legalized displacement is generating the *juridicalisation of resistance* (Bhan, In the public's interest:

evictions, citizenship, and inequality in contemporary Delhi, 2016) or, what others call, the *judicialization of land disputes* (Sanches, 2016). However, I argue that while recent legislation has given the poor more tools to claim land in Brazil, paradoxically the poor, including informal tenants, in Porto Alegre have also been impeded from using them.

Dissertation Layout

This dissertation is organized into seven parts, including three empirical chapters. The second chapter sets the theoretical background of the research and highlights how this work is contributing to key literatures such as Racialized Displacement, the Financialization of Housing, and Regimes of Property. The third chapter discusses the methodology employed in this analysis, including the methods and data used, as well as the author's positionality and research ethics. The fourth, fifth, and sixth parts of this dissertation consist of empirical chapters.

Chapter four centers on the role of the judiciary more broadly when it comes to land dispossession. Based on quantitative and qualitative data, I discuss not only the overall profile of plaintiffs and defendants but also the most prevalent reason for eviction both within the formal and informal housing market. I also explore the laws that are being mobilized by the judges to evict or contest evictions in Porto Alegre and conduct a spatial analysis of the "displacement patterns", exploring the socio-economic and demographic profiles of the areas with higher eviction rates in the city.

Chapter five focuses on evictions within the informal housing market by contrasting the history and legislation of property rights in Brazil to the trajectories of those who were not able to claim or possess property. By interviewing judges and analyzing in-depth eviction court records targeting squatter occupations in Porto Alegre, I engage in discourse analysis to assess how the judges are

interpreting key laws and progressive legislation published in the last twenty years that theoretically granted informal tenants the right to stay put.

Chapter six explores the actual role of the Judicial Center for Conflict Solution and Citizenship (CEJUSC), a mediation court established in 2013 in Porto Alegre – one of the first cities to implement this kind of initiative in the country. The official purpose of CEJUSC is to democratize access to the Judiciary and de-bureaucratize judicial litigation processes. By attending CEJUSC meetings as a participant-observer and interviewing people involved, my goal here was to discuss rights in the context of democratization, including what is participation in the context of legal and extra-legal sites. Additionally, this last empirical chapter debates if this new model of justice results in a real redistribution of power and resources.

Finally, in the last section of this dissertation, in addition to summarizing the main findings of my doctoral research, I also discuss how the judicial system can become more democratic and how displacement and dispossession mandates can be minimized not only in Porto Alegre but in other Brazilian cities as well. I conclude by suggesting “legal remedies” that housing rights activists can apply while fighting against eviction and other legal and policy alternatives to expand access to adequate housing in the city.

CHAPTER 2

Theoretical Background

Theoretical Framing

While I use *judicial dispossession* as the conceptual site of my research to learn how eviction mandates are being legitimized by the courts, I engage with an emerging field of inquiry in Legal Geography that suggests that marginalizing powers are being employed through policy and legal frameworks. Prominent scholars like Ghertner (2015) argue that the judiciary currently represents the greatest threat of displacement in the global South. He also claims that evictions are now perceived as acts of governance rather than a violation (Ghertner, *Rule by aesthetics: World-class city making in Delhi*, 2015). Additionally, Blomley (2004a) highlights that political ideologies are overruling alternative property regimes in favor of tenure models focusing on individual and private land ownership. Ultimately, Yiftachel (2017) suggests that displacement is becoming an efficient control tool used by the State and a foundation of contemporary urban citizenship. I am contributing to this new field of research within Legal Geography by adding to the theories of property. My dissertation also adds to this scholarship by examining how contemporary frameworks of land use and property rights have been mobilized for land dispossession in Brazil, challenging fundamental principles of urban citizenship and defying recent attempts to expand access to justice in the country.

My research addresses the economic, political, and judicial dimensions of land, housing, property rights, and citizenship. I am approaching these themes starting from the premise that the legal space, including legal codes and the judicial system, both produces and is produced by society, its political economy, sociocultural system, and other social norms. In other words, I assume that law

is not objective, but, as Blomley (1998) argues, constantly echoing power structures and incorporating social and cultural systems. Thus, drawing from the literatures on the financialization of housing; racialized displacement; property mandates, and using a legal geography perspective, I frame my research around the idea of *legalized displacement*. In the following pages, I will present key texts about these three key literatures. I will also discuss the potential contributions of my own research to each.

Key Literatures: financialization, displacement, and property mandates

In contrast to the period following the Great Recession, when evictions were perceived as a cruel practice, happening only during temporary periods, in our present historical conjuncture evictions have become a common and consistent practice. Madden and Marcuse (2016), for example, argue that became commonplace in North American cities. Rolnik (2013) goes even further and claims that we are currently witnessing the institutionalization of urban evictions worldwide. According to her, this type of displacement is at the core of the financialization of the housing sector. The commodification of not only housing itself but also of loans and mortgages has produced massive waves of displacement across the world.

Nonetheless, economic factors and processes of capital accumulation alone cannot explain contemporary modes of expulsion. Several authors (Ghertner, 2015; Bhan, 2016; Roy, 2017; Yiftachel, 2020) have already indicated that dispossession, in fact, has become a discriminatory means through which private actors and local authorities ban and expel the marginalized from the city. Roy (2017) shows that in Chicago, for instance, even families living at the “city’s end”, were routinely subjected to eviction orders. In Milwaukee, Desmond (2016) reveals that poor tenants (especially Black women) who ended up paying off their debts still got evicted.

Besides eviction processes led by private actors, the state also plays a fundamental role when it comes to displacement and land dispossession, more broadly. Janoschka e Sequera (2016), for example, argue that in economies of the global South the government plays a significant part in “market-led” displacement, even in countries run by progressive administrations. Ghertner (2015), in fact, criticizes gentrification scholarship for ignoring the extra-economic forces behind displacement, in particular state violence. The author claims that changes in the political economy of land (i.e., land privatization, property formalization, and tenure regularization), produced, above all, by regulatory and legal frameworks, have been the main drivers of displacement since the 2000s.

Nonetheless, different from the past when state-sponsored displacement was mostly performed by the executive power, involving the participation of police forces, against informal tenants through brutal arrangements such as forced removals (Valladares, 2005; Perlman, 2010), post-millennial evictions in the global South are now being mostly executed by the courts. Looking at the case of New Delhi, Bhan (2016) explores the judicialization of evictions, by showing the emergence of the judiciary as the primary site of urban planning. He argues that post-millennial evictions are not an outcome of planning ordinances or acts initiated by local authorities. Instead, they are a result of public interest litigations. Ghertner, also analyzing the case of India, argues that judges “[...] begun to accept such arguments about ‘the nuisance of slums’ as a legitimate basis for slum removal” (2012, p. 1168).

Evictions and displacement processes more broadly imply not only land and housing dispossession, but also the loss of (other) rights and the reframing of citizenship itself. Yiftachel claims that displacement became a foundation of contemporary urban citizenship. According to him, “the greater the threat of displacement, the weaker the urban citizenship” (2020, p. 162). As a response to

the weakening of urban citizenship faced by marginalized groups, Miraftab and Willis (2005) argue that poor people's movements create alternative spaces of participation to demand rights. These "invented spaces", as the authors call them, boosted the emergence of a different kind of citizenship. They contend that as the neoliberal state privatizes the city and excludes people who cannot present themselves as customers, poor people use insurgent citizenship to hold local authorities accountable. Nevertheless, as Holston (2008) suggests, if the insurgence of democratic citizenships has recently unsettled established and exclusionary principles and privileges, new forms of urban violence and inequality also erode, threatening the access to justice – and, in the case of Brazil, the constitutional right to housing – for the disenfranchised.

Financialization of the housing sector

According to Aalbers, financialization is "the increasing dominance of financial actors, markets, practices, measurements and narratives, at various scales, resulting in a structural transformation of economies, firms (including financial institutions), states and households" (2016, p. 2). He adds that the financialization of the housing sector, in particular, "demands that not just homes but also homeowners become viewed as financially exploitable" (Aalbers, 2016, p. 284). García Lamarca and Kaika explain that the financialization of housing was partially achieved through "the production of citizens as real estate investors, connecting them into speculative complex financial relations with the potential to severely disrupt and dismantle their livelihood" (2016, p. 323). Recent financial innovations within the housing sector, such as the securitization of mortgages and the development of micro-credit programs, have expanded the amount and access of credit to low-income families. Nevertheless, these financial maneuvers were also created at the expense of greater risks, snowballing real estate speculation, and foreclosure rates. The financialization of the housing sector is shifting the ways in which housing is being produced, marketed, and acquired.

Klink and Barcellos de Souza (2017) highlight that financialization processes mobilize various scales, agents, and practices while transforming economies, organizations, and livelihoods. Thus, it is also crucial to explore the legal and policy frameworks that enable markets to operate (Brenner & Theodore, 2002). In Brazil, the establishment of the *Sistema Financeiro Imobiliário* (Real Estate Financing System, SFI) in 1997 promoted substantial reforms at a national level, including the formation of mortgage securitization companies (Poindexter & Vargas-Cartaya, 2002). However, Santoro and Rolnik (2017) claim that after the creation of the SFI, Brazil did not advance much in terms of creating a favorable framework for the securitization of housing credit. The authors argue that securities in Brazil are still limited to the non-residential real estate market. They also explain that if, on one hand, this system prevented the establishment of high-risk transactions, on the other hand, the Brazilian authorities implemented a conservative model of housing production, in which the main source of revenue is not the private sector, but the pension and other semi-public and public funds.

The public sector in Brazil has a key part not only in supporting the housing sector but also in sponsoring redevelopment projects. Queiroz Ribeiro and Diniz (2017) claim that in the case of public-private partnerships, the state ends up taking over all the risks. Siqueira argues that in the case of urban operations that “use financial and land use mechanisms to unlock land values and promote redevelopment” (2018, p. 1), technically, the government’s role is only to relax zoning legislation, issue land permits, and sell construction quotas, raising capital to invest in social housing and other infrastructure projects. Nonetheless, Queiroz Ribeiro and Diniz (2017) show that in Rio de Janeiro, the titles issued by the municipality to fund future redevelopment projects in the area, which were to be later purchased by private investors, in fact, were acquired by a federal bank. As a result, the financialization of the real estate sector in Brazil is based on public indebtedness and on disputes between public and private agents over public resources (Klink & Souza, 2017).

Social housing programs like the *Minha Casa Minha Vida* (MCMV) also illustrate this phenomenon. The MCMV, which finances social housing units built by private developers, epitomizes the historic arrangements of private agents appropriating public funds (Queiroz Ribeiro & Diniz, 2017). The MCMV was designed to encourage private firms to take part in housing production in the country, but at the same time, the program was highly dependent on public resources. Rolnik and her co-authors (2015) highlight that this ambivalent financial arrangement means that, as risks are transferred to public institutions and subsidies go to private agents, the state assumes the responsibilities while the market profits. In these obscure relations between public and private actors, the regulatory framework is being restructured and the power to plan and manage spaces in the city is progressively being transferred to the private sector. Finally, by turning investors into key players within the housing sector, the government is making the urban poor much more susceptible to the risks associated with financial markets (Costa, 2002). Additionally, local authorities are shifting the character of housing from a social good to a financial asset, boosting real estate speculation, threats of eviction, and the risk of dispossession (Santoro & Rolnik, 2017).

Although Rolnik (2013) claims that the financialization of housing has deeply affected the enjoyment of the right to adequate housing across the world, little is known about how the financialization of housing produces displacement in Brazil, particularly among low-income tenants. Local specificities, such as the entanglements between statutory and financial frameworks and evictions, have yet to be investigated. While universities and non-profit organizations have collected extensive data about forced evictions that target informal residents, there is no consistent evidence about evictions within the formal housing market in the country. To address this gap, my research will contribute to this literature by assessing the drivers of contemporary displacement processes, including risks of eviction among renters and mortgage debtors.

Racialized Displacement

Market conditions alone cannot explain much of the displacement taking place globally today. More than a direct and inevitable outcome of the commodification of housing, practices of dispossession must be addressed as discriminatory politics or, as Roy (2019) suggests, *racialized banishment*. Although concepts like the financialization of housing help us understand much of the urban transformations currently taking place across the world, this framework does not fully clarify the continuous entanglements between capitalism and racial discrimination. As Fraser summarizes, “exploitation-centered conceptions of capitalism cannot explain its persistent entanglement with racial oppression” (2016, p. 163). According to the author, “the subjection of those whom capital expropriates is a hidden condition of possibility for the freedom of those whom it exploits” (Fraser, 2016, p. 166).

Roy also claims that foreclosure can be understood as a mechanism of social and racial banishment. While investigating the Chicago Anti-Eviction Campaign, she found that banks confiscate houses located “at city’s end” (2017, p. A3). She argues that these processes hide discourses on models of ownership and embody not only a loss of property but more critically, a loss of personhood. Similarly, Desmond (2016) concludes that eviction is an ordinary practice in inner-city black neighborhoods in Milwaukee. He argues that women are more than twice as likely to be displaced as men. Particularly black women tend to have less-flexible schedules, receive lower wages, and often are the sole providers for their family, preventing them from working extra hours to “work off” the rent. In sum, the author emphasizes that, while black men in the United States are locked up, “black women are locked *out* (emphasis added)” (Desmond, 2016, p. 121).

Racialized logics also shape state policies and justify courts' decisions. In New Orleans, for example, after Katrina the number of occupied affordable housing units in the city metropolitan area went from 11,000 to 2,300, indicating that such disasters enable "government reconstruction programs to prioritize private sector contracts over the continued support of public-sector infrastructure" (Adams, Van Hattum, & English, 2009, p. 630), deliberately pushing the urban poor out (Smith, 2006).

In the case of Salvador, Brazil, Perry argues that black women are disproportionately subjected to forced removals by local authorities. The evictions she investigated were allegedly pursued in order to "make way for new structures that were meant to attract tourists to the city center" (2013, p. 49). However, the author argues that judges ordered the eviction of poor black women, even when the latter presented the required documentation proving land ownership. She summarizes, "black women, especially those living in the poorest urban neighborhoods, traditionally have been consigned to a 'de facto status of non-citizens,' occupying not only the spatial margins of cities but also the socioeconomic margins as the poorest of Brazil's poor" (Perry, 2013, p. 115).

Bhan (2016) and Ghertner (2015) also look at state-sponsored displacement in India, examining the fundamental role played by the courts in evicting the poor in Delhi. As the former explains, "the involvement of the courts rather than the state" (Bhan, 2009, p. 128) differentiates contemporary from previous evictions in India. Similarly, Ghertner claims that judges confronted with the lack of proper documentation abandoned previous bureaucratic prerequisite and statutory requirements for ordering evictions and "made the appearance of filth or unruliness in and of itself a legitimate basis for demolishing a slum" (2010, p. 207). While suggesting that some bodies, due to their limited mobility, are becoming more displaceable than others, Yiftachel argues that displacement is switching "from an act to a systemic condition through which marginalizing power is exerted

through policy and legal systems” (2017, p. 3). He adds that urban planning has become a very powerful governing tool and that “planning (or lack of) provides the authorities with a set of technologies with which they can legalize, criminalize, incorporate or evict” (Yiftachel, 2009, p. 96).

Social and racial discrimination in the (re)making of the city is not new. Spatial segregation has always been present in urban planning, from Baron Haussmann’s efforts to revitalize Paris to Robert Moses’ attempt to redevelop New York. What has changed, on one hand, is the sophistication level of financial, policy, and legal instruments being used for exclusion, dispossession, and displacement. On the other hand, discriminatory politics are now increasingly hidden behind populist discourses and rhetoric, which I intend to analyze in later chapters. Thus, the contribution of my dissertation to the literature on racialized displacement is the study of how policy and legal structures support displacement. I will explore the discourses being employed, especially by the judiciary, while ordering evictions, in particular of marginalized groups. Moreover, by investigating the means through which land dispossession is endorsed, I will reflect upon the ways by which the urban poor are being judged and governed in Brazil.

Regimes of Property

The processes described in the previous sections are entangled with legal and social foundations of property rights. Discourses performed by the state, especially by the courts, validate certain tenure models while condemning others, ultimately producing dispossession (Ghertner 2008; Bhan, 2013). Property regimes built around the idea of private and individual rights, for example, might limit the access of the disfranchised to the urban space, untimely boosting socio-spatial segregation (Griffin, 2010; Singer, 2011). Therefore, frameworks on property entail not only claims to

territory, but also mobilize concepts such as power and identity. There is a growing body of literature studying regimes of property focusing on the rhetoric associated with principles of ownership. Many authors discuss the challenges implicated in understanding private property ownership as the “proper” and acceptable mandate. In the next paragraphs, I will build on these scholars and elaborate on what Roy (2003) identifies as “paradigms of propertied citizenship”, in which certain prerogatives are being given exclusively to those who can afford to become homeowners.

Blomley (1998) uses the term “landscapes of property” to urge scholars studying property regimes to take into account not only the social scope of the property but its historical and geographic dimensions as well. He criticizes the geographic alienation of legal studies and calls for the spatialization of law, defending a closer look at the connection between the law and legal systems, including not only the effects of law upon space but also “the ways social spaces affect law” (Blomley, 2004b, p. 99). Porter (2014) and Graham (2010) agree and claim that the notion of property needs to consider the relationalities embedded in it. The latter suggests that “property is not a thing but a relation of claims” (Graham, 2010, p. 403), while the former (Porter, 2014) encourages us to reflect upon the significances of property within different legal and cultural discourses and practices.

In addition, it is important to think about the problems of ignoring or condemning alternative property models. Postcolonial scholars have already highlighted the danger of associating modernity to specific “modes” of space production. As Robinson puts it, the concept of urban modernity “has assumed a privileged link between modernity and certain kinds of cities” (2004, p. 709). Hence, besides challenging the dichotomies of informal-formal, illegal-legal as two disconnected systems (Souza Santos, 2002; Roy, 2005), it is fundamental to acknowledge alternative mandates of property that are not necessarily related to the Anglo-American liberal model based on individual rights and ownership

(Esteva, 2014; Leitner & Sheppard, 2018). In fact, Gillespie (2016) questions the universal applicability of Western standards of propertied mandates and proposes a new framework of thinking about property relations in different contexts by debating concepts such as tenure security, exclusion, and rights. He claims that “legal concepts of property need to be more place sensitive so as not to potentially undermine or destabilize existing and evolving social norms and conditions” (Gillespie, 2016, p. 264).

By framing property around the idea of exclusion, Blomley argues that “property provides both a rationale for dispossession and a ground for its opposition” (2016, p. 594). In this sense, the American paradigm of propertied ownership was responsible for shaping socio-spatial boundaries in the North American cities and excluding individuals who did not meet quintessential norms of residence (Roy, 2003; Wylie, Hammel, & Moos, 2012). Roy, for example, asserts that “propertied citizenship for the select was made possible through the impossibility of shelter and social citizenship for all” (2003, p. 484). Furthermore, property territorialization embodies a specific form of spatial and social classification (Blomley, 2016, p. 597). As Gibson-Graham (1997) suggests, property is not a fact but an aspiration, and a very powerful one.

Finally, although factors other than the law matter when thinking about displacement, the logic behind certain propertied regimes is very much associated with dispossession. By analyzing the discourses employed to highlight the inviolability of the concept of private property and exploring how legal tools recently created in Brazil to recognize other tenure models are being challenged, my contribution to this literature will be to investigate how contemporary legal and policy frameworks on land use and property rights have been mobilized for (and, in certain cases, against) displacement.

CHAPTER 3

Research Design

Methodology

Drawing from seminal works on urban displacement, I compile a research design with different methods to help me answer my three research questions: 1) *How are evictions pursued by the Brazilian judiciary today and how are they contested?*; 2) *How are legal frameworks of land use and property rights being used to justify displacement?*; and 3) *What is the role of conciliation courts, formal spaces of land disputes in Porto Alegre, in challenging collective dispossession?*. In particular, I was inspired by Bhan's (2016) book *In the Public's Interest: Evictions, Citizenship, and Inequality in Contemporary Delhi* on court-ordered evictions in India. Although his research problem differs from mine, as I do not focus only on removals within the informal housing sector, Bhan (2016) added to my own research approach, especially when it came to the methodological choices I made to answer my last two research questions.

The author performed what he calls an “ethnography of inequality” (Bhan, *In the public's interest: evictions, citizenship, and inequality in contemporary Delhi*, 2016, p. 36). To explore how post-millennial evictions in Delhi were different from displacement processes prior to the 2000s and to understand the role of the judiciary in all these cases. During his fieldwork, he mapped and reconstructed the spatial distribution of demolished “slums” in Delhi by talking to taxi drivers, small merchants, and former residents. Bhan engaged in participant observation, following residents threatened with eviction to Delhi's courts, looking closely at a total of 24 cases. He explored court records to assess the arguments used by judges to justify evictions and monitored how these decisions

were approached and portrayed by the media to uncover “how the judges’ words traveled through the city” (2016, p. 38). Finally, he completed a series of semi-structured interviews with community and housing activists to better understand resistance to evictions in the city.

Bhan’s description of his fieldwork helped me choose the methods that would help me answer my second and third research questions. His account also assisted me to approach eviction court records analytically and critically. Bhan asks how Public Interest Litigations (PLIs), a “judicial mechanisms established by the Indian judiciary in the late 1970s explicitly to protect the fundamental rights of the marginalized [by allowing them to...] access justice in the highest courts of the land through significantly eased legal procedures” (2016, p. 2) ended up being used to achieve the exact opposite. He notes that people’s claims to shelter in Delhi were not only ignored but were used against them to displace them. In my case, I focus on the legal and policy frameworks on land use and property rights used to justify dispossession in Porto Alegre. Therefore, to answer my second question, I investigate the judicial discourses in processes that I call *legalized displacement*. In addition to interviewing key figures such as judges, prosecutors, and legal defenders, inspired by Bhan (2016), I also conduct a discourse analysis of court records from selected eviction cases to clarify how the Brazilian judiciary mobilizes, interprets, and applies innovative legislation.

Finally, in addition to being interested in investigating the paradox of legal mechanisms used to displace and dispossess, I am concerned about potential alternatives to minimize evictions. Nonetheless, while Bhan (2016) focuses on the work of housing rights activists and social movements leaders, I explore recent experimentations to democratize justice and expand participation within the judicial system, studying the role of conciliation courts.⁸ Hence, to answer my third question on the

⁸ Porto Alegre was one of the first cities in Brazil to establish a conciliation court to deal with collective land conflicts. CEJUSC is led by TJRS and was launched in 2013.

operation and performance of extra-legal courts, I attended meetings at the Judicial Center for Conflict Solution and Citizenship (CEJUSC) as a participant-observer, and also assessed the housing rights activists' perceptions of conciliation courts through semi-structured interviews.

***Conceptual “site” of research: judicial displacement as the conceptual
the conceptual and methodologic arrangement***

I am using judicial dispossession as the conceptual “site” of my research. As the socio-physical arrangement that best represents and grounds both the processes that I am studying (i.e., legalized displacement) and my methodologies (i.e., studying evictions through eviction court records), *judicial dispossession* is a critical outcome of legalized displacement. By framing my research problem around the idea of judicial dispossession, thus, I am trying to invoke all the institutional, geographical, and temporal scales associated with legalized displacement. Nonetheless, although I am suggesting that judicial dispossession is a consequence of judiciary decisions when it comes to evictions, the courts are not the sole institutional actor implicated here. Judicial dispossession can be read as a direct outcome of eviction mandates ordered by the courts. However, what makes these mandates legitimate is not only the fact that they are being ruled and executed by judges. These practices are embedded within legal, governmental, and policy apparatuses. As Bhan highlights, displacement, in this case, is occurring “through democratic processes *rather* than in their absence (my emphasis)” (2016, p. 9).

Although I am grounding my analysis in the case of Porto Alegre and looking at judicial dispossession in contemporary Brazil, legalized displacement is not restricted to this Latin American country. The rhetoric being used to justify such discriminatory operation from the part of the judiciary is entrenched not only in Brazilian history but rather transcends national borders. The seminal works

assessed in the literature review section of this dissertation confirm that we are witnessing the emergence of new forms of evictions in the context of financial capitalism and the neoliberal State. Although these eviction mandates, similarly to past historical conjunctures, disproportionately target marginalized citizens, they now have the judiciary as the key participant. The works summarized in this chapter illustrate this new paradigm, as they highlight the major role that courts are playing in the United States and India in cases of displacement. Under this new paradigm, which I call *legalized displacement*, Ghertner (2015) indicates that evictions are understood as acts of governance instead of violation. In sum, Brazil is not the only country in which the presence of the poor and other marginalized groups in the city is being perceived as a “disruption” that is addressed with judicial dispossession through displacement.

Methods and data

My research questions encompass different socio, spatial, and temporal levels of investigation. Although a more detailed account of my methodologies can be found in the empirical chapters four, five, and six, I briefly discuss here the methods and data I am using to answer each of my research questions.

1. *How are evictions pursued by the Brazilian judiciary today, and how are they contested?*

I hypothesize that some of the drivers of contemporary evictions in Brazil are directly related to the commodification of housing, recent legislation on land use, and political ideologies that overrule some regimes of property in favor of others. The current eviction apparatuses in Brazil are produced by these different processes involving the market and the State, in which the judiciary plays a major

role, not only by mediating these conflicts but often by ignoring or misusing key and innovative texts and land laws when ordering and executing these eviction mandates. Moreover, I argue that, besides displacement targeting informal settlements, there is a growing movement of tenancy and mortgage-related eviction cases in Brazil.

I use archival research and spatial analysis to confirm my first hypothesis. I am grounding my investigation in the municipal scale of Porto Alegre and doing a conjectural analysis of the contemporary eviction apparatuses in Brazil. Scholars have already documented and explored in length previous eviction regimes in the country (Valladares, 2005; Perlman, 2010). My contribution, therefore, is the study of post-millennial eviction mandates and their specificities. As the promulgation of the 2001 City Statute was the most important mark when it comes to land use legislation and property rights in Brazil, analyzing evictions since the 2000s helps to elucidate how (old and recent) legal and policy frameworks are being mobilized both *for* and *against* land dispossession in Porto Alegre.

To understand the eviction apparatuses in Porto Alegre and the forces and drivers behind such arrangements – including who is being evicted, the reason for eviction request, judicial decision, and the laws used to challenge or justify eviction –, I am using two different methods. The first one is archival research. I am assessing legalized displacement through an inventory of all eviction notices issued in Porto Alegre by the Rio Grande do Sul Court of Justice (TJRS) between 2001 and 2018. I accessed these eviction records through the TJRS online database. However, to assess which cases resulted in eviction orders and extract the relevant data I listed above, including the profiles of the plaintiffs and defendants, I had to systematize the documents downloaded from TJRS repository and build a database with all these approximately 6,000 records.

Additionally, I conducted a spatial analysis to understand the geographic context (including where evictions are concentrated and the socio-economic and demographic profile of the residents living in those areas) of legalized displacement in Porto Alegre. Nonetheless, since I could not find the addresses of the properties being contested linked to all the eviction cases I surveyed online, I had to access the hard copies of many of these cases. After finding the addresses of over one thousand properties, I geocoded them and added census tract socioeconomic and demographic data to produce maps illustrating the spatial distribution of evictions in the city. Using these maps, I was able to explore the prevalence of eviction orders in certain areas of the city as well as the profiles of their residents.

2. *How are legal frameworks of land use and property rights being used to justify displacement?*

I hypothesize that, although tenant security is also threatened by real estate speculation and other financial maneuvers, the State, particularly the judiciary, plays a major role in practices of dispossession. I claim that some legal instruments created by recent legislation have provided the courts with “legitimate” excuses to issue eviction notices. Lastly, I hypothesize that judges are mobilizing political ideologies that condemn certain property regimes in favor of other property models, defying land use legislation in their rulings.

To answer my second research question and test my hypothesis, I conducted semi-structured interviews with local leaderships of housing rights movements, legal activists, judges, lawyers, public defenders, prosecutors, attorneys general, and district attorneys, and discourse analysis of the eviction court records of cases involving groups of squatters – what the Brazilian judicial system calls, *ocupações* (“occupations”). Thus, this second phase of my research focuses on evictions within the informal housing market. With the goal of understanding how dispossession is being validated and challenged

in the context of land occupation and disputes, I looked closely at the approximately two hundred cases implicating groups of informal tenants filed at TJRS for Porto Alegre between 2001 and 2018. I chose to explore only collective land conflicts and not individual ones because CEJUSC, the conciliation court object of my last research question, does not accept individual claims.

In each of these cases, I conducted a discourse analysis not only of the selected eviction court records, but also of the coded interviews I did with the actors involved in some of these litigations. In total, I conducted 38 open-ended, semi-structured interviews with legal, policy, and civil actors, as Table 1 illustrates (the interview questionnaire can be found in Appendix 1). Interviews took between thirty minutes to one hour, and were often held at coffee shops, occupied buildings, or at the office of the subject. With these interviews, on the one hand I wanted to understand how legal actors such as municipal, state, and federal judges were interpreting land law; if/how they were applying progressive legal tools and texts (e.g., the City Statute); how they perceived informal tenants and *ocupações*; and if their decisions were impacted by the ownership status (i.e., privately, or government-owned) of the properties, objects of the legal disputes. On the other hand, I also wanted to explore how other legal, policy, and institutional actors often involved in these litigations (e.g., attorneys general, district attorneys, prosecutors, state and federal public defenders, lawyers representing squatter movements, state and municipal housing authority officials, people providing technical assistance to *ocupações*, and other representatives), and the informal tenants themselves saw the judiciary and their own assessment of the judicial decisions. I did not know most of my subjects and I was able to approach some of them through contacts I had at the Federal University of Rio Grande do Sul (UFRGS); the remaining subjects were indicated by former interviewees.

Table 1: Number of interviewed actors by group

Source: made by the author

<i>Sector</i>	<i>Role</i>	<i>Number of interviewees</i>	<i>Interviews (subtotal)</i>
Judiciary	Municipal judge	4	12
	State judge	2	
	Federal judge	1	
	Mediator (“lay judge”)	2	
	District/state attorney (prosecuting attorney)	2	
	Federal attorney (prosecuting attorney)	1	
Government	Attorney General Office (municipal)	3	6
	State Housing Authority	1	
	Municipal Housing Authority (DEM HAB)	2	
Other institutions	Porto Alegre Master Plan Council’s University (Federal University do Rio Grande do Sul, UFRGS) representative	1	3
	IBDU’s (Brazilian Institute of Urban Law) representative	1	
	Caixa Econômica Federal (bank) representative	1	
Squatters and ‘ocupações’	Housing Rights Movement (local leadership)	2	17
	Housing Rights Movement (state leadership)	2	
	Architect/Technical assistance to squatter movements	1	
	Lawyer/legal assistance to squatter movements	8	
	State public defender	1	
	Federal public defender	3	
Total			38

The objective of this study was to assess how political ideologies on past and current legislation on land use and property rights have shaped judicial decisions regarding property regimes and displacement practices. In other words, my aim here was to understand how judges are interpreting and applying land law (established at the national scale)⁹ to justify land dispossession (executed at the

⁹ In the United States, each state has the autonomy to regulate its justice system. Each state has its own State Constitution that defines the local legal frameworks, how the courts operate, the costs of legal proceedings, etc. In contrast, in Brazil, there is a body that exercises the national legal “control” (National Council of Justice, CNJ) of the country. Brazil is governed by its Federal Constitution, and the states do not have their own local constitution. Legal norms established at a local scale, thus, cannot confront the text of the Federal Constitution. Brazil is influenced by the legal Roman-German system, known as Civil Law, which is based on codified law. That is, the application of law in the country, as already emphasized, is based mostly on the text

municipal scale) and what legal and policy frameworks the judicial system is mobilizing while ordering these evictions. These political ideologies often prioritize certain mandates (e.g., based on individual and private ownership) over others (e.g., collective use tenure).

3. *What is the role of conciliation courts, formal spaces of land disputes in Porto Alegre, in challenging collective dispossession?*

I hypothesize that, although formal spaces such as conciliation courts were established to supposedly expand the access to justice and democratize land disputes in Porto Alegre, these extra-legal assemblies ultimately still benefit property owners, including the municipality and state government. I argue that the meetings held at CEJUSC, led by TJRS, are just a performance in the sense that these spaces still replicate the hierarchy and mainstream arguments found in ordinary litigations and judicial rulings and that the claims of informal tenants are often disregarded and invalidated.

Lastly, to verify the hypothesis behind my third research question, I used participant observation of CEJUSC hearings occurring between 2018 and 2019. Furthermore, I also conducted semi-structured interviews with legal figures (e.g., judges, prosecutors, public defenders, lawyers), as well as policymakers and political actors (e.g., heads of state and municipal housing secretaries and urban planners involved in cases in which the occupied land is state-owned). My intention here, as previously mentioned, was to study potential alternatives to minimize evictions. More specifically, I am interested in understanding the role of conciliation courts serving collective land disputes,

of the Federal Constitution. Hence, only in the absence of a regulatory rule, the judiciary turns to jurisprudence – that is, similar cases already judged – so that the right is applied to a concrete case.

established in Brazil in the early 2010s, in expanding access to justice for marginalized citizens. I particularly wish to explore if CEJUSC hearings, despite officially being created to assist informal tenants to claim and negotiate land, are being used against squatter groups.

Finally, I also interviewed leaders of squatter occupations, as well as housing rights activists present in some of these extra-legal hearings to clarify their perceptions of the conciliation court and eventual mechanisms and strategies they have used to counter eviction at these assemblies. One cannot examine a housing question in Brazil without also discussing the associated housing movement. My third and last question, thus, explores the strategies that squatter movements are using to contest legalized displacement in Porto Alegre. As emphasized in Chapter 1, although the agreements set at CEJUSC have no legal validity, these hearings are still being led by judges and mediated by prosecutors, public defenders, and lawyers. Thus, we can argue that the cases studied here still embody legalized displacement.

Motivated by what Bhan (2016) calls the *juridicalisation of resistance*, in addition to discussing what democratization and participation mean within the judiciary, I am interested in clarifying how collective evictions that are being contested in the legal and extra-legal systems, as opposed to those directly executed by the government, are generating resistance. Although each case has its own specificities, attending different hearings at CEJUSC, has allowed me to contrast strategies perceived as “effective” in fighting displacement to those that ended up being not as successful.

Generalization

As discussed in the introduction of this proposal, the processes I am investigating are not exclusive to Porto Alegre or Brazil. Models of western regimes of propriety have been present almost everywhere. Legalized displacement is a product of speculative practices, discriminatory politics, and mandates of property based on individual rights. Thus, it is not limited to the Brazilian context. Earlier, I called into question Harvey's (2010) inaccurate distinction between "brutal" displacements in the Global South and more "legalistic" eviction approaches taking place in the Global North. He is not the only author suggesting this dichotomy. As already stated, Sassen (2014) also argues that the Global South is witnessing a massive wave of displacement related to rural land grabs, while the Global North, in contrast, experiences expulsions mostly as a result of financial manipulation and debt. While violent practices of land dispossession are also occurring in so-called global cities such as Los Angeles and London, this dissertation wants to show that evictions in the "megacities" of countries of the Global South are also increasingly mobilizing the courts.

This polarized – and often wrong – distinction between cities in the global South (usually portrayed as sites of informality and illegality) and North (representing normalcy and legitimacy) has already been criticized in length by postcolonial theorists. As Roy notes "to simply study cities of the global South as interesting, anomalous, different, and esoteric empirical cases" (2009, p. 820) is not enough. Hence, I hope my work contributes to the "theory from the south" (Comaroff & Comaroff, 2012) but, more importantly, I wish that this theory *from* the South does not become restricted only to theory *for* the South. By adding to epistemologies and methodologies that contest Euro-American ideas (i.e., the notion, among many Northern scholars, that eviction in Southern cities is directly associated with land "invasion"), my objective is to not only highlight how Brazil can serve more than

an empirical case of analysis but also to argue that urban narratives within the country may also help us to re-read similar processes in the United States and other countries. In other words, I hope the cases I am investigating in this dissertation offer us the conceptual tools to interpret displacement processes differently elsewhere, not only in Brazil, with the framework of *legalized displacement* allowing us to read evictions differently in other parts of the globe (e.g., perhaps we are overestimating the significance of the market circuits or underestimating the importance of policy and legal frameworks in practices of land dispossession in the global North).

While I am not trying to make a case for the replicability of my case, I am suggesting a theoretical generalization, which my work might help to build and add to a theory of judicial dispossession. By understanding how certain legal instruments are being used to justify dispossession, exploring the major forces and drivers behind court-ordered eviction mandates, and studying the strategies of social movements to resist displacement and their instruments to minimize land dispossession in Brazil, low-income tenants in Los Angeles or other cities of the Global North might learn new ways to counter and avoid eviction as well. By employing various methods such as archival research, spatial and discourse analysis, and incorporating diverse temporal, spatial, and institutional dimensions into my investigation, I hope to make an argument for the importance of legalized displacement.

Positionality and Research Ethics

I believe that my responsibilities as a researcher are to decolonize theory, confront systems of oppression (not only in the field, but also in the academia), and promote an ‘ethics of accountability’ (Roy, 2006, p. 25), reporting and being committed *to* marginalized groups. As Porter and her co-authors put it, applying these mandates today requires us to “divest from the protocols of neutrality

that have kept planning on the sidelines of freedom struggles” (2021, p. 127). Eviction in any situation represents harm. However, in the context of my own research, divesting from neutrality meant paying particular attention to displacement outside the formal housing market. Thus, the last two last chapters of this dissertation focus on collective land conflicts, that is eviction litigation targeting multiple squatters. Informal tenants do not only live with the permanent fear of losing their home but face other daily violence as well. Hence, once again inspired by Bhan’s work, I tried to look *from* the squatter settlement instead of *at* it. As he suggests, “[...] to look at the *basti* from within planning theory or practice, for example, is to tell a tale of exception. To look at planning from the *basti* is to tell a tale of the fiction of the rule” (2012, p. 23).

Nonetheless, I do not believe that to build theory from the *basti* or *ocupação* one needs to do research solely at the margins. On the contrary, it is also important to access spaces of privilege to understand how the conditions within the periphery are being created.¹⁰ Therefore, I used my own privileged position to critically access the discourses and logics of “chief” legal actors in these processes. In other words, being a doctoral candidate pursuing her Ph.D. at an accredited research institution in the United States helped me to have access to judges and other legal actors who might have been hesitant to speak to local researchers. I chose not to engage in an extensive ethnography of squatter and housing rights movements in Porto Alegre because, although I am reporting and committed *to* them, I did not want to foster an exploitative relationship between researcher and subjects. As I was living abroad and did not have a previous connection with these groups, I decided

¹⁰ Similar to Bhan, I am not using the terms “margins”, “periphery”, and “spaces of privilege” as spatial classifications, but as locational indicators for conceptual and theoretical inquiry.

to study displacement using eviction court records and other formal and informal testimonies – collected through interviews and participant observation – as the core foundation of my dissertation.

Despite living in the United States, though, the fact that I was born and lived almost all my life in Brazil assisted me not only linguistically, but also allowed me to better navigate the several spaces where I conducted research, such as the courtroom, the archives, and the squatter settlements. Additionally, doing research on the judiciary without having gone to Law School while made my research more challenging (as I was not extremely familiar with the legal field, its codes, procedures, and organizational structure), also made it easier. Because I was not a lawyer, I faced less resistance from activists and informal tenants. Furthermore, I believe that not having a legal background motivated judges and other authorities to talk to me more informally and openly.

In addition to affecting the access to subjects and the types of information I collected, my own positionality also impacted the ways I understood the gathered data. On the one hand, my positionality as a white female might have hampered my access and interaction with housing rights movements and residents of *ocupações*, particularly during the interview process. While approximately half of my interviewees were females, the fact that I was white (like most of the judges and prosecutors) might have made them more suspicious about me. To surpass some of these limitations, in addition to being transparent about my work and re-stating my research ethics highlighted above, I combined other methodologies such as archival research and spatial analysis.

On the other hand, while positions of power and privilege can be very hard to overcome, I tried to address my own personal bias by paying attention to the particular and lived experiences of informal tenants. Moreover, I structured my conclusions in a way that my findings would not only

add to new theories but also contribute pragmatically to housing rights movements in their fight against displacement. It is not enough to understand how poverty, inequality, and injustice is reproduced. Our work must also have practical implications and help to change and transform the realities of marginalized groups on the ground.

CHAPTER 4

Judicial dispossession in Brazil: an overview of court-ordered evictions in Porto Alegre

Introduction: the case for court-ordered evictions

While understood as legal mechanisms and legitimate actions, court-ordered evictions are often embedded within exclusionary and discriminatory logics. As discussed in the second chapter of this dissertation, Ghertner (2015) showed how the judiciary in Delhi, India, stopped using bureaucratic prerequisites and statutory requirements to evict and started to ground its decisions on the “aesthetics of poverty.” In other words, poverty or, rather, the appearance of poverty became a lawful excuse to evict. Other authors discussed in previous pages have also revealed that marginalized groups are being disproportionately targeted with evictions. Desmond (2016), for example, explains that those getting formally evicted (evictions processed through the court system) in Milwaukee, United States, are not only predominantly Black but are usually Black women. In Brazil, although university-based researchers are currently mapping some of the forced and extra-legal evictions taking place in cities like São Paulo and Rio de Janeiro, still very little is known about *formal* evictions. This chapter adds to these literatures on displacement by documenting and analyzing who is getting evicted by the Brazilian judiciary in Porto Alegre, from where, as well as under what grounds. In addition to clarifying some of the keywords mobilized by judges when ordering and contesting evictions, I also elucidate the most cited legislations in their rulings.

Court-ordered evictions are only one category of eviction. They do not fully account for the real scale of displacement in Brazil (even within the formal housing market, many tenants might be

harassed and leave before facing an eviction lawsuit), nor exhaust the lived experiences of people being displaced (extra-legal evictions might be even more violent as they do not follow any institutionalized mandates). Nonetheless, court-ordered evictions also must be critically investigated, especially in Brazil. In a country where the right to housing is encoded in its constitution, displacement produced “under the rule of law” becomes even more problematic. Evictions, in this case, are being performed by the ultimate institution supposed to protect peoples’ social and civil prerogatives, including their access to adequate housing. When the Judiciary orders the eviction of poor tenants, for example, the courts are not just denying citizens their rights but might be stripping their last chances to secure decent housing.

As I discuss in the first chapter of this dissertation, I call legalized displacement the land dispossession practices endorsed by the courts implicating different institutional scales, drivers, and actors – including the market and the state. Although I am conceptualizing this process as an outcome of *judicial dispossession*, court-ordered eviction mandates are inserted in a broader context of discriminatory and rentier capitalism under the neoliberal state (Fernandez & Aalbers, 2016; Christophers, 2020). Hence, these evictions are directly related to processes such as land speculation, housing commodification, and other exclusionary initiatives. Additionally, while I argue that legalized displacement involves both formal and informal tenants, most of the court records examined in this chapter focus on court-ordered eviction within the formal housing market,¹¹ including the formal rental market. The quantitative and spatial analyses of the inventory gathering data from thousands of eviction court records I collected showed that quantitatively speaking, renters were at the biggest risk of court-ordered removals by the Rio Grande do Sul Court of Justice (TJRS) in Porto Alegre from

¹¹ Collective eviction litigations involving informal tenants are the object of chapter five.

2001 to 2018, when compared to homeowners. This proportion is even more alarming when considering that homeowners represent most residents living in the city.

In the next pages, I first discuss the objectives of my research, the research question that guided this chapter, and my hypothesis. In the second part of this chapter, I give a detailed account of my methodology, elaborating on the archival research and spatial and quantitative analyses I conducted. Next, I contextualize my study by briefly explaining how the Brazilian judiciary is organized and describing the main laws associated with urban policy and land access in the country. In the fourth part of this chapter, I share the results of the spatial analysis I conducted with the geocoded addresses of the properties whose ownership or possession was being contested in TJRS. I also present an overview of my findings based on the inventory of over 3,000 eviction court records I compiled. Finally, in the conclusion section, I discuss how my findings are inserted in a broader framework of legalized displacement.

Objectives of the empirical research

The research question that guided this chapter is *how are evictions pursued by the Brazilian judiciary today?* I hypothesize that some of the drivers of contemporary court-ordered evictions in Brazil are directly related to the commodification of housing and recent legislation on land use and property rights. I anticipate that the current eviction apparatuses in Brazil are produced by these different processes involving the market and the state. I also hypothesize that the Judiciary plays a key role in these removals, not only often ignoring, but sometimes misusing key and innovative and progressive land laws when issuing evicting verdicts. Moreover, I argue that, besides displacement targeting informal settlements, there is a growing movement of tenancy eviction cases in Brazil.

In this chapter, thus, I assess the role of the Judiciary when it comes to land dispossession, by looking at eviction litigations filed in TJRS (a state court) for the city of Porto Alegre between 2001 and 2018. As highlighted in Chapter 1 of this dissertation, I chose to analyze evictions filed within this temporal framing for two reasons. First, seminal scholars have already studied in length previous eviction apparatuses in Brazil, including the forced evictions against informal tenants led by the government in the 1980s and 1990s (Valladares, 2005; Perlman, 2010). Second, I am interested in exploring if and how the judiciary is mobilizing important land legislation established in the last two decades, including the paradigmatic 2001 City Statute, which was supposed to expand and democratize access to land and housing in the country. Hence, I am doing a conjectural analysis of the contemporary eviction apparatus (i.e., the complex set of actors and drivers mobilized by these removal practices) in Brazil and centering my study around the judiciary.

Nevertheless, my goal here is not so much to debate the laws and their particularities but to discuss the context in which their enforcement is inserted, including the circumstances in which certain legal codes and logics are applied – or not. Although I am also interested in the legal frameworks that are enabling processes such as the financialization of housing and the rentierization of the economy (Christophers, 2020), my main objective is to understand how the judiciary interprets and applies the law when it comes to eviction, especially regarding the factors that influence and determine its verdicts. In sum, my main concern here is to examine the role of the Brazilian courts in producing -- or contesting -- displacement and to explore how the legal apparatus might be used to advance housing (in)justice. It is important to note, however, that these concerns are not only addressed in this first empirical chapter but throughout my entire dissertation.

This part of my dissertation, specifically, is grounded on the inventory of eviction court records I built with over 3,000 documents. This chapter gives a broader view of how judicial dispossession looks like in Brazil, including the main drivers and actors involved in eviction litigations. Based on quantitative and spatial data, besides understanding the magnitude of court-ordered evictions in Porto Alegre, I discuss, among others, the most prevalent reasons of eviction across my inventory and within specific groups (e.g., informal tenants, renters); the overall profile of institutional plaintiffs and defendants; and the laws and keywords judges are mobilizing to evict or contest evictions. Finally, I also investigate the incidence of evictions across different socioeconomic and demographic groups. By geocoding the addresses of the contested properties and crossing them with socio-economic and demographic information, I was able to generate ArcGIS maps to learn which residents are at a greater risk of eviction, based on their location.

Methodology

As briefly stated in the third chapter of this dissertation, I conducted archival research and spatial analysis. Below, I explain in greater detail the methods I employed in this first empirical chapter.

Quantitative analysis

For my quantitative analysis, I created an inventory of all eviction court records filed with the TJRS for the city of Porto Alegre, between 2001 and 2018. I collected this material from TJRS public online database (TJRS, 2019). In addition to publishing the digital version of recent records, starting in February of 2005, the state court also began to publish the scanned versions of older records' hard copies.¹² Nonetheless, I cannot confirm if TJRS made available all eviction court records filed before

¹² I found an eviction court record dated as early as 1976.

2005. Therefore, the inventory I compiled, and, in particular, the court records from 2001 to 2004, might underrepresent the universe of eviction litigations adjudicated in TJRS during this period.

Besides being one of the most accessible state court databases in Brazil, TJRS online archives also allow people to search records applying different filters, including date, keyword, place, and rapporteur judge (*relator*).¹³ One can also apply these filters to the full content of the court record (*inteiro teor*) or just to the summary of each file. Despite risking restricting the generalizability of my findings as my sample became much smaller, I narrowed my search to the verdicts' summaries only for one main reason. I made this decision because expanding my search to scan the records' full content would result in over 70,000 documents to analyze.¹⁴ And I did not have the material resources nor the time to explore and collect data from each of these files.

Hence, by applying the desired filters just to the verdicts' summaries, my search resulted in 7,469 eviction court records -- a feasible selection given my limited resources. I hired eight research assistants to help me open, review, and extract data from each of these court record files. This stage of the research lasted seven months. All my assistants were either law students or lawyers I met through contacts I had at the Law School at the Federal University of Rio Grande do Sul (UFRGS).

I searched for court records' summaries containing the word *imóvel* (realty/real estate property); without the terms *comércio* (business) or *comercial* (commercial); and with one or more of the following terms: *reintegração de posse* (repossession action),¹⁵ *despejo* (eviction), *remoção* (removal,

¹³ State judges that rule appeals at second instance courts like the TJRS are called *deseembargadores*. Each litigation filed at TJRS has a designated rapporteur (*relator*), a state judge responsible for initially analyzing the appeal, elaborating the lawsuit report, and being the first judge (in case it is not a monocratic decision) to “vote” and express their verdict.

¹⁴ And some records were fifty pages long.

¹⁵ Lawsuit or action to recover possession; action for repossession; restitutory interdict (Castro, 2013).

relocation), *retomada* (repossession), *manutenção de posse* (maintenance/writ of possession),¹⁶ or *adjudicação* (adjudication, foreclosure).¹⁷ Most of the records were available in .html format; those that were not were published as a .doc file.

After downloading and opening each file, I extracted the following information for every document, as table 2 shows:

Table 2: Data extracted from the analyzed TJRS eviction court records

Source: made by the author

<i>Variable</i>
1. trial date;
2. number of the eviction court record (record identification code); ¹⁸
3. type of procedure (e.g., interlocutory appeal, civil appeal, motion);
4. subject (e.g., lease);
5. plaintiff(s) name(s);
6. plaintiff(s) type(s) (e.g., individual/natural person, real estate firm, property developer/construction company, public or private bank, other types of legal entity, or the state);
7. Brazilian Bar Association license number of plaintiff(s) lawyer(s) – including if it was a lawyer from the public defender’s office.
8. defendant(s) name(s);
9. defendant(s) type(s);
10. Brazilian Bar Association license number of defendant(s) lawyer(s) – including if it was a lawyer from the public defender’s office.
11. address of the property whose possession or ownership was being contested; ¹⁹

¹⁶ Lawsuit or action for maintenance of possession; action against nuisances; action against the disturbance of one’s possession (Castro, 2013).

¹⁷ Compulsory conveyance of the property from the debtor to the creditor. Might also be translated to transference, conveyance of property, or compulsory conveyance of the ownership of the real estate depending on the context (Castro, 2013).

¹⁸ In the state court (TJRS), the court records containing the verdict of state judges are called in Portuguese *acórdãos*. They refer to the appellate decision or decision of the appellate court (Castro, 2013). To simplify, I use the term “eviction court records” as a synonym of *acórdãos*.

¹⁹ Addresses could not be found in most of the online documents (*acórdãos*) analyzed by us. In case this information was missing from TJRS court records, we tried to find it by accessing the lower court’s decision. Nonetheless, many of these first instance decisions could also not be accessed online or did not contain the searched address. Since several addresses could not be found in online databases, we had to search for them in the lower court forums’ physical archives, where hard copies of the decisions were kept.

12. jurisdiction (*foro*) where the lower court litigation was filed;²⁰
13. objective: if the plaintiff's goal was to maintain possession/ownership or recover possession/ownership (repossess) of contested property;
14. motive: reason(s) why the plaintiff was filing a lawsuit to maintain possession/ownership or recover possession/ownership (e.g., violating the purchase agreement, contesting ownership, rent default, etc.);
15. judge rapporteur (*relator*); judging body/chamber (*órgão julgador/câmara*);
16. name of all state judges ruling the case;
17. name of state judge(s) granting the claim – judgment for plaintiff;
18. name of state judge(s) denying the claim – judgment for defendant;
19. final verdict (i.e., maintenance of possession or repossession);
20. keywords mobilized by the state judges in their verdict;²¹
21. laws, codes, and statutes mobilized by the state judges in their verdicts.

It is important to mention that all eviction court records which were considered incomplete were disregarded.²² The same occurred with files whose matter did not represent lawsuits whose objective was either the maintenance of possession/ownership or the repossession of residential urban properties. Despite focusing on residential urban properties whose possession or ownership was contested at lower courts, many of the analyzed lawsuits filed with TJRS did not actually focus on tenure or titling issues. Instead, they discussed only specific civil procedures or issues such as legal fees, change of legal representation, adjustment of previously agreed amounts to be paid by debtors, and other particularities that were *not* linked to the repossession or maintenance of residential urban properties per se. Hence, from the 7,469 court records analyzed, after disregarding incomplete records

²⁰ This information allowed us to locate the physical archives where the lower court claims were stored and, thus, helped my research assistants and me to find the addresses of the properties whose ownership or possession was being contested in TJRS.

²¹ Based on my literature review, survey of land law and housing legislation in Brazil, and preliminary interviews I did with legal figures and housing advocates, I selected certain terms that, although do not designate specific bills, are related to progressive and recently established legal texts and other important legislations. I discuss the selected keywords and how they were mobilized in the verdicts in the fifth section of this chapter.

²² Records considered incomplete were those documents in which one or more of the following information was missing: a) trial date; b) number/record ID; d) subject; e) plaintiff's name; f) plaintiff's type; h) defendant's name; i) defendant's type; m) objective; n) motive; and s) verdict.

or those documents that did not meet the criteria just explained, only 3,191 records qualified and were, thus, considered for further quantitative analysis.

All information extracted from qualifying documents was stored and analyzed using Excel. After cleaning and systematizing data, I created a single table with each row containing all extracted information of a specific eviction court record. The quantitative analysis was then conducted by generating different Pivot Tables (usually arranging different subtypes of eviction court records by year or verdict) and graphs that will be discussed in the following pages.

Spatial Analysis

As mentioned earlier, to study the incidence of court-ordered evictions in Porto Alegre across diverse socioeconomic and demographic groups, I conducted a spatial analysis of the addresses of the residential urban properties whose ownership or possession was being contested in the lawsuits filed with TJRS. As also clarified in previous notes, most addresses could not be found in the eviction court records published on TJRS online database. Therefore, I tried to access the decisions issued by the lower courts. The online databases of Porto Alegre's first instance courts are not as complete as the virtual archives of TJRS and only a few addresses were retrieved from this online search. To increase the number of addresses collected, hence, I visited the lower courts' physical records, where copies of the lawsuits were stored. Nonetheless, a large part of these lawsuits was already archived (*arquivados judicialmente*) and could only be retrieved with a special request, an "unfiling petition" (*petição de desarquivamento*). Only the parties involved in the lawsuits, or third parties interested in the case – which was my case – could file this petition. However, besides the bureaucratic steps that are required to "unfile" or "unarchive" each of these records, there is also a payment of a fee of approximately

BRL\$20.00 per record.²³ Paying this fee for thousands of records was financially unfeasible for the purpose of this research. Thus, I eventually was able to collect only the addresses of lawsuits that were either still in progress or temporarily filed in boxes in local jurisdictions (*varas*). From over 3,000 addresses I was looking for, I was able to collect just 631, a little over one-fifth of my initial target.

After building the inventory of collected addresses, I geocoded them and added this data to ArcGIS. I then inserted socio-economic and demographic information, retrieved from IBGE (Brazilian Institute of Geography and Statistics) 2010 census and 2017 data from Rio Grande do Sul Civil Construction Industry Union, the SINDUSCON (*Sindicato da Indústria da Construção Civil no Estado*). After crossing this information, I generated various maps to assess which neighborhoods and groups were at a greater risk of court-ordered eviction in Porto Alegre, as I will discuss in the following sections.

The organizational structure of Brazil's legal system

The three branches of government in Brazil are the Legislative, Executive, and Judiciary. Legislative power is responsible for creating the laws; the Executive power executes them and runs the country; and, finally, the Judiciary magistrates the divergences that emerge in Brazilian society, by applying the law to real-world cases.

Structure of Brazilian Judiciary

²³ About USD\$ 3.70.

Contrary to the United States' legal system, which is based on common law, the Brazilian Judiciary is ruled by civil law. In the U.S. decisions issued by judges represent mandatory legal authority. In the Latin American country, in turn, legal decisions are guided by codified law (i.e., laws published by legislative bodies) and not by judicial precedent (i.e., published judicial opinions) (Oliveira & Garoupa, 2011, p. 571).²⁴ This means that judges in all instances are required to interpret and apply the law that is written and codified into different statutes, codes, and, of course, the 1988 Federal Constitution.

States in Brazil have the power to adopt their own laws. Their autonomy, however, is bound by the principles set by the 1988 Federal Constitution. Moreover, municipalities in Brazil can also issue local ordinances and constitutions (if their principles do not contradict the Federal Constitution), which compose the Organic Law of the City (*Lei Orgânica Municipal*). Municipalities are entitled, thus, to legislate on local matters and to “pass supplementary laws on issues that are considered of local interest and that have not been specifically regulated by federal or state laws” (Mattos Filho Advogados, 2014, p. 1). In sum, the federal government legislates over general matters, while states and municipalities might legislate on specific interests always obeying legal fundamentals highlighted by the Federal Constitution.

Additionally, Fisher emphasizes that Brazil's statutes are usually conceived “within comprehensive legal codes rather than bubbling piecemeal from common practice” (2008, p. 9). She claims that, although everyday laws often do change the codes, each code represents a comprehensive,

²⁴ Recent reforms in the Brazilian legal system, though, created the binding precedent or case law mechanism (*súmula vinculante*). This means that all courts have to follow the reasoning of the Supreme Court (STF) in similar cases.

logical, and idealized legal universe, “which ought not to be tanned by precedent or by haphazard law-making” (Fischer, 2008, p. 9).

Brazil’s legal system is composed of different areas such as criminal, civil, and electoral. And each of them is governed by a separate code (e.g., Civil Code, Code of Civil Procedure,²⁵ Penal Code, Code of Criminal Procedure, Electoral Code, Military Penal Code, etc.) and their own courts and jurisdictions. Therefore, each legal branch has a great degree of autonomy.

The fundamental competence of the Brazilian judiciary is the resolution of jurisdictional social conflicts, deciding in each case who is right or wrong, and relying on legal institutes and on applicable laws (Nogara, 2008, pp. 115-116). Nonetheless, members of the Judiciary must analyze all issues that are presented to them and cannot, even with the excuse of a legal gap, refrain from judging them. Another feature of Brazil’s legal system is the fact that legal provisions just occur with the action of the interested parties. In other words, the Judiciary does not interfere until called upon.

Brazilian judiciary’s structure is based on bodies holding different hierarchies. As per the article n. 92 of the 1988 Federal Constitution, the different authorities embodying the Judiciary are the Supreme Court (STF), the National Council of Justice (CNJ), the Federal Court of Appeals (STJ), and the Superior Courts. The latter is composed of the Superior Labor Court (TST), the Superior Electoral Court (TSE), and the Superior Military Court (STM). The STJ, in turn, is formed by Regional Federal Courts of Appeals (TRFs) and the State Courts of Appeals (TJs) or *Tribunais de Justiça*.²⁶

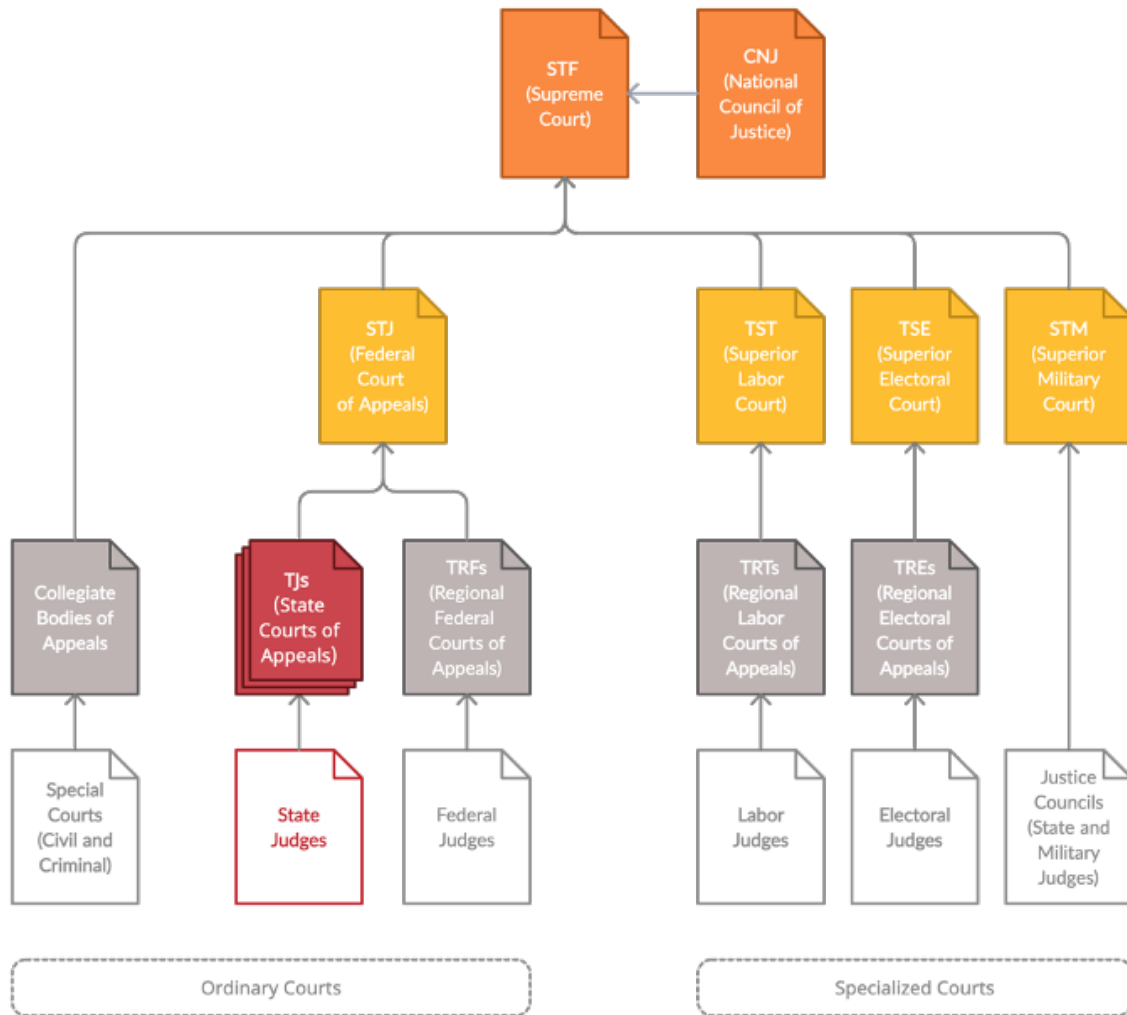
²⁵ Code of Civil Procedures regulates the entire prosecution of the case and its proceedings in the civil judicial sphere. The Civil Code, in turn, regulates private relationships and all rights and obligations related to people, including their assets like their real estate.

²⁶ In this dissertation, I use TJRS as an acronym for the *Rio Grande do Sul Court of Appeal*.

The TRFs, on one hand, are led by federal judges who decide on issues involving foreign parties, indigenous peoples, and political crimes and criminal offenses against the federal government (including the federal government’s properties). The TJs, on the other hand, are led by state judges that decide on appellate decisions issued by lower and municipal ordinary courts. Figure 1 below shows the different bodies and hierarchies forming the Brazilian Judiciary.

Figure 1: Organizational chart of the judicial system in Brazil

Source: made by the author based on STJ (STJ, 2020)



In sum, the CNJ is the agency that manages (including financially) the Brazilian Judiciary. The STF, by contrast, represents the highest body of the Brazilian judicial system and is formed by eleven judges – called ministers (*ministros*) – chosen by the president of the country and approved by the Senate. The STF rules on issues that allegedly violate the federal constitution and discusses cases that are of general interest and importance. There are also other Superior Courts (TST, TSE, and STM) that analyze appeals issued by specialized courts (e.g., TRTs and TREs) and that constitute federal jurisdiction. The STJ, in turn, magistrates’ special appeals from state and federal common justice systems when federal laws are violated, provided that the appeals involve matters (e.g., codes, statutes, etc.) that fall hierarchically below the Federal Constitution. The STJ is formed by 33 ministers who are also chosen by the president of the country and approved by the Senate (Sadek, 2004). Lastly, the TJs are run by state justice, while the TRFs are run by federal justice. As explained above, both instances analyze appeals from ordinary courts. Nonetheless, state common justice has residual authority. That is, under its authority are only the cases that do not fall under federal jurisdiction or jurisdiction of specialized courts like the electoral courts.

It is important to emphasize that the Brazilian judiciary is structured around the principle of the appellate jurisdiction, meaning that any issue analyzed by the country's legal system is entitled to a “double” examination by different authorities: by a lower court (first instance) and by a court of appeals (second instance).²⁷ Usually, the verdicts issued by lower courts are monocratic (i.e., issued by one judge only), while the decisions issued by courts of appeals are made by three or more judges (i.e., collegiate). Second instance decisions, however, can also be monocratic (Verissimo, 2008). Therefore, as in many other state courts in Brazil, decisions issued by TJRS can be monocratic or issued by a set

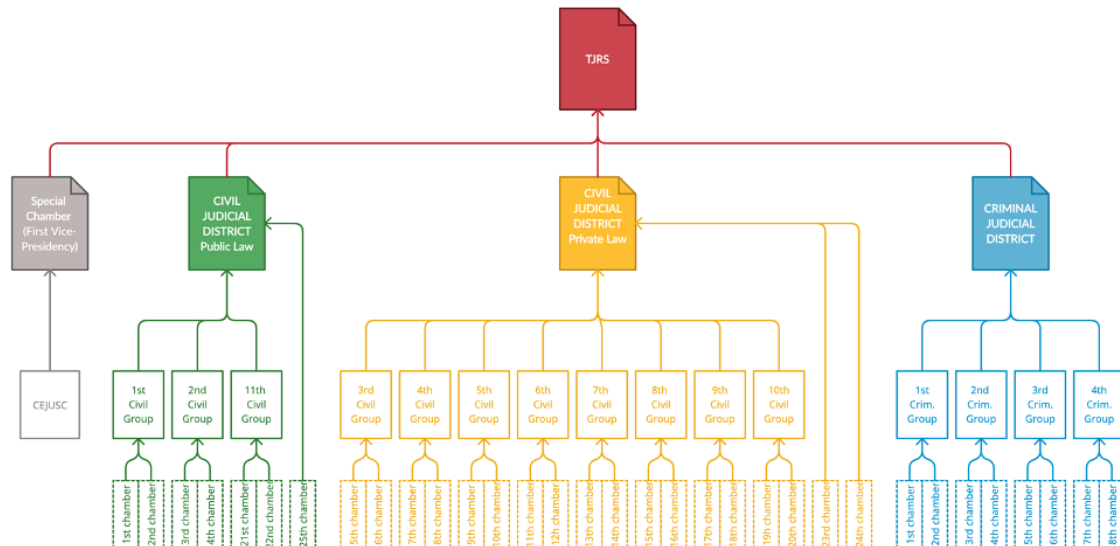
²⁷ In certain cases, as already pointed out, the issue can be analyzed by a higher court (“third instance”, although this terminology does not officially exist) such as the STF or the STJ. These higher bodies of justice can also, eventually, analyze an issue directly, that is without a prior decision issued by a lower court.

of state judges (usually three). In cases in which there is more than one state judge analyzing the case, the final verdict follows the decision of the majority.

Collegiate bodies that issue appellate decisions are organized in chambers (*câmaras*) and are thematically divided. Chambers deciding on equivalent subjects are structured around the same judicial district (*seção judiciária*). TJRS, for example, is composed of three judicial districts: public law (civil); private law (civil); and criminal.²⁸ Each chamber in TJRS is constituted by four to seven state judges (Nogara, 2008). Figure 2 below illustrates the legal organizational structure of TJRS, including where falls CEJUSC, the mediation court that will be discussed in length in chapter 6.

Figure 2: Legal structure of Rio Grande do Sul Court of Appeals (TJRS)

Source: made by the author based on TJRS (TJRS, 2019)



²⁸ The eviction court records I analyze in the next section are all issued by civil groups on private law or if the property whose ownership or possession being contested in the lawsuit is owned by the government, public law.

Decisions issued by lower courts might represent interlocutory (*decisões interlocutórias*) or final verdicts (*sentença*). The first are decisions issued while the lawsuits are still in progress and magistrate over preliminary injunctions or procedural decisions (e.g., provide a citation, production of evidence, etc.). Although they decide aspects of the judicial procedure per se, interlocutory decisions can also be appealed. In addition to interlocutory and final verdicts, there are also orders (*despachos*) issued by the judges that determine further actions required for the litigation to advance. Nonetheless, because these orders have no decision-making matter, they are not subject to appeal. Final verdicts issued by a court of appeals are called appellate decisions (*acórdãos*) and might eventually be contested in higher courts (BRASIL, 2015).

In addition to the legal actors such as judges and lawyers representing plaintiffs and defendants, some lawsuits might also involve the Prosecution Office (state or federal, if involving a subject of interest by the federal government); the Public Defender's Office (municipal, state, or federal); and the Office of the Attorney General (municipal, state, or federal). As the names themselves indicate, the first agency is an autonomous authority responsible for defending the legal order, the democratic state, and “un-waivable” individual and social interests and rights. The Public Defender's Office, in turn, provides legal guidance and defense for marginalized groups – “those in need” or *necessitados* (CF, Art. 134, 1988). Finally, the Office of the Attorney General watches over the interests of the government, be it at the municipal, state, or at federal level.

Studying displacement through TJRS eviction court records

As briefly explained before, I centered my study of legalized displacement in Porto Alegre by looking at eviction court records issued by TJRS. These verdicts (*acórdãos*), as I also mentioned,

represent appellate decisions and are, thus, delivered by state judges. I chose to focus on these documents due to the accessibility of TJRS online database. The Rio Grande do Sul Court of Appeals' digital archives, like the online databases of other TJs in Brazil, are publicly and easily accessible. In addition, one can search for court records filed in TJRS by using keywords of concern such as "eviction", "urban residential property", or "repossession". There are several filters that can be applied as well, limiting or broadening the search results as desired.

Instead, the verdicts issued in the first instance in Porto Alegre are very difficult to get access to. The city's lower courts' archives do not accept a search by keyword. Rather, to access a verdict issued by a municipal judge, one must be familiar with the names of the parties involved in the lawsuit or the lawyers' license numbers. It would be impossible for me, therefore, to explore eviction court records at these lower courts without already possessing basic information (e.g., defendant or plaintiff's identities) for each litigation I would be investigating.

The choice to center my analysis on the decisions made by TJRS, however, has two immediate repercussions. First, the universe of eviction lawsuits filed in Porto Alegre between 2001 and 2018 -- and, thus, the scale of court-ordered evictions in the city -- might be far greater than my research suggests. Hence, the numbers my study raises must be explored with caution, so one does not fall into the trap of minimizing the relevance of judicial dispossession in Brazil.

Second, by surveying only appellate decisions, I may be overlooking the incidence of court-ordered removals within particular groups. In other words, by solely considering those lawsuits that touch the Rio Grande do Sul Court of Appeals, my study might underestimate evictions targeting marginalized groups. Some tenants, for example, might not afford to appellate unfavorable verdicts

issued by lower courts. They may leave without appealing as legal proceedings in the country tend to be very protracted and legal assistance can be expensive. As a way to address this potential limitation, I am also conducting a qualitative analysis of eviction targeting particular subgroups such as informal tenants (see Chapters 5 and 6).

Finally, it is important to clarify that the decisions delivered by TJRS, which I examine in this dissertation, do not exhaust all appellate decisions issued in Porto Alegre between 2001 and 2018. As briefly noted in previous sections, if the parties are contesting the possession of a property owned by the federal government, for example, the lower court verdict made by a federal judge will be analyzed by a Regional Federal Courts of Appeals (TRF).

Property and possession under Brazilian law

Before discussing the results of my research, I summarized in the table below how Brazilian law understands the concept of property, possession, their related concepts, and corresponding legal procedures.

Table 3: Property, possession, and related procedures under Brazilian law

Source: made by the author based on Mattos Filho (Mattos Filho Advogados, 2014)

Principle/Concept	Codes/laws
<i>Access to Housing</i>	

<p>The 1988 Federal Constitution defines housing as a social and fundamental right to be observed by the Brazilian government (CF Art. 6, 1988). The Constitution establishes that the federal government must issue the guidelines for urban development, housing, sanitation, and transportation (CF Art. 21, 1988). In turn, state governments and municipalities, in addition to the federation, have shared legislative powers to “promote housing construction programs and to improve housing and basic sanitary conditions” (CF Art. 23, 1988). The CF also allows the state to take land for “public necessity” or to fulfill a social interest if fair monetary compensation is paid (CF Art. 5, 1988). Furthermore, the document also outlines general policies to be applied by local administrations, including eminent domain and adverse possession of public land (CDRU - <i>concessão de direito real de uso</i> (CF Art. 182 & Art. 183, 1988), legal mechanisms to be applied to ensure the right to housing.</p>	<p>1988 CF, Art. 5; 1988 CF, Art. 6; 1988 CF, Art. 21; 1988 CF, Art. 23; 1988 CF, Art. 182; 1988 CF, Art. 183)</p>
<p><i>Ownership</i></p>	<p>1988 CF, Art. 5; 1988 CF, Art. 8; 1988 CF, Art. 170; 2002 CC, Art. 1,225; 2002 CC, Art. 1,228</p>
<p>The 1988 Federal Constitution guarantees the right to own land (CF Art. 5, 1988). The Civil Code also regulates land ownership. Land ownership is a right <i>in rem</i> (“negative right”) in Brazil. This means that ownership is a duty imposed upon other people and society in general. The 2002 Civil Code specifies rights <i>in rem</i> as follow: (a) property; (b) surface rights; (c) easements; (d) usufruct; (e) use; (f) habitation; (g) mortgages; and (h) others (CC, Art. 1,225, 2002). Although the 2002 Civil Code does not provide an exact definition of ownership, it outlines that “the owner has the right to use, enjoy, and dispose of the thing and the right to reclaim it from those who unfairly owned or possessed it” (CC, Art. 1,228, 2002). Hence, we can infer that ownership represents the right to use, enjoy, and dispose of property and claim it from everybody that unfairly holds it. However, as will be discussed in the next chapter, land ownership in Brazil is subjected to the social function of property. In other words, ownership must fulfill a social function, benefiting not only the owner but the society as a whole (CF, Art. 170, 1988).</p>	
<p><i>Possession</i></p>	

<p>Under Brazilian law, the possession of real estate property is regulated by the 2002 Civil Code (CC, Art. 1,196, 2002). The document defines possessor as the person who exercises, in full or partially, any powers that are inherent to ownership. Thus, if a person does not have a land title, but they are in physical possession of that land, they are considered possessors and not the owners. However, if someone has possession of a real estate property that is adverse to its owner, the possessor may also, under particular circumstances, face a repossession lawsuit filed by the owner. Similarly, if the possessor has the legal right to possess a given property, but a third party occupies it, the original possessor is entitled to suit the further occupant. According to Brazilian law, possession may be “fair” or “unfair”, depending on how it was acquired. Unfair possession is considered to be acquired through “violent, illegal, or precarious ways” (CC, Art. 1,200, 2002). Only fair possession is subject to legal protection. Possession can also be acquired in “good” or “bad” faith. Falls into the first category a possessor who is unaware of the obstruction that prevents them from acquiring the possessed property (CC, Art. 1,201). Under certain cases, Brazilian law, though, allows possessors to become the official property owners (see adverse possession below).</p>	<p>2002 CC, Art. 1,196; 2002 CC, Art. 1,200; 2002 CC, Art. 1,201</p>
<p><i>Possessory lawsuits</i></p>	<p>1973 CPC Art. 920-Art. 933;</p>
<p>The Code of Civil Procedure (CPC) outlines as possessory legal actions: a) repossession (<i>reintegração de posse</i>); 2) maintenance of possession (<i>manutenção da posse</i>); and 3) prohibitory interdict (<i>interdito proibitório</i>). In the case of usurpation (<i>esbulho</i>), preventing a holder’s possession, the lawsuit to be filed is (CPC, Art. 920 – 933; Art. 554-Art. 598, 2015). In case of nuisance or disturbance (<i>turbação</i>), making it difficult for the possessor to exercise the possession, the lawsuit to be filled is the maintenance of possession. Finally, in case there is a threat to possession, the possessor may file a prohibitory interdict (i.e., preemptive lawsuit) against a threat of nuisance or usurpation of one’s possession. Although they have opposite objectives, both legal actions of repossession and maintenance of possession follow the same procedural rules. The plaintiff of repossession or maintenance of possession lawsuit must prove: a) prior possession of the thing; b) the disturbance or usurpation committed by the defendant; c) the date possession was violated; and d) the conservation of possession (even if disturbed) in the case of a maintenance action, or usurpation in the case of a repossession lawsuit (CPC, Art. 927, 1973).²⁹</p>	<p>2015 CPC, Art. 554-Art. 598</p>

²⁹ In the preliminary hearing, the plaintiff may produce testimonial evidence, and the defendant might challenge the witnesses and ask questions. If the defendant’s argument is accepted, the judge immediately issues a warrant for restoration or maintenance of possession. If the argument is rejected, the warrant will be denied, and the proceeding will continue. If the parties achieve a conciliation, the judge will ratify the judgment. If a conciliation is not achieved, the judge will determine the disputed points, decide on pending procedural issues, and define the evidence to be produced, scheduling a trial hearing if necessary (CPC, Art. 331, 1973). If the second hearing (“hearing of justification”) is not established – regardless of the warrant – the defendant will be summoned to provide the judge with their response within 15 days. If the second hearing has already been held, the defendant has 15 days from the date that they were summoned to provide

<i>Tenancy</i>	<i>1991 Law n. 8,245; 2009 Law n. 12,112</i>
There are also laws governing residential and commercial leases in urban areas in Brazil – Law n. 8,245, published in 1991 (Lei n. 8,245, 1991) -- informally called, the Tenancy Law or <i>Lei do Inquilinato</i> -- and Law n. 12,112, instituted in 2009 (Lei n. 12,112, 2009) -- informally called, the New Tenancy Law or <i>Nova Lei do Inquilinato</i> . These texts regulate the use and the rights of the renter who has possession of a property. The 1991 Law limits the rights of the owner, who must respect the property’s peaceful use by the renter and provide adequate conditions of the leased unit. The 2009 Law, however, brought some significant changes to tenancy regulation in the country, making it more difficult for tenants to resist eviction, as it will be discussed in the following sections.	
<i>Adverse possession</i>	<i>1988 CF, Art. 8; 1988 CF, Art. 183; 2002 CC, Art. 1,238-Art. 1,244</i>
Adverse possession (<i>usucapião</i>) is regulated by the Civil Code, which defines that a person who possesses private real estate urban property their own for a period of 15 years (or 10 years if the possessor resides at the property or holds productive work improving the land), without interruption or opposition, acquires ownership, regardless of the title being acquired in “good” faith or not. In urban areas, this period shrinks to 5 years and applies to properties with a total area of up to 250 square meters (CF, Art. 183, 1988). After the required period of uninterrupted possession has passed, the possessor may request the official land title through a judicial proceeding (CC, Art. 1,238-1,244, 2002). Such law is grounded on the fact that the real estate urban properties, as already highlighted, must fulfill a social function (CF, Art. 8, 1988) (see chapter 5).	

When it comes to access to land, housing, and property, in addition to the legal mechanisms established at a federal level, the Rio Grande do Sul State Constitution also legislates the subject at the state level. The document stipulates that municipalities will define planning and land use “to promote the definition and execution of the social function of urban properties [...] and to inhibit real estate

the judge with a response. If the defendant fails to appear at the “hearing of justification” or to secure legal representation, despite being validly summoned, the period for responding is running. If a defendant is validly summoned and does not appear at the hearing and/or does not respond, they will be in default (*revelia*) (CPC, Art. 330, 1973). If the defendant has been summoned through public notice (*citação por edital*), or in service of process at a certain time (*citação com hora certa*), the judge will designate a special guardian to present the defendant’s defense. Regardless of the response, the judge shall confirm if the case is subject to dismissal (*extinção do processo*) or summary judgment (*juízo antecipadamente*) (CPC, Art. 329 & Art. 330, 1973).

speculation” (CE-RS, Art. 176, 1989). Moreover, the Rio Grande do Sul State Constitution highlights that, in terms of housing provision and state housing policy, “the distribution of public resources will prioritize meeting social needs” (CE-RS, Art. 173, 1989). And that housing programs of social interest will be promoted and executed prioritizing land tenure regularization, the provision of basic infrastructure and social facilities (*equipamentos*), and the implementation of housing projects (CE-RS, Art. 173, 1989).

Finally, Porto Alegre’s Organic Law, *Lei Orgânica Municipal* (Lei Orgânica, 1990), also highlights prerogatives and duties regarding access to housing, urban policy, and land use. It is worth paraphrasing some of its passages in length:

Article 13 defines that the municipality will use its real estate properties as fundamental resources for applying urban policies, especially on housing and basic sanitation. If a municipal property has no definitive destination, it cannot remain vacant.

Article 15 stipulates that the use of the municipal property by third parties may be carried out upon concession, serving the public, collective, or social interest.

Article 201 highlights that the social function of the city is understood as the access of every citizen to basic living conditions. It also defines urban development as: “[...] ensuring popular participation in the planning process; ordering the use and occupation of municipality land in line with the social function of property; promoting the democratization of occupation, use, and possession of urban land”.

Article 203 outlines that, to ensure the social function of the city and property, the government will promote and require landowners, in accordance with the federal legislation, to adopt measures to ensure the democratization of the use, occupation, and possession of urban land.

Article 204 mandates that, in order to ensure the purposes defined in the previous article, the municipality will use the following legal instruments: expropriation for social interest or public utility; adverse possession of public land (*CDRU - concessão de direito real de uso*); and adverse possession as cited in the Article 183 of the Federal Constitution.

Article 205 outlines that urban properties must fulfill a social function, in compliance with the provisions established by the city’s Master Plan. The municipality must, thus, require the owner of unbuilt or underused urban land to promote its adequate use under penalty of compulsory subdivision or mandate to build; application of progressive urban real estate tax; and expropriation with payment through public debt securities.

Article 206 highlights that any privately owned urban land that remains without the land-use stipulated by local urban policies is susceptible to expropriation.

Article 208 establishes that urban development guidelines and norms must ensure the urbanization, regularization, and titling of informal and low-income areas without removing their residents (except in situations of risk to life or health). In case residents need to be transferred, they must be contacted prior and moved to a nearby location with no impairment in relation to their previous settlement.

Article 217 instituted a “land banking” (*banco de terras*) of the municipality's owned land to meet urban and housing needs.

Article 230 orders that help low-income citizens to overcome the lack of housing by assisting them to acquire a unit “within the housing market” should be a priority.

Article 233, finally, stipulates that the execution of housing programs will be the municipality's responsibility. The local government will, thus, be responsible to manage housing production; encourage the creation of housing cooperatives and other types of voluntary associations to increase housing construction and infrastructure improvement and expansion; and establish a free technical assistance program to help low-income families with housing design and construction. (Lei Orgânica, 1990).

Results: an overview of judicial dispossession in Brazil

As mentioned in the previous sections, I based this quantitative analysis on the inventory of over 3,000 eviction court records filed for Porto Alegre in TJRS, between 2001 and 2018. For each record, information about the plaintiffs, defendants, ruling judges, address, the final verdict (*acórdão*), keywords, and laws mobilized in the decisions, among other data were extracted. In the next pages, I will discuss my findings by arranging them into different categories of analysis.

Porto Alegre and its spatial patterns of eviction

As mentioned in the first chapter of this dissertation, Porto Alegre is one of the largest cities in Brazil, ranking as the fifth most populous metropolitan area in the country. With a population of 4,276,475 people (IBGE, 2018), Porto Alegre serves as the state capital of Rio Grande do Sul, the

southernmost state in the country, as figure 3 and 4 below show. The city is located by the Lake Guaíba waterway and is divided into 81 official neighborhoods (Figure 5).

Figure 3: Map of Brazil highlighting the state of Rio Grande do Sul

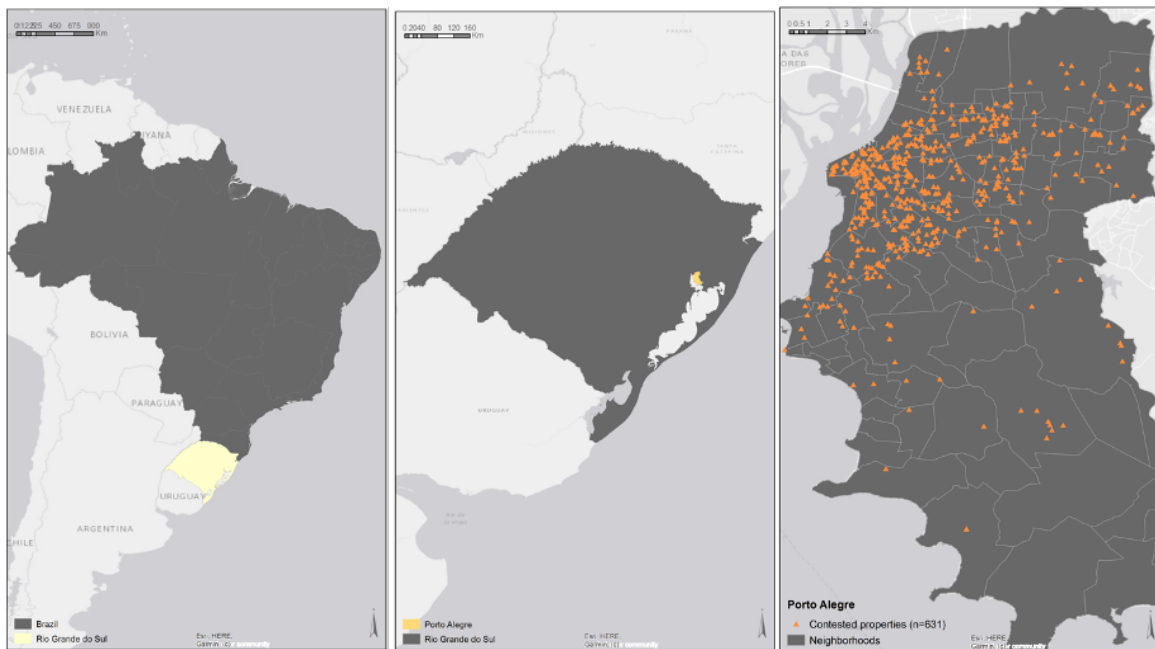
Source: made by the author combining 2021 ESRI data.

Figure 4: Map of Rio Grande do Sul highlighting the city of Porto Alegre

Source: made by the author combining 2021 ESRI data.

Figure 5: Map of Porto Alegre by neighborhood and properties contested in TJRS.

Source: made by the author combining 2021 ESRI and 2018 TJRS data.



In terms of population density, Porto Alegre follows the same pattern encountered in other major Brazilian cities and has denser central areas compared to its periphery (Holston, 2008). The neighborhoods located in the geographic center of Porto Alegre also have a higher White population, smaller average household size, and greater average monthly income (IBGE, 2010), as figures 6, 7, 8, and 9 demonstrate.

Figure 6: Map of Porto Alegre's population density and contested properties in TJRS by neighborhood

Source: made by the author combining 2021 ESRI, 2018 TJRS, and 2010 IBGE census data.

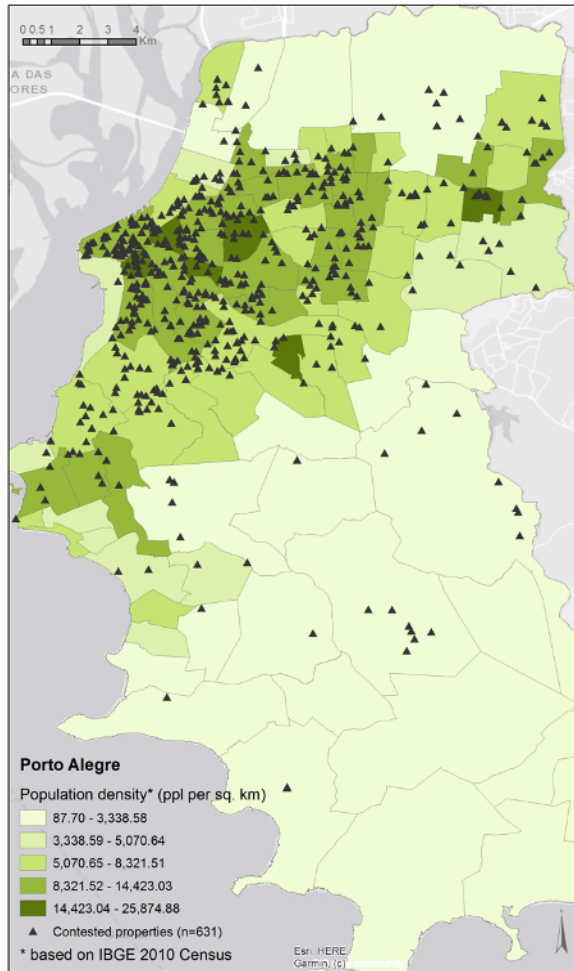


Figure 7: Map of Porto Alegre's White population and contested properties in TJRS by neighborhood

Source: made by the author combining 2021 ESRI, 2018 TJRS, and 2010 IBGE census data.

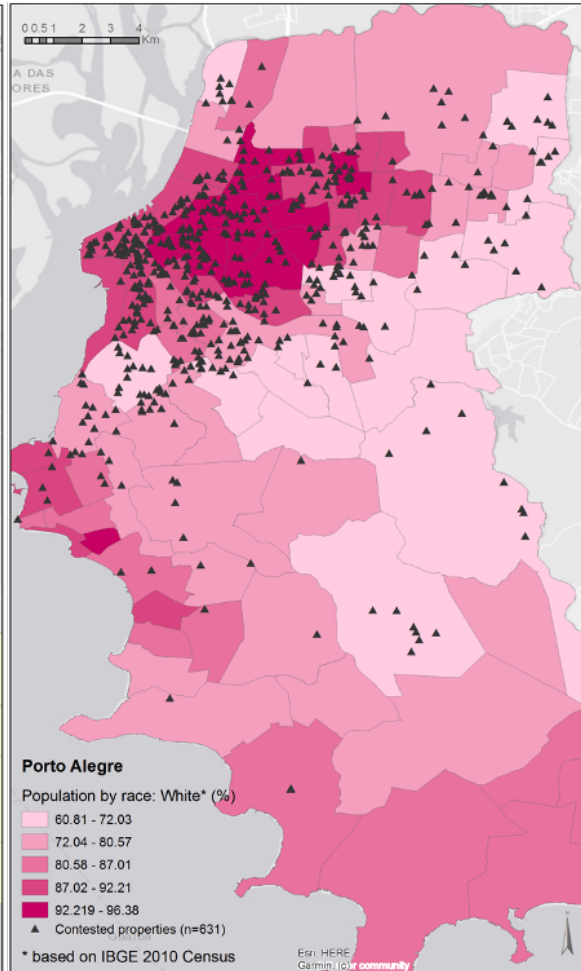


Figure 8: Map of Porto Alegre’s average household size and contested properties in TJRS by neighborhood

Source: made by the author combining 2021 ESRI, 2018 TJRS, and 2010 IBGE census data.

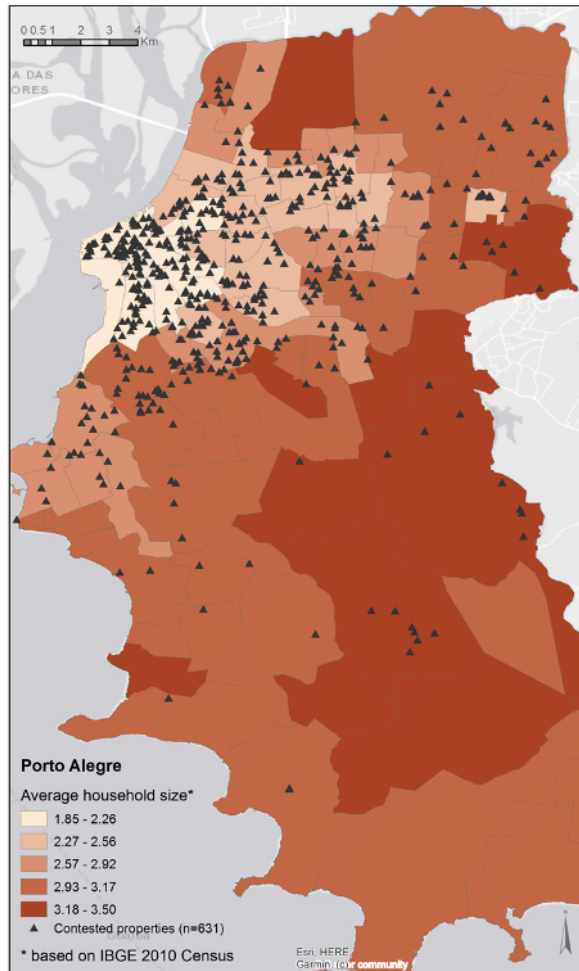
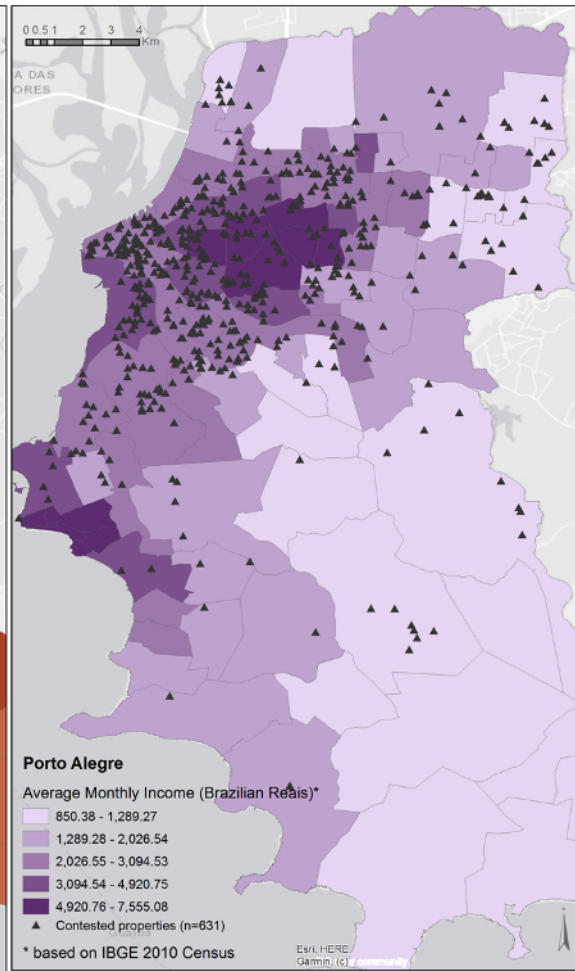


Figure 9: Map of the average monthly income of Porto Alegre’s residents and contested properties in TJRS by neighborhood

Source: made by the author combining 2021 ESRI, 2018 TJRS, and 2010 IBGE census data.



Although most residents of Porto Alegre’s neighborhoods own their own housing, as figure 10 indicates, centrally located areas (wealthier and whiter) tend to have a higher percentage of renter-occupied housing units when contrasted to peripheral neighborhoods (Figure 11). Furthermore, the average square meter price for sale and for rent is greater in these central locations, as figures 12 and 13 show.

Figure 10: Map of Porto Alegre's owner-occupied housing units' rate and contested properties in TJRS by neighborhood

Source: made by the author combining 2021 ESRI, 2018 TJRS, and 2010 IBGE census data.

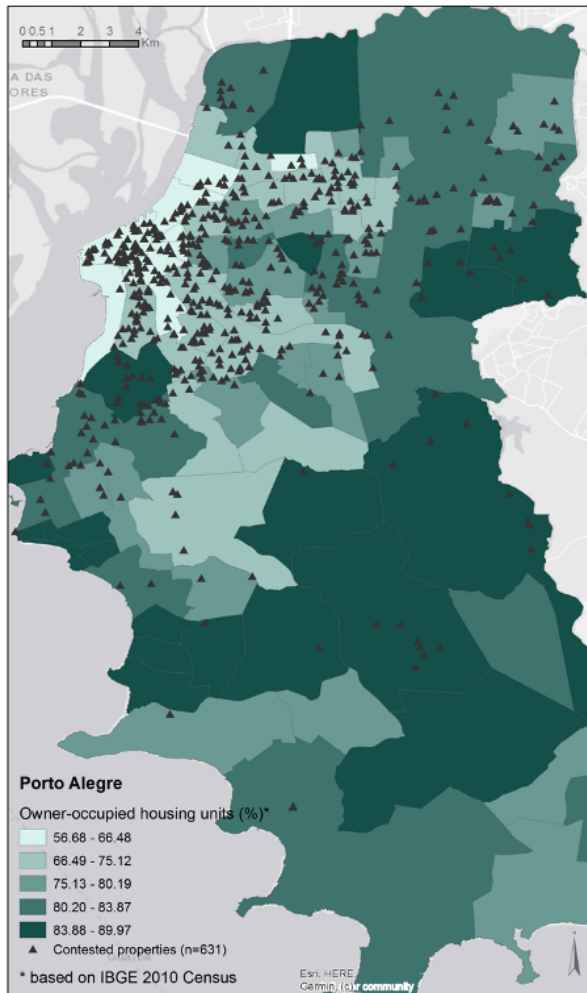


Figure 11: Map of Porto Alegre's renter-occupied housing units' rate and contested properties in TJRS by neighborhood

Source: made by the author combining 2021 ESRI, 2018 TJRS, and 2010 IBGE census data

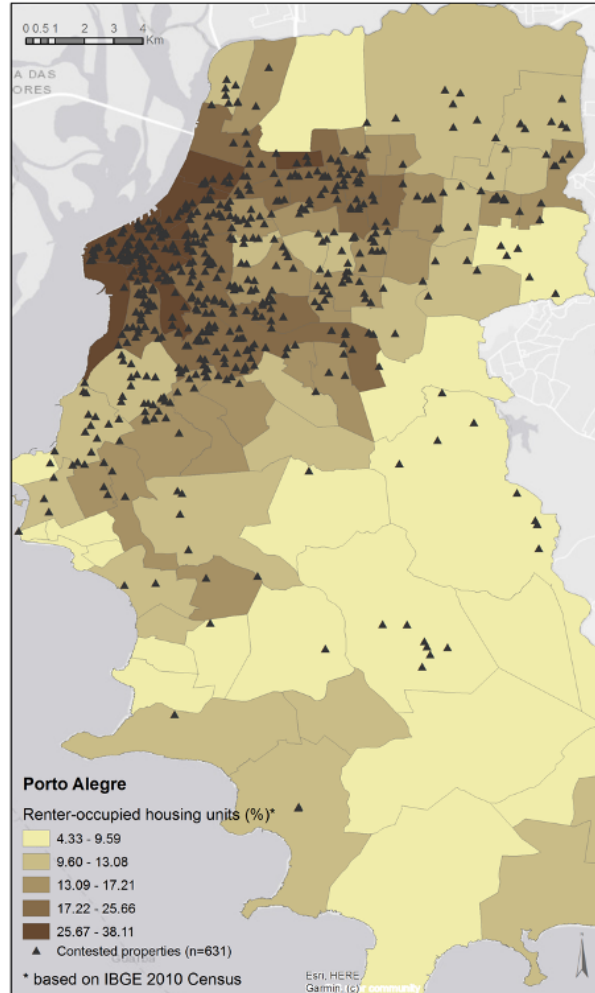


Figure 12: Map of the average square meter price for sale in Porto Alegre and contested properties in TJRS by neighborhood

Source: made by the author combining 2021 ESRI, 2018 TJRS, and 2017 SINDUSCON-RS data.

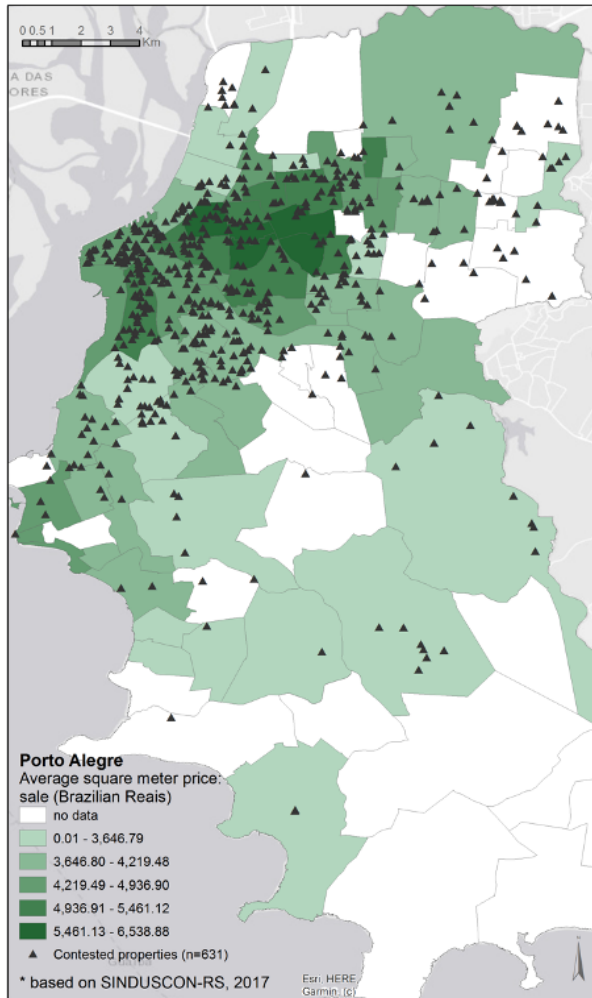
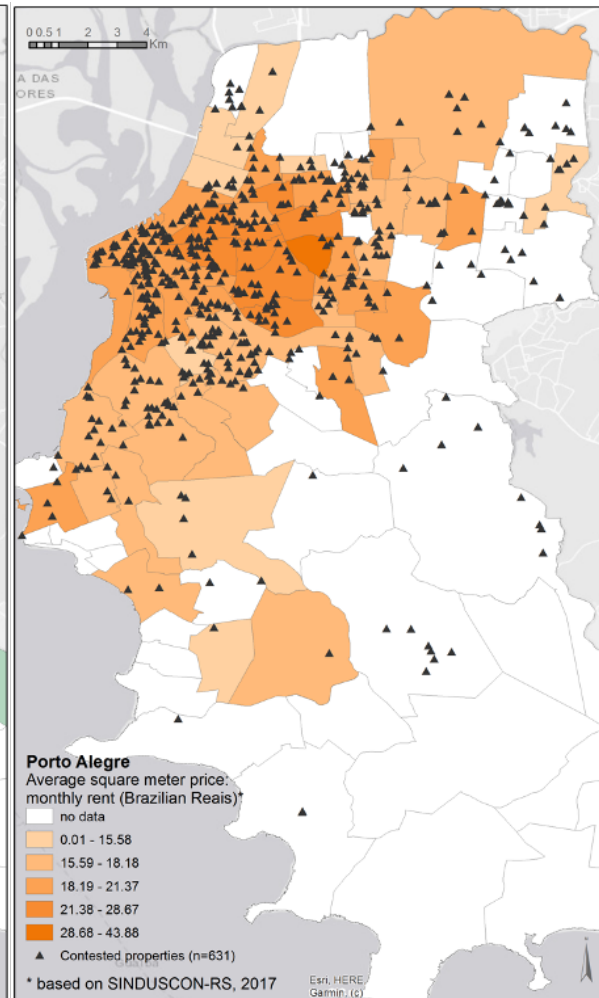


Figure 13: Map of the average square meter price for rent in Porto Alegre and contested properties in TJRS by neighborhood

Source: made by the author combining 2021 ESRI, 2018 TJRS, and 2017 SINDUSCON-RS data.

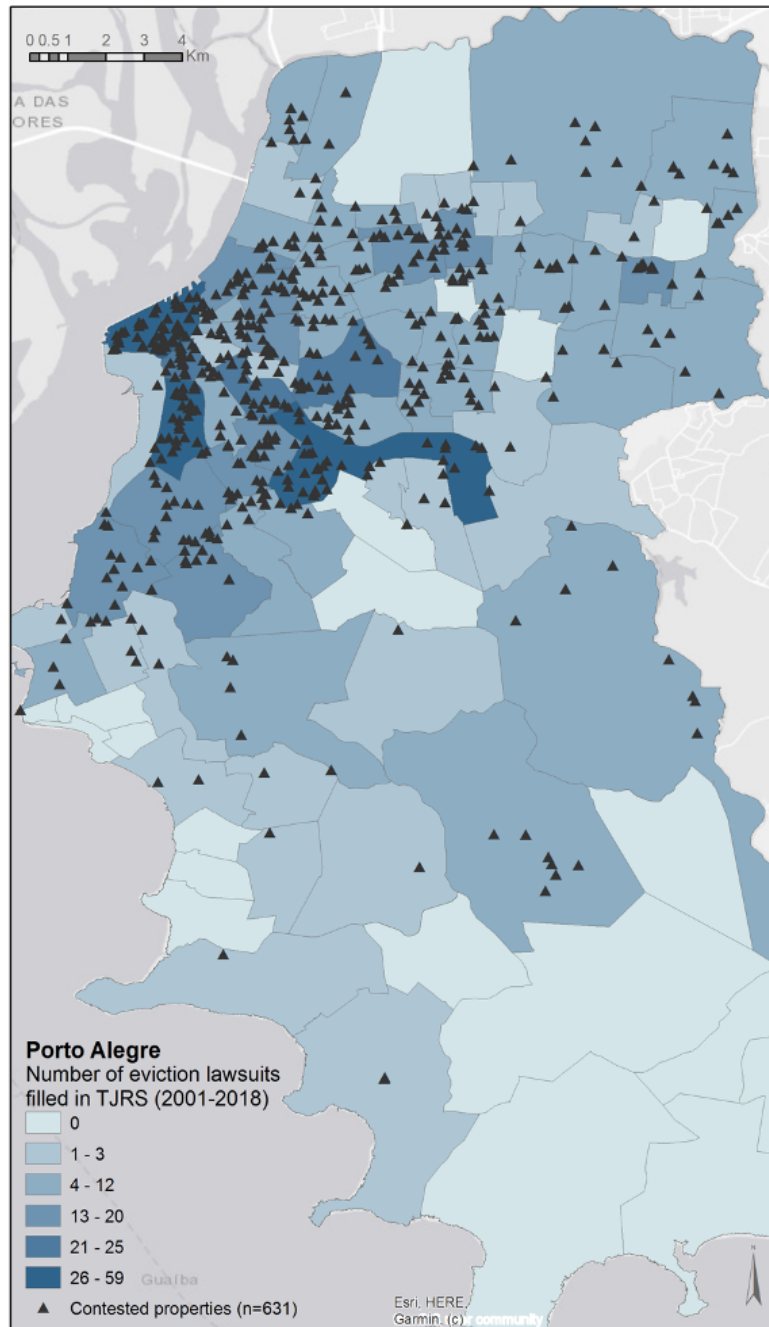


As illustrated throughout figures 5-14, most properties whose ownership or possession was being contested in eviction lawsuits filed in TJRS are also located in central neighborhoods. These areas, in sum, tend to have a higher population density – made up mostly of people with higher average monthly income and White residents. Although more densely populated, these centrally located regions where the properties contested in TJRS are clustered have a smaller average household size,

indicating that the number of housing units there is considerably greater than in marginal neighborhoods. Additionally, these inner zones tend to also concentrate on properties with greater average square meter price, both for sale and lease. Finally, as described above, even though Porto Alegre has, in general, a very high rate of owner-occupied housing units, the neighborhoods where the majority of properties, objects of the lawsuits, analyzed in this study are situated have the greatest renter-occupied housing units' rate in the city.

Figure 14: Map of properties whose ownership and/or possession was being contested in eviction lawsuits filed in TJRS (2001–2018)³⁰ for Porto Alegre by neighborhood.

Source: made by author combining 2021 ESRI, 2018 TJRS, and 2010 IBGE census data.



³⁰ The number represented by this map only accounts for those eviction lawsuits whose properties' addresses were found at the TJRS online database and/or physical archives, as explained in the previous sections.

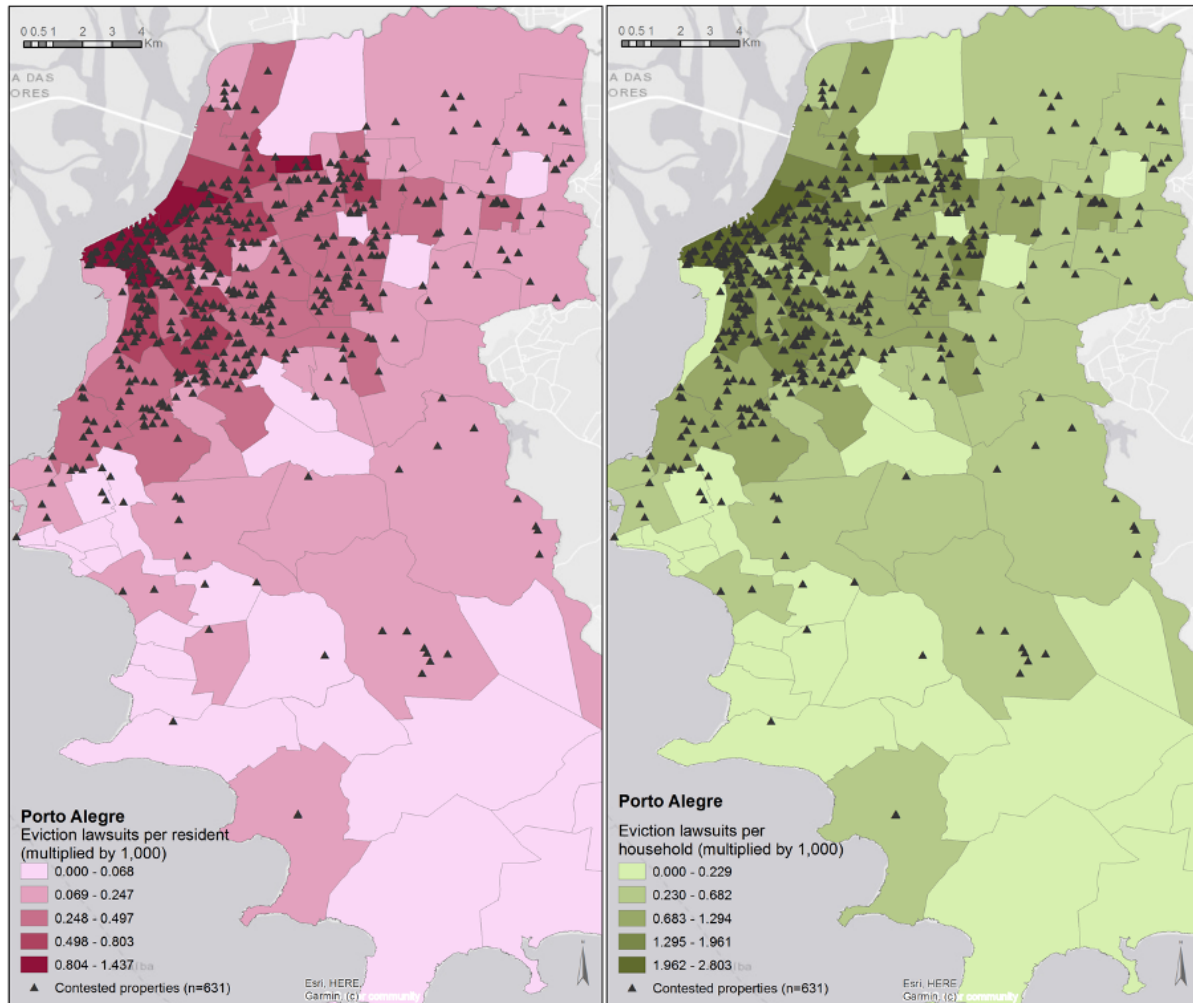
The figures above suggest that tenants may be at the epicenter of judicial dispossession in Porto Alegre. They also imply that market-driven displacement might be a major subcategory of eviction in the city, as most properties contested in the raised lawsuits tend to be located in high-valued areas. It is important to highlight, though, that most of the contested properties in TJRS could be clustered in central neighborhoods because these areas also concentrate most housing units in Porto Alegre. Nevertheless, after normalizing data, figures 15 and 16 below indicate that this is not the case. After accessing the rate of contested properties per household unit and resident, we observe that there is still a prevalence of evictions in denser neighborhoods.

Figure 15: Map of the rate of contested properties in TJRS per resident by neighborhood.

Source: made by the author combining 2021 ESRI, 2018 TJRS, and 2010 IBGE census data.

Figure 16: Map of the rate of contested properties in TJRS per household by neighborhood.

Source: made by the author combining 2021 ESRI, 2018 TJRS, and 2017 SINDUSCON-RS data.

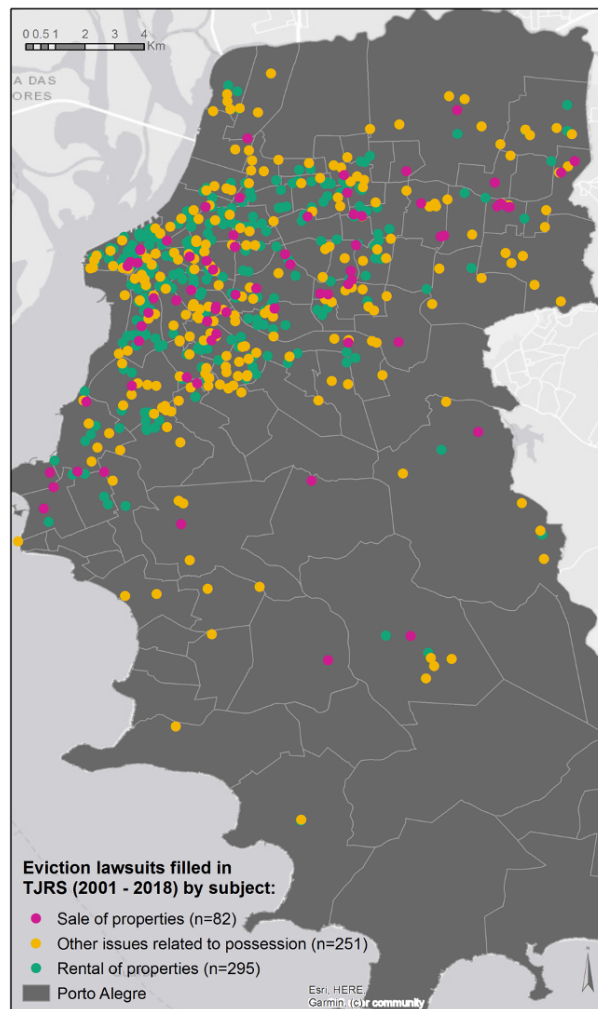


In order to better assess spatial patterns of court-ordered displacement in Porto Alegre, I will break down the incidence of eviction in the city, illustrated by figure 14 above, into different categories, including by subject (e.g., lease, sale, etc.). Thus, after clarifying the socio-economic and demographic features of areas with higher eviction rates in Porto Alegre, I will explore the different types of evictions most prevalent in each region of the city. Although the universe of contested properties is considerably smaller than my total quantitative analysis sample, these 631 properties geocoded into ArcGIS maps represent over one-fifth of my overall sample and might elucidate important qualitative aspects of my study.

First, by filtering the lawsuits analyzed in this chapter by subject, it seems that most actions involving rented properties are indeed located in more centrally located neighborhoods. Lawsuits involving other possession issues (e.g., land conflicts, squatting, etc.) are more spread throughout Porto Alegre, as it is the case with lawsuits involving the sale of housing units (Figure 17).

Figure 17: Map of eviction lawsuits filed in TJRS (2001-2018) by subject in Porto Alegre

Source: made by the author combining 2021 ESRI and 2018 TJRS data.



On the one hand, figure 18 demonstrates that over two thirds of the analyzed lawsuits aim to maintain possession,³¹ they also appear to be more spatially scattered than those actions aiming repossession, which tend to be concentrated in central neighborhoods. Figure 19, on the other hand, shows that when it comes to the decisions issued by TJRS, almost two-thirds of the verdicts order repossession. Most contested properties from the verdicts deciding against eviction (i.e., maintenance of possession) tend to be situated in inner-city neighborhoods.

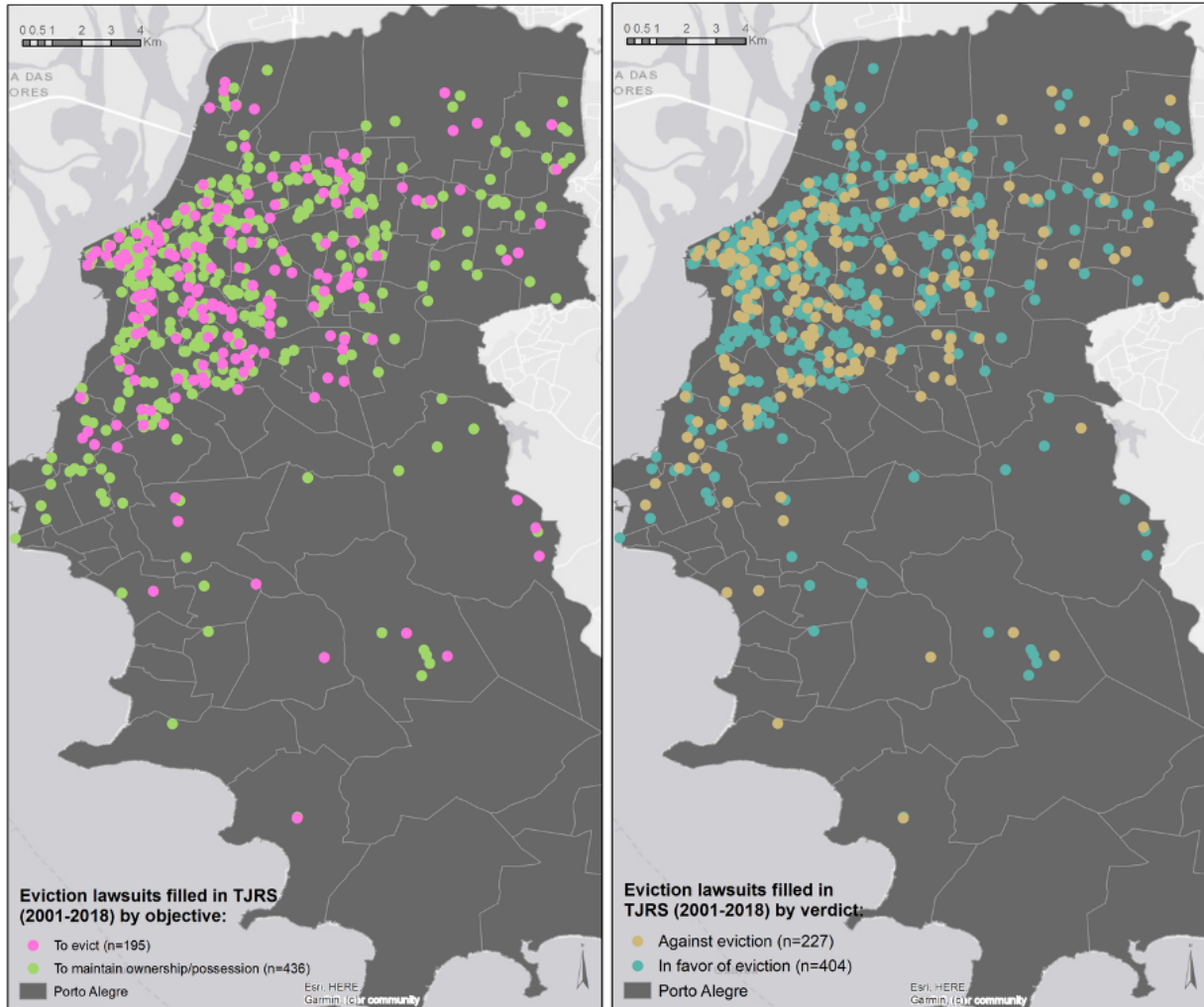
Figure 18: Map of eviction lawsuits filed in TJRS (2001-2018) by objective in Porto Alegre.

Source: made by the author combining 2021 ESRI and 2018 TJRS data.

Figure 19: Map of eviction lawsuits filed in TJRS (2001-2018) by verdict in Porto Alegre.

Source: made by the author combining 2021 ESRI and 2018 TJRS data.

³¹ It is important to note, though, that as these represent appellate decisions, many of these lawsuits could originate from plaintiffs filing petitions at lower courts aiming repossession.



Although the number of cases illustrated by figures 20 and 21 below represents a little over ten percent of the universe of collected addresses (as many lawsuits involved only private individual parties), these maps indicate that the lawsuits involving institutional private actors (typical players operating within the formal housing market) usually target properties more centrally located. In turn, actions encompassing properties situated in marginal areas of the city normally involve the government either as the plaintiff or as the defendant.

Figure 20: Map of eviction lawsuits filed in TJRS (2001-2018) by institutional plaintiff type in Porto Alegre.

Source: made by the author combining 2021 ESRI, and 2018 TJRS data.

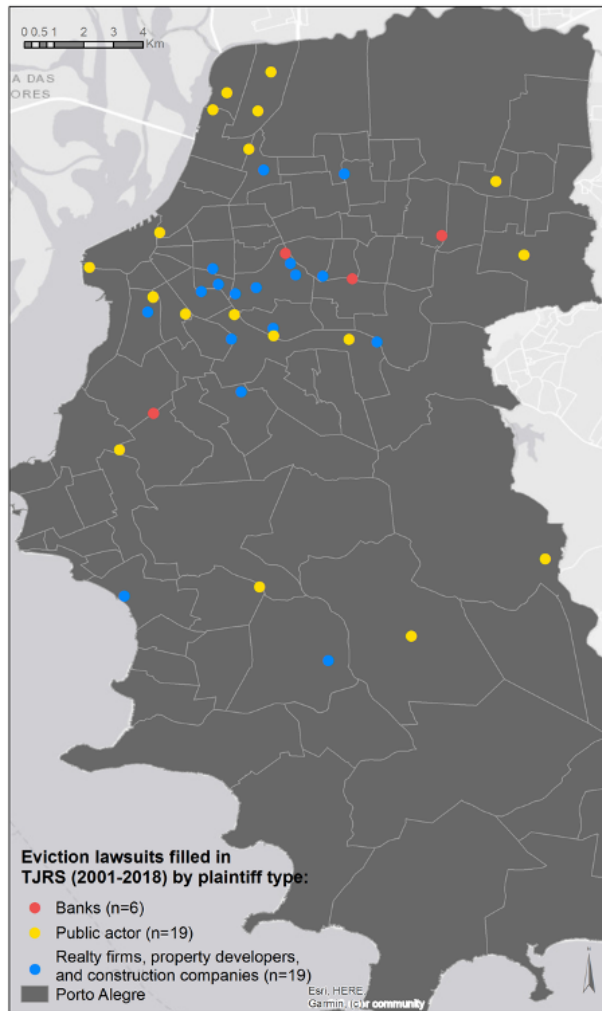
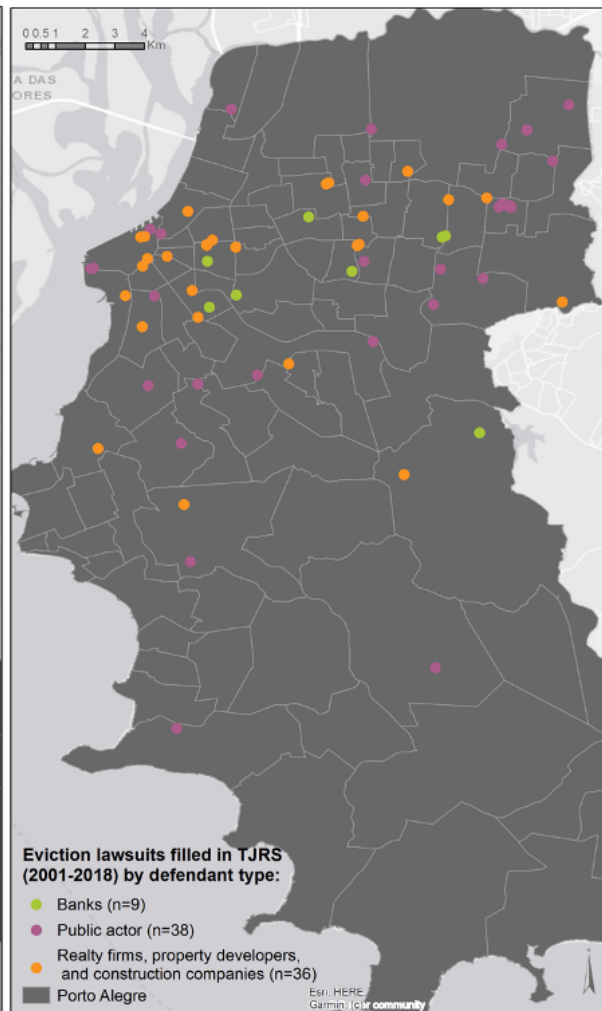


Figure 21: Map of eviction lawsuits filed in TJRS (2001-2018) by institutional defendant type in Porto Alegre.

Source: made by the author combining 2021 ESRI, and 2018 TJRS data.



In terms of the year in which the verdict was issued, the actions deciding on properties located in Porto Alegre’s extreme south tend to be older, while those in the north were usually filed after 2009, as figure 22 below illustrates. As it will be discussed in the next section, one important legal mark in the late 2000s was the promulgation of the new Tenancy Law. The Law n. 12,112 was published in 2009 and, to a certain degree, making it easier for landlords to initiate eviction legal procedures.

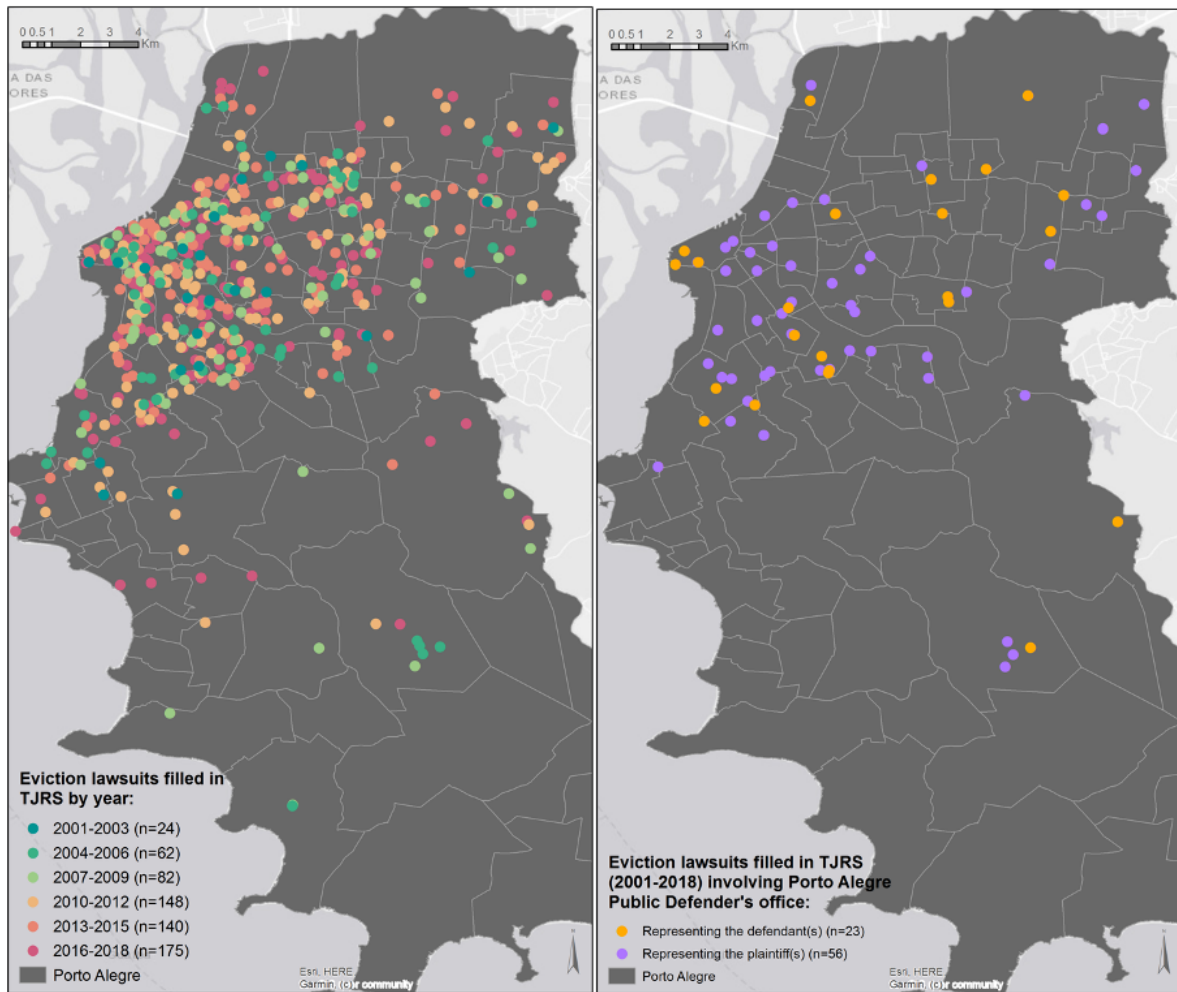
However, to better understand if and how this new legislation impacted the verdicts issued by TJRS, I conducted a quantitative analysis of my whole sample that will be assessed in the next pages.

Figure 22: Map of eviction lawsuits filed in TJRS by year in Porto Alegre.

Source: made by the author combining 2021 ESRI and 2018 TJRS data.

Figure 23: Map of eviction lawsuits filed in TJRS (2001-2018) involving the Public Defender's Office.

Source: made by the author combining 2021 ESRI and 2018 TJRS data.



It is impossible to fully predict the socio-economic conditions of plaintiffs and defendants as the eviction court records do not specify their income. Nonetheless, one way to overcome this

limitation is by looking at those lawsuits involving the Public Defender's Office (representing either the plaintiff or the defendant), as the parties without the resources to hire a lawyer are entitled to receive legal aid from the public defenders. The Public Defender's Office was established in 1994 in Rio Grande do Sul and, since then, has represented most low-income citizens that cannot afford to hire legal assistance.³²

As figure 23 above shows, despite central neighborhoods being inhabited by more affluent people and concentrating the most expensive housing units (both for sale and lease) in Porto Alegre when compared to marginal areas of the city, the Public Defender's Office also represents residents from there. Public Defenders' assistance in these areas might be related to the fact that vacant properties in the inner city (be it properties owned by the government or idle land for speculative purposes)³³ are currently occupied by squatter groups. Thus, we can argue that displacement in the city center does not only affect wealthy residents.

Finally, the last part of this spatial analysis focused on identifying locational patterns of appellate decisions mobilizing certain keywords and legislations. Figures 24 and 25 below illustrate the eviction court records containing the most cited laws in my overall sample, as well previously defined keywords (see methods section). I also included in these maps, litigations involving adverse possession. As we can observe, eviction records for properties located in central neighborhoods also involve adverse possession (*usucapião*) lawsuits and decisions mobilizing the term "right to housing" (*direito à moradia*). This indicates, as mentioned in the last paragraph, that some of the lawsuits contesting the

³² There are also NGOs in Porto Alegre providing free legal aid, including the Volunteer and Solidarity Association (AVESOL) and the University Legal Assistance Service (SAJU) led by the Law School at the Federal University of Rio Grande do Sul (UFRGS), both institutions I had contact with when interviewing associate lawyers for this research.

³³ Sabadi (2017), for example, identified 49 idle properties only in downtown Porto Alegre.

ownership or possession of units situated in central areas of the city might involve informal tenants in addition to those within the formal housing market. The keyword “social function of property” (*função social da propriedade*), nevertheless, tends to appear in actions filed for properties situated in peripheral neighborhoods (Figure 24).

Figure 24: Map of eviction lawsuits filed in TJRS (2001-2018) mobilizing key laws in Porto Alegre.

Source: made by the author combining 2021 ESRI and 2018 TJRS data.

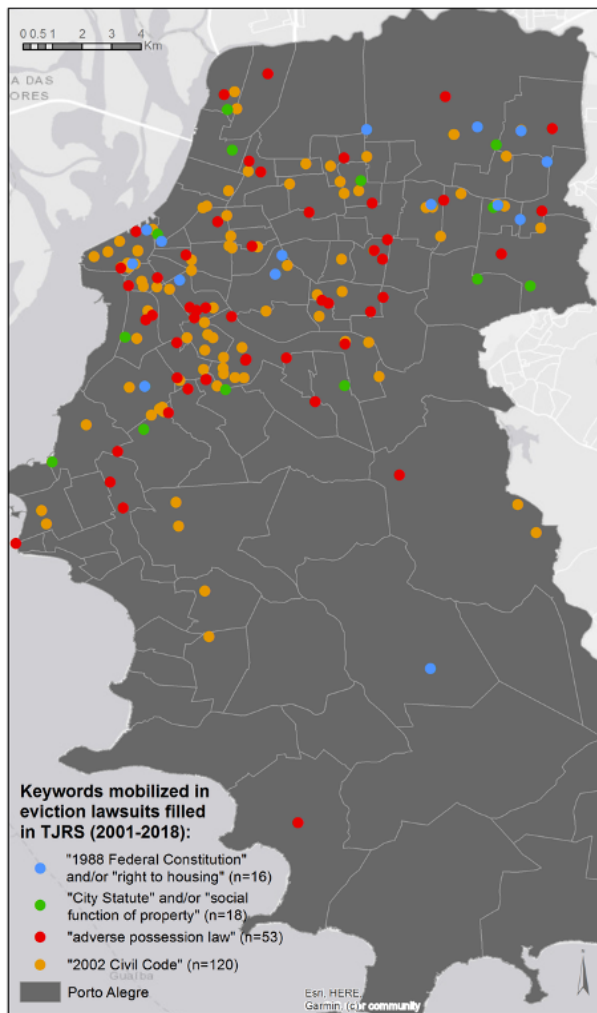
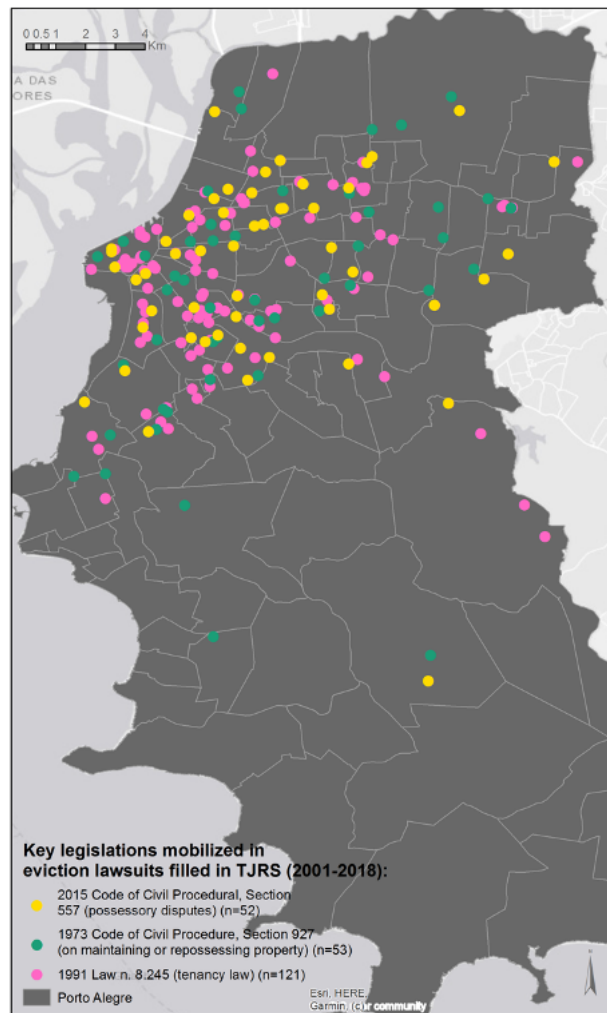


Figure 25: Map of eviction lawsuits filed in TJRS (2001-2018) mobilizing keywords in Porto Alegre.

Source: made by the author combining 2021 ESRI and 2018 TJRS data.



Regarding the spatial patterns of the most cited laws in TJRS decisions, as figure 17 has already indicated, we can observe that lawsuits whose matter is lease are centrally clustered (Figure 25). In turn, the properties involved in TJRS decisions citing articles from civil procedural codes concerning other issues of possession (e.g., lack of proof of ownership) are more spatially dispersed. These laws and cited articles will be further discussed in the next subsection.

Quantitative analysis of TJRS eviction lawsuits: the magnitude of court-ordered displacement in Porto Alegre

As mentioned in the methods' section of this chapter, I analyzed 3,191 eviction court records filed in TJRS, between 2001 and 2018, and whose object was ownership or possession issues of properties located in the city of Porto Alegre. As previously highlighted as well, these records were found on TJRS online database after a search using specific keywords and filters. Nonetheless, some of these documents were still scanned paper copies and not original electronic files. In fact, only from 2005 onwards I did find digital documents that have not been scanned. Hence, not all appellate decisions published after 2001 and before 2005 might be archived on TJRS website yet.

TJRS eviction lawsuits by year

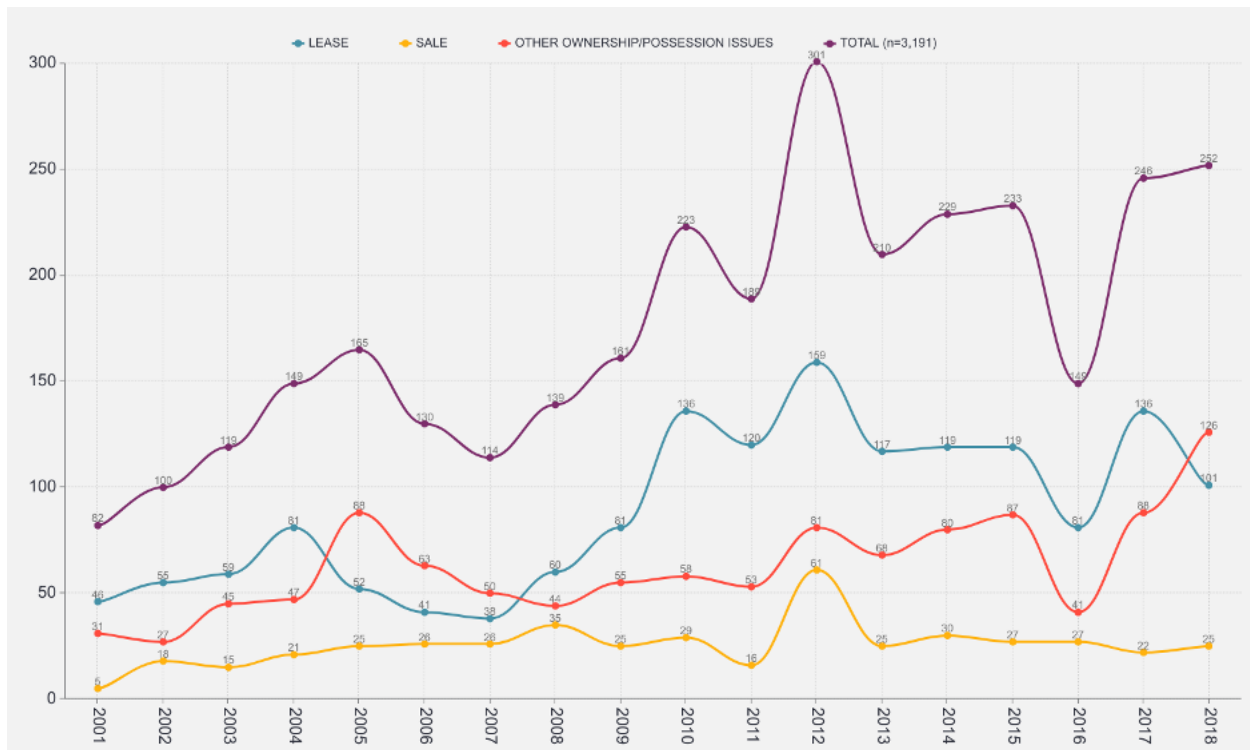
With this limitation in mind, figure 26 below illustrates the eviction court records filled in TJRS by year³⁴ and subject. The purple line represents the sum of decisions by year; the blue line, the sum of decisions whose matter was the lease of properties; the red line, the decisions whose matter was the sale of properties; and, finally, the yellow line represents the sum of decisions whose matters were other ownership or possession issues. As we can observe, the first peak in the volume of issued

³⁴ Year in which the appellate decision was *issued* by TJRS.

decisions occurred in 2005. However, as clarified in the previous paragraph, not all court records from 2001 to 2004 might have been published on TJRS online database yet. Another major peak happened in 2010 and 2012, followed by a steep fall in 2013. Actually, the year 2012 represents the highest number of issued decisions by TJRS, totaling over 300 adjudicated records. In turn, in 2016 we see a considerable drop in the sum of TJRS decisions. However, the lowest number of issued TJRS decisions after 2004 was in 2007, with only 114 verdicts.

Figure 26: Eviction lawsuits filed in TJRS (2001-2018) for Porto Alegre by year and subject.

Source: made by the author combining 2018 TJRS data.



Looking at the legal and political contexts might assist us to explain these rises and falls in TJRS issue decisions by year. The most important legal mark when it comes to land law in Brazil is the City Statute, established in 2001 when urban policy became a matter of the Brazilian judiciary

(Alfonsin, 2001). Nevertheless, it is worth noting that 2009 and 2015 also represent important years when it comes to urban legislation in Brazil, when the New Tenancy Law (Law n. 12,112) and the new Civil Procedural Code (CPC), respectively, were institutionalized in the country. The first text brought more flexibility to landlords, facilitating eviction proceedings as will be discussed further on in this chapter. The new CPC introduces a series of changes in relation to the 1973 CPC in terms of possessory actions, especially regarding jurisdiction issues, collective possessory actions, and new forms to apply adverse possession law (i.e., through extra-legal channels) (CPC, Art. 1,070, 2015).³⁵ There were also other important legal marks to urban law in Brazil such as the 2015 Metropolis Statue and the 2017 Urban Land Regularization Law. Nonetheless, none of the eviction court records analyzed mobilized these legal texts.

The Workers' Party (PT) had an elected mayor in Porto Alegre from 1989 to 2004, the longest term PT held at a state Brazilian capital until today. When a mayor from a different party was elected in 2005, as discussed in the first chapter of this dissertation, the new government broke the alliance with informal tenants and housing cooperatives and no longer assisted these groups in acquiring land and regularizing their situation. In fact, the local government did the opposite and instituted programs like "Caça Fraudes", encouraging residents to report neighbors with issues such as irregular water access (Baierle, 2007).

This change in the political scene in Porto Alegre might help to explain the drop in appellate decisions and, thus, in appeals more broadly, starting in 2006. As just mentioned, the lack of support

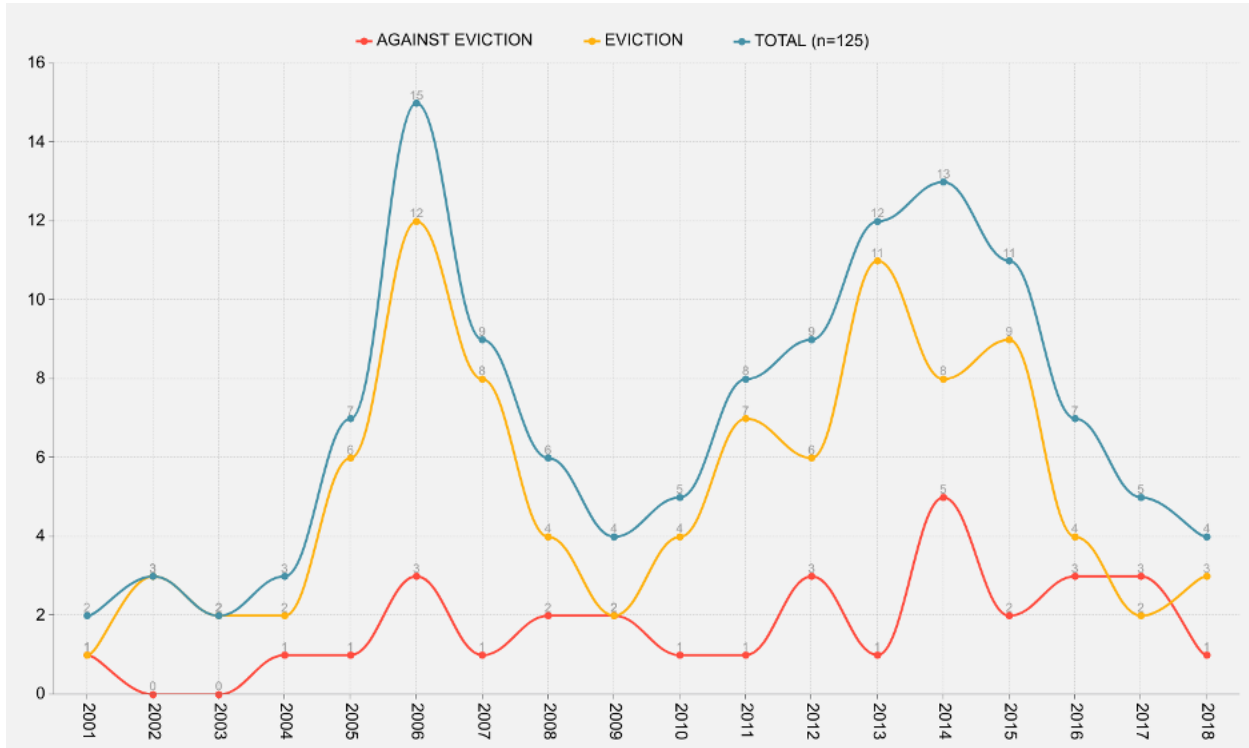
³⁵ Article 557 also adds that the claim of ownership over property does not preclude the maintenance of possession or repossession (CPC, Art. 557, 2015). In sum, the new CPC advances by making a clear distinction between possessory actions (i.e., lawsuits to recover possession) from petitory actions (i.e., lawsuits to establish and enforce one's property right).

from the local government might have discouraged people from filing appeals, at least when it comes to informal tenants and squatter groups. Moreover, the establishment of the New Tenancy Law in 2009 and of the new CPC in 2015 may justify the 2012 rise and 2016 decline in TJRS decisions. As already pointed out, Law n. 12,112 gave more power to landlords. The new code of civil procedure, in turn, made it easier for people to apply for adverse possession in extra-legal ways. Figure 26 above also shows that TJRS decisions and appeals whose matter was the lease of properties (blue line) had a significant surge after 2009. Nonetheless, after 2015, in addition to the decline in the appeals, whose subject was other ownership and possession issues, we also see a drop in the number of lease appeals.

Moreover, by looking at the graph below we observe that only 125 appellate decisions concerning adverse possession (*usucapião*) were issued by TJRS from 2001 to 2018. Although figure 27 illustrates a significant plunge in the sum of decisions (blue line) in 2015, we also see a decline in 2007. Thus, by looking only at these graphs we cannot confirm that the new CPC by itself was a decisive factor in the decline of adverse possession appeals.

Figure 27: Adverse possession lawsuits filed in TJRS (2001-2018) for Porto Alegre by year and by objective.

Source: made by the author combining 2018 TJRS data.

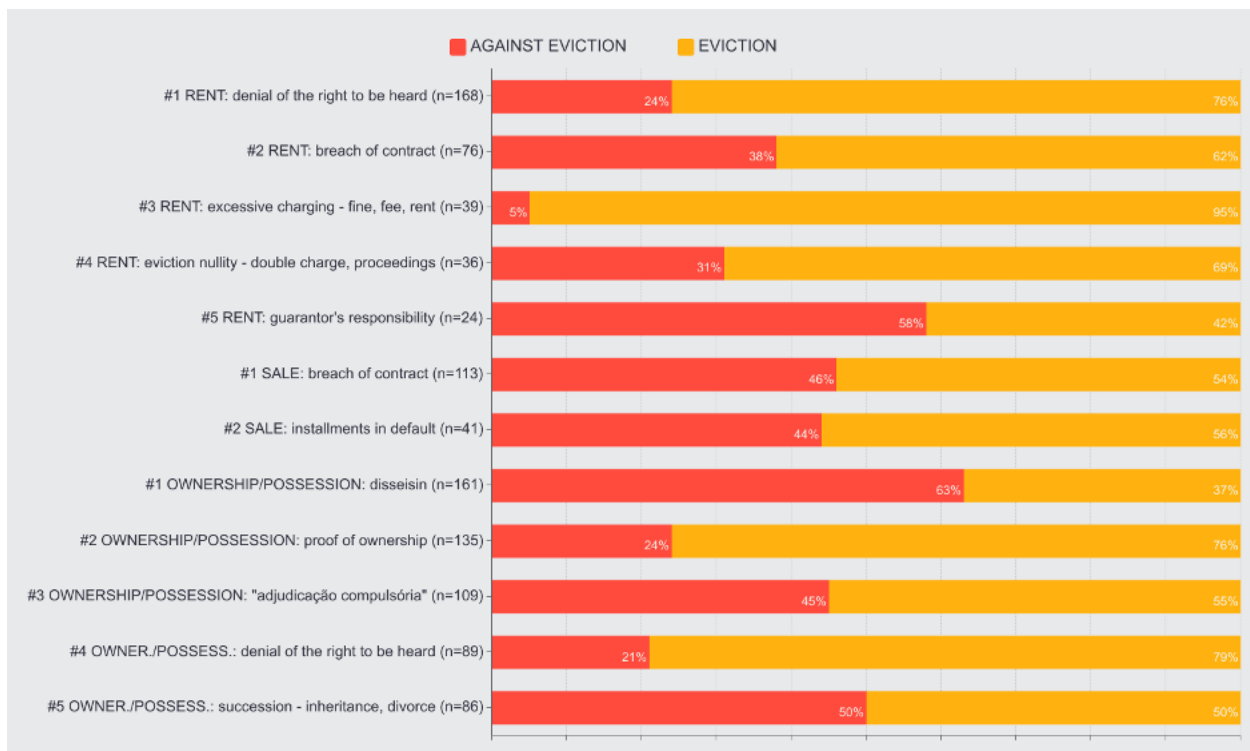


TJRS eviction lawsuits by reason

In terms of the reasons mobilized by plaintiffs when filing the lawsuit, figure 28 breaks them down by subject (i.e., lease/rent, sale, and other ownership/possession issues). The graph below ranks the most cited reasons within each subject group. We can also observe the verdicts by percentage for each subgroup represented in figure 28. For those decisions whose matter was the lease of properties, the most common reason given by the plaintiff when filing an eviction lawsuit was the denial of their right to be heard. Other common reasons found were a breach of contract, excessive charging, and double charging (in these latter cases all plaintiffs were tenants). When it comes to actions whose subject was the sale of properties, the two top reasons given by plaintiffs when entering the lawsuit

were a breach of contract and buyer in default. Lastly, in those actions concerning other issues of ownership and possession, the typical motives when entering with the lawsuit were: disseisin (usurpation of possession); demonstration of possession; and issues with the transference of property (*adjudicação compulsória*).³⁶

Figure 28: Eviction lawsuits filed in TJRS (2001-2018) for Porto Alegre by reason and verdict.
Source: made by the author combining 2018 TJRS data.



TJRS eviction lawsuits by verdict

One of the most important aspects of this analysis is exploring the context in which certain verdicts were issued by state judges. Figure 29 below shows the total of decisions for repossession and

³⁶ The compulsory conveyance of a property from the debtor to the creditor.

for maintenance of possession by year; figure 30 illustrates these figures in percentage terms, also grouping them by year. Figure 29 indicates that verdicts both deciding for eviction (i.e., repossession) (blue line) and against it (i.e., maintenance of possession) (red line) tend to follow the same slope from the overall number of appellate decisions (yellow line). However, when we look at figure 30, it becomes evident that the years comprising higher rates of evicting verdicts are 2001, 2007, 2009, and 2010. The year of 2008, in turn, represents the date with the lowest percentage of repossession verdicts.

Hence, we can argue that, in general, TJRS tends to decide for repossession with an overall percentage of 64%. If we break out the evicting decisions by subject (i.e., concerning the lease of properties, sale of properties, or other ownership/possession issues), the percentage is very similar: 55.41% when involving lease; 55.01% when involving sale; and 55.16% when involving other possession or ownership issues.

Figure 29: Eviction lawsuits filed in TJRS (2001-2018) for Porto Alegre by year and verdict.
Source: made by the author combining 2018 TJRS data.

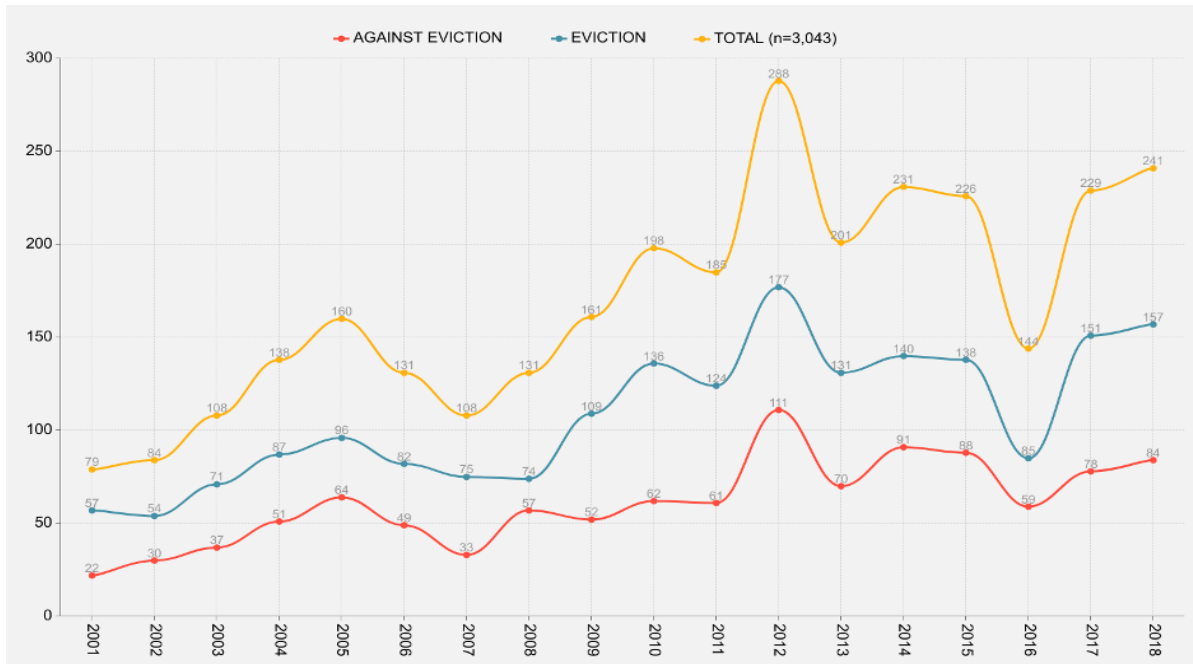
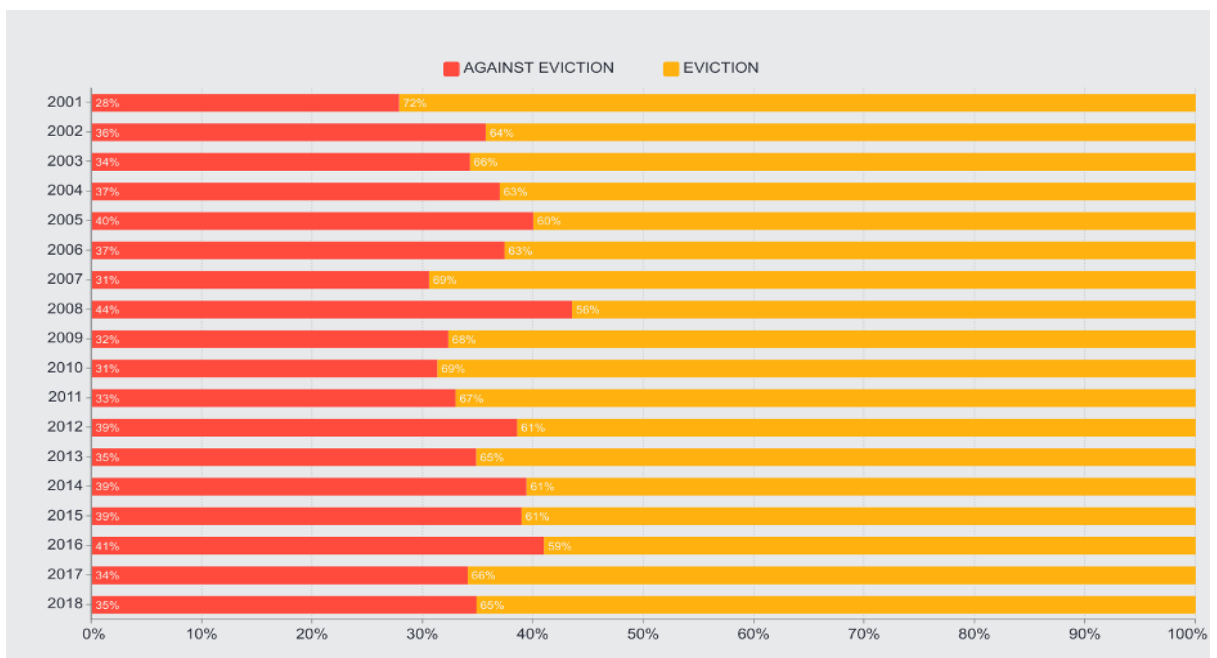


Figure 30: Eviction lawsuits filed in TJRS (2001-2018) for Porto Alegre by year and verdict (%).
Source: made by the author combining 2018 TJRS data.



TJRS eviction lawsuits by type of institutional plaintiffs and defendant

When looking at the eviction court records filed in TJRS, I also looked at the types of plaintiffs and defendants. After dropping individual private plaintiffs and defendants and exploring, thus, only institutional actors, we observe that TJRS usually decides for repossession only when the plaintiff represents public actors (municipality, state, and other governmental agencies) (Figure 31). In all other cases, most verdicts benefit the defendants.

In turn, figure 32 shows that TJRS tends to issue evicting decisions, benefiting institutional actors when they are the defendants, regardless if they are banks, construction firms, developers, or they represent the government. In fact, by exploring closely the cases in which the government is involved, we see that when Porto Alegre's housing authority (DEMHAB) is the plaintiff, the state judges benefit DEMHAB (i.e., ordering repossession) in 83% of their decisions (Figure 33).

Figure 31: Eviction lawsuits filed in TJRS (2001-2018) for Porto Alegre by type of institutional plaintiff and verdict.

Source: made by the author combining 2018 TJRS data.

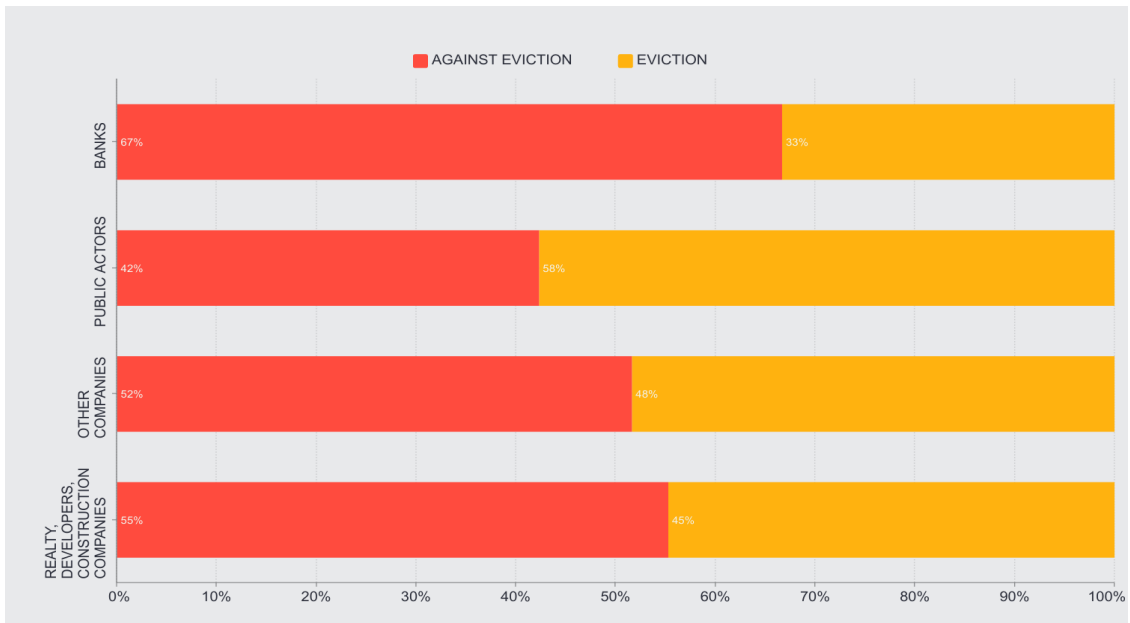


Figure 32: Eviction lawsuits filed in TJRS (2001-2018) for Porto Alegre by type of institutional defendant and verdict.

Source: made by the author combining 2018 TJRS data.

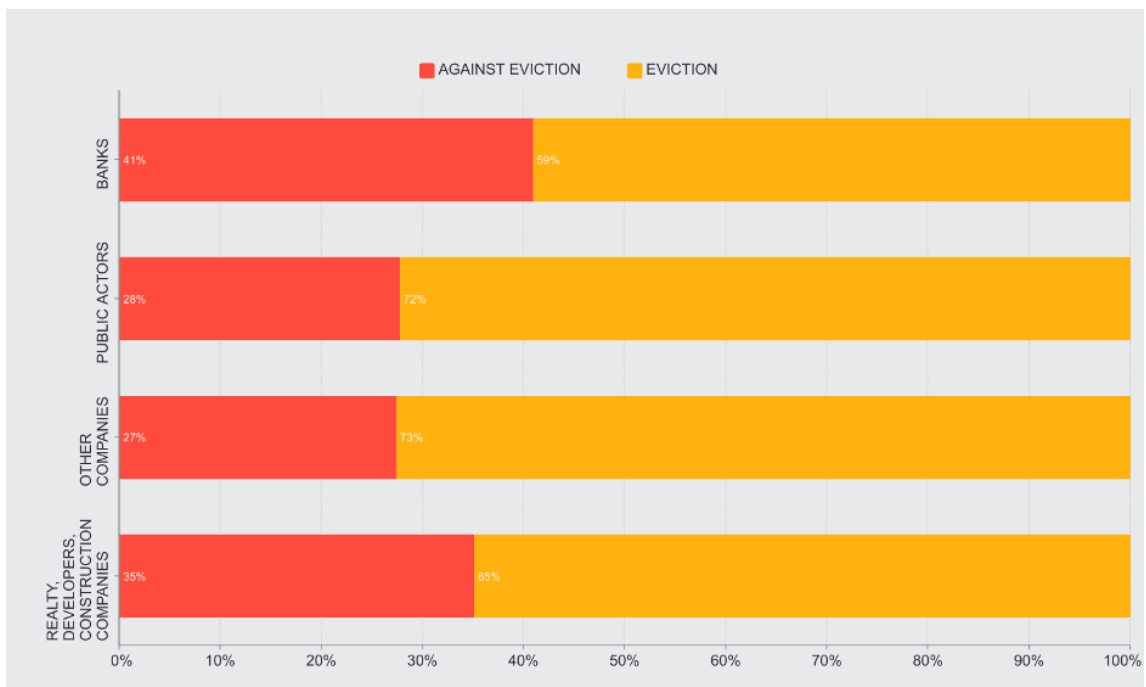
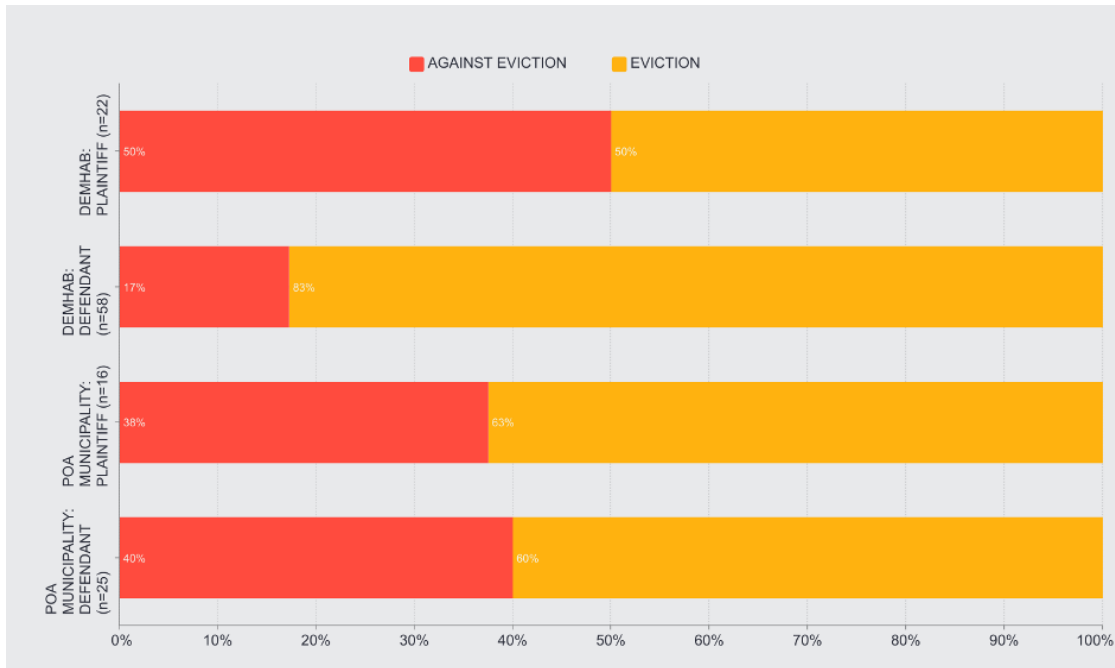


Figure 33: Eviction lawsuits filed in TJRS (2001-2018) for Porto Alegre involving the Municipal Housing Authority (DEMHAB) and the municipality by verdict.

Source: made by the author combining 2018 TJRS data.



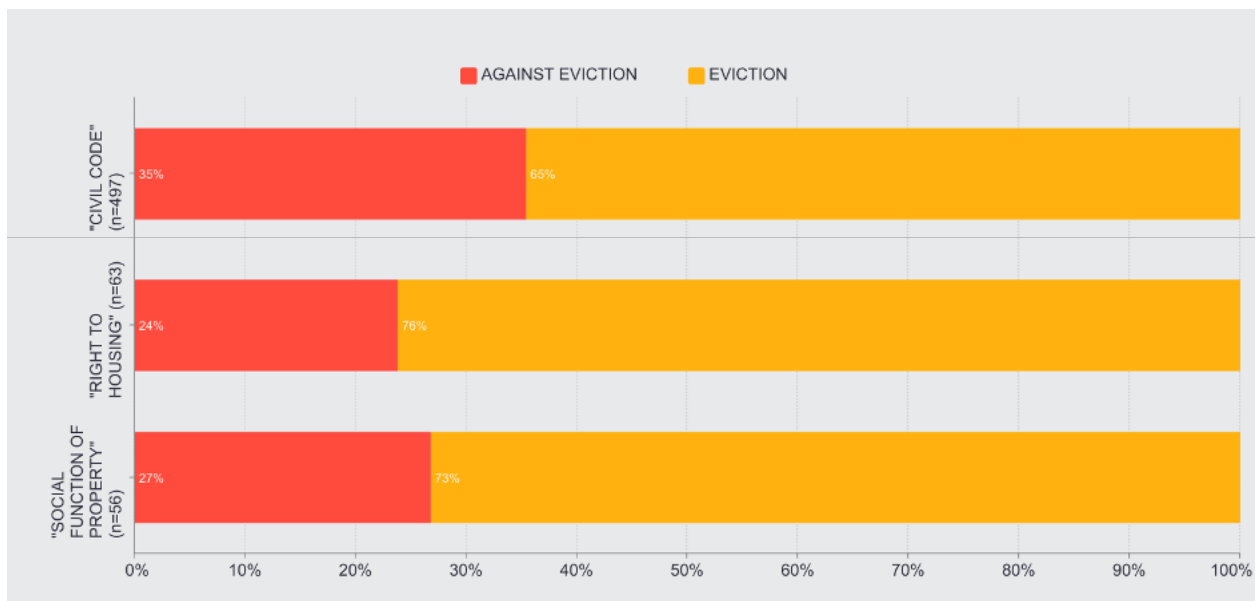
TJRS eviction lawsuits by mobilized keywords and laws

I also assessed TJRS eviction court records by looking at the keywords and laws mobilized by the judges in their decisions. As explained in the Methods section of this chapter, after preliminary research, I selected three keywords: civil code; right to housing and/or federal constitution; and social function of property and/or city statute. The most cited keyword is “civil code”, mobilized in approximately one-sixth of my entire sample. The Civil Code will be further discussed in the next chapter, but it essentially regulates private relations between individuals, including their properties. “Right to housing” and “social function of property” were not cited nearly as much as “civil code”. This was already expected as usually the first two keywords only appear in verdicts deciding actions involving informal tenants. Nonetheless, it is interesting to notice that verdicts containing the terms

"right to housing" and "social function of property" have a high evicting rate -- approximately 75%. A qualitative analysis of how these terms were mobilized by judges is not covered here but will be discussed in the next chapter when I will turn my focus to the collective possessory actions.

Figure 34: Eviction lawsuits filed in TJRS (2001-2018) for Porto Alegre by keyword and verdict

Source: made by the author combining 2018 TJRS data.



Finally, figure 35 above shows the most cited laws in TJRS decisions issued between 2001 and 2018 for Porto Alegre. Only the laws that were cited in at least 32 lawsuits (1% of my overall sample) were considered here. Only eight legislations made the cut, including four separate laws and four articles from civil and civil procedure codes. Both articles 561 from the 2015 CPC and 927 from the 1973 CPC are identical. As already referred earlier, they mandate that the plaintiff of repossession or maintenance of possession lawsuit must prove: a) prior possession of the property; b) the disturbance or usurpation committed by the defendant; c) the date possession was violated; and d) the

conservation of possession (even if disturbed) in the case of a maintenance action, or usurpation in the case of a repossession lawsuit (CPC, Art. 927, 1973; CPC, Art. 561, 2015).

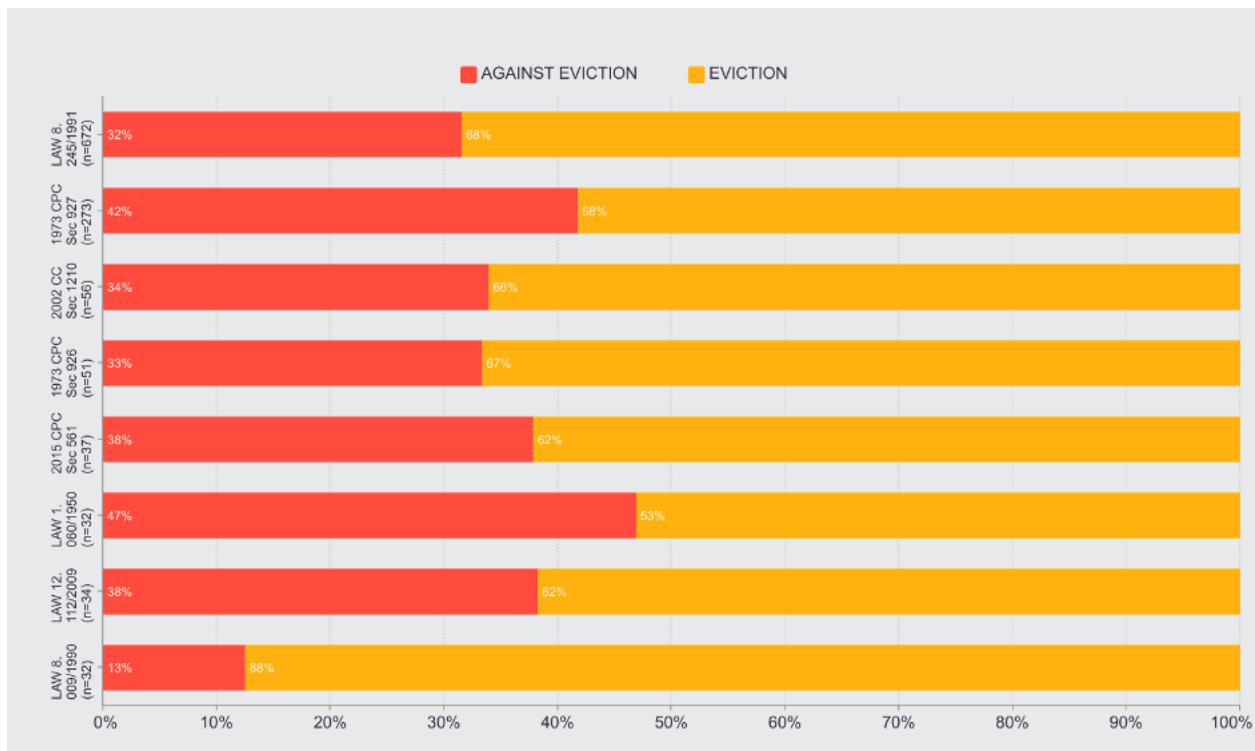
Article 926 from the old CPC also rules possessory proceedings and establishes that the possessor is entitled to be kept in possession, in case of nuisance, and repossession in case of usurpation (CPC, Art. 926, 1973). Once again, article 1,210 from the 2002 Civil Code has similarities with both 1973 CPC, article 926, and with the previously discussed 2015 CPC, article 557. In addition to stipulating that the possessor is entitled to be kept in possession (in case of a nuisance) and repossession (in case of usurpation) it also specifies that the claim of ownership over property does not preclude the maintenance of possession or repossession. However, article 1,210 adds that the possessor who suffers nuisance or usurpation can keep possession or restore possession by their own means, as long as they do it "soon" (*logo*) and that their efforts do not go beyond what is essential to the repossession or maintenance of possession (CC, Art. 1.210, 2002).

Laws 8,245 and 12,112, as already mentioned, are tenancy laws. The first was instituted in 1991 and it was the first comprehensive law created to regulate lease relations in Brazil. The latter was created in 2009, bringing significant changes to these relations. Among other changes, the 2009 law stipulated that tenants have 30 days to leave the property in case of eviction, rather than six months, as specified by the 1991 law -- and this deadline might be reduced further if there is no contract regulating (*contrato de garantia*) the lease. Moreover, the new tenancy legislation also allows the judge to issue an eviction warrant in case the tenant is in default (Restiffe Netto & Restiffe, 2010). In sum, these changes benefit landlords, by granting them greater security and expediting the eviction process, leaving tenants in a much more vulnerable position (Murari & Barretto, 2010, p. 41).

Lastly, Law 1,060, issued in 1950, determines that free legal assistance must be offered to those that can afford to hire legal representation. Law 8,009 established in 1990 discusses the “in-seizability” of homestead (exempt property). It stipulates that those properties representing someone's primary residence may not be confiscated or seized as a debt payment. The only exceptions are: when a property is offered as collateral in a mortgage contract; when the debtor is in default of installments made to finance the acquisition or construction of a housing unit; and by obligations arising from surety granted in lease agreements. As we can observe from figure 35, almost 90% of the verdicts that mobilized this law decided for eviction, the highest rate illustrated by the graph below.

Figure 35: Eviction lawsuits filed in TJRS (2001-2018) for Porto Alegre by law and verdict.

Source: made by the author combining 2018 TJRS data.



Conclusion: the role of the Judiciary in producing - and contesting - displacement.

The research question that guided this chapter was "how are evictions pursued by the Brazilian judiciary today?". By extracting key information from eviction court records filed in TJRS, from 2001 to 2018, I was able to explore not only the magnitude of judicial dispossession in Porto Alegre but also the state judges' decisions under different contexts (i.e., depending on the institutional types of defendants or plaintiffs involved, the year the verdict was filed, the motive of the lawsuit, keywords and mobilized laws, etc.). As mentioned earlier, in addition to discussing matters of land law in Brazil, I was interested in investigating the circumstances in which certain laws are enforced, as well as the major drivers and actors involved in eviction litigations to understand the processes at the core of legalized displacement and, thus, who is at a greater risk of eviction. In sum, by providing an overview of judicial dispossession, including key statistics and spatial patterns, this chapter hopes to clarify how the Brazilian judiciary is applying the law when it comes to eviction litigations and the factors that might influence or determine its decisions.

The maps and graphs included here showed that, although informal tenants are still at great risk of displacement, quantitatively speaking the incidence of court-ordered removal within the formal housing market in Porto Alegre cannot be ignored. Renters, in particular, face the greater threat of eviction. The evidence discussed in the previous sections suggests that central legislation such as the 2009 Tenancy Law, giving more power to landlords, might have boosted eviction lawsuits involving leased properties and granted judges more power to expedite eviction procedures. The spatial analysis also showed that tenants in central and expensive neighborhoods are often the subjects of these types of litigations. We cannot affirm that we are witnessing the corporatization of the residential rental sector in the city as we found no evidence of numerous eviction lawsuits concerning the lease of

properties being filed by the same plaintiff (at least in the state court). Nonetheless, we can argue that we are seeing a growing movement of tenancy-related eviction actions.

Moreover, still when assessing eviction litigations within the formal housing sector, the spatial analysis indicates that market-led displacement might represent a key form of eviction. High valued and expensive central neighborhoods have the highest eviction rates, even after controlling for population density. Nonetheless, it is interesting to notice that in the few litigations (203 in total) in which the plaintiff is a private institutional actor -- including banks, construction companies, real estate agencies, and developers -- the Judiciary tends to benefit the defendants. In turn, when eviction actions involve the government and public agencies such as Porto Alegre's housing authority (both as plaintiff and defendant), state judges tend to issue evicting verdicts.

Another aspect that stands out is the fact that, despite the promulgation of paradigmatic texts like the 2001 City Statue, including the establishment of progressive and inclusive mechanisms such as the social function of property, the courts barely cite this legislation in their rulings. Instead, state judges heavily rely on specific articles from civil and civil procedure codes, bureaucratically regulating possessory actions. Even when keywords such as the constitutional right to housing are mobilized in the verdicts, judges usually decide for eviction.

While collective eviction litigation involving informal tenants will be extensively analyzed in the next two chapters, the quantitative analysis conducted here showed that for adverse possession lawsuits, for example, the court generally issues evicting verdicts. However, it is worth mentioning that when looking at possessory actions more broadly, targeting formal and informal tenants, judges tend to be conservative when claims of usurpation of possession are presented. In these cases, they

tend to benefit the defendant, as disseisin is one of the only motives that have lower evicting verdicts, compared to other reasons for filing an appeal.

CHAPTER 5

Eviction regimes and property rights: squatter occupations and the paradigm of private property

Introduction: eviction and property rights mandates

As highlighted in the first chapter of this dissertation, Brazil has one of the most progressive and inclusive land-use laws in the world. Nonetheless, despite all the legal mechanisms created by recent legislation to stop and reverse exclusionary patterns of land tenure, the Brazilian judiciary still orders the eviction of thousands of marginalized families. Among these processes, is the court-ordered displacement of informal tenants occupying both public and privately-owned land. When confronted with cases like that, as the previous chapter showed, state judges in Porto Alegre, tend to rule against squatters.

There is a growing body of literature, including those analyzing the Brazilian context, that argues that informal tenants are seen as second-class citizens and, thus, do not have the same rights secured by other types of citizens even before the court (Vainer, 2015, Bhan, 2016, Appadurai, 2019). In fact, Roy (2003), when coining the term “propertied citizenship”, highlights contemporary urban policy paradigms in which certain prerogatives are only associated with homeownership. Yiftachel (2009) goes even further and claims that the distinct treatment that different kinds of urban residents are subjected to epitomizes a process of “grey spacing”, in which, the illegalities of the rich are overlooked, while the infractions of the poor are criminalized. Yiftachel’s theory helps us explain the fact that poor people occupying environmental preservation areas are quickly removed, while luxury houses located in similar environments are rarely demolished. This chapter adds to this scholarship by

analyzing how contemporary legal frameworks on land use and property rights have been mobilized for and against dispossession. To do this, I look at the legal discourses issued by the Rio Grande do Sul Court of Justice (TJRS) when ruling cases involving squatter occupations in Porto Alegre, and also engage in conversations with key legal, policy, institutional, and civil actors discussing the role of the judiciary in processes of land dispossession.

Brazil remains the only country in the world with the right to the city encoded in its constitution, as the logic behind the *social function of property* is prioritizing use value over exchange value of land. The 1988 Federal Constitution established that all urban properties must fulfill a “social function”. Article n. 39 of the 2001 City Statute regularized this constitutional fundament by determining that “urban property fulfills its social function when it meets the fundamental requirements of city planning expressed in the master plan,³⁷ assuring the fulfillment of citizens' needs regarding quality of life, social justice [...] respecting the guidelines in Art. 2” (BRASIL, 2001).³⁸ I will discuss the City Statute at length in the next sections of this chapter. However, what I want to emphasize here is the fact that this federal law initiated a new urban legal paradigm in Brazil (Fernandes, 2011). Starting in 2001, property owners may suffer sanctions, including expropriation, if their property remains unused. The concept of the social function of urban property challenges the inviolability of property rights, also listed in Brazil’s 1988 Federal Constitution (Article 5), by

³⁷ Porto Alegre’s master plan, for example, determines that in order to fulfill the social function of urban properties, the municipality can use, among others, instruments such as land use and occupation norms; taxation and related incentives; special projects zones; real estate consortium operations (*operações urbanas consorciadas*); and compulsory subdivision, construction, and use of land or properties (PORTO ALEGRE, 1999).

³⁸ Art. 2 The purpose of urban policy is to order the full development of the social functions of the city and of urban property, following the general guidelines: I – the guarantee of the right to sustainable cities, understood as *the right to urban land, to housing*; [...] VI - land use planning and control in order to avoid: (a) *inappropriate use of urban property* [...]; (e) *speculative retention of urban property*, resulting in its underutilization or non-use; [...] XIV - *land regularization and urbanization of areas occupied by low-income population* through the establishment of special rules of urbanization, use and occupation and construction [...] (my emphasis) (BRASIL, 2001).

subjecting private property's guardianship to the conditions specified above. Nevertheless, many squatter groups occupying vacant properties in Porto Alegre are still threatened with eviction orders issued by the Brazilian judiciary. My research will, thus, clarify how judges are interpreting and applying innovative legal mechanisms, such as "social function of property", and property rights legal frameworks in their eviction mandates.

The next section will state in detail my objectives, research question, and hypothesis. The third part of this chapter covers the methods employed to answer my research question, elaborating on a discourse analyses of selected court records and on interviews with major figures from the Brazilian judiciary and some other parties involved in these litigations. Next, I explain more in-depth key land use and property rights legislation published in the last decades, including the City Statute, as well as related critiques and analysis conducted by legal and urban planning scholars. The fifth part of this chapter presents the results of my research and is divided into two parts: first, the discourse analysis of selected eviction court records; and, second, the accounts shared by the interviewed key actors. Lastly, in the conclusion, I discuss my findings in light of paradigms of property rights in Brazil.

Objectives of empirical research

This chapter aims to answer the following question: "*How are legal frameworks of land use and property rights being used to justify displacement?*". My hypothesis is that although tenant security is also threatened by real estate speculation and other financial maneuvers, the State, particularly the judiciary, plays a major role in practices of dispossession. I claim that some legal instruments created by recent legislation have provided the courts with "legitimate" excuses to issue eviction mandates. Lastly, I also hypothesize that judges are mobilizing political ideologies that condemn certain property regimes in

favor of a property model that focuses exclusively on private and individual property guardianship and, thus, defying recent and innovative land use legislation in their rulings.

The application of the law is influenced by socio-political and economic circumstances, ultimately benefiting certain groups over others. In the case of Brazil, according to Fernandes (2011), the role of the courts in generating inequalities is very much underestimated, as the current urban-legal paradigm is directly responsible for creating exclusionary patterns of urban development. I argue that, when judges order the eviction of squatter movements occupying vacant land, they are not only ignoring the legal mechanisms created to ensure that Brazilian citizens have adequate access to housing. They are, in fact, violating these people's constitutional right to housing, as tenure security is a key factor in one's entitlement to housing and citizenship. Moreover, I claim that some of the instruments supposedly created to minimize displacement (e.g., eminent domain), are being instead used to displace people. Some of these progressive instruments, for example, might be serving as a legal excuse to evict, granting the government permission to remove marginalized families from what the state considers "risky" areas (e.g., hillside or riverside). Although these mechanisms might have been created to minimize risks associated with living in precarious locations like riverbanks, I argue that this strategy has enabled governments, sanctioned by the Judiciary, to implicitly promote "slum" clearance.

This second empirical chapter focuses on court-ordered evictions within the informal housing market. More specifically, my analysis centers around property rights and who has the right to claim and own property in Brazil. By analyzing eviction court records filed in TJRS targeting squatter occupations in Porto Alegre and by coding interviews I conducted with judges, public defenders, prosecutors, and other legal and policy figures, directly and indirectly, involved in these litigations, I engage in discourse analysis to assess how judges are interpreting paradigmatic land use

laws and progressive urban legislation. As mentioned earlier, these key legal texts, published in the last twenty years, theoretically granted informal tenants the right to stay put. Nevertheless, what happens in practice seems to contradict important pieces like the 2001 City Statute. Informal tenants occupying vacant properties in the city are often subjected to judicial dispossession. This defies not only concepts such as the right to the city and the social function of property but also the constitutional right to adequate housing, since in many cases evicted families do not receive any form of housing subsidy or alternative housing following their removal.

As I will explain in greater detail in the next section, I analyzed sixteen eviction court records filed in TJRS for Porto Alegre, from 2001 to 2018, targeting squatter groups. I selected these records because I was interested in studying if and how the courts mobilize contemporary legal frameworks on land use and property rights. Above all, I was interested in exploring the encounters between the right to the city, epitomized in the Brazilian legislation by the social function of property, and private property rights. Therefore, I selected litigations involving informal tenants. However, I opted to analyze only collective cases, that is eviction lawsuits targeting a group of informal tenants or, what I call, squatter groups. While looking at these eviction records was important to clarify the legal justifications judges mobilize when issuing eviction mandates, it was also essential for my research to talk directly to judges and other parties involved in these lawsuits. The interviews I conducted with squatter leaders, as well as policy and legal actors such as public defenders, allowed me to better assess the underlying logic behind legalized displacement within the informal housing market.

Methodology

As highlighted in the previous pages, to answer my second research question, I relied on discourse analysis of selected eviction court records I accessed from the TJRS online database,³⁹ as well as semi-structured interviews I conducted with several actors directly or indirectly involved in these litigations. In the following paragraphs, I explain in greater detail how I gathered and analyzed my data.

Discourse analysis of eviction court records

The first stage of my methodology concerns the discourse analysis of selected eviction court records. In the first empirical chapter of this dissertation (chapter four), I conducted a quantitative analysis of approximately 3,000 eviction court records I accessed from the TJRS online database. I restricted my search on TJRS digital archives to encompass only those records filed from 2001 to 2018 and for properties located in the city of Porto Alegre. As I already explained, I chose this time frame because seminal authors studying legal and policy urban frameworks in Brazil (Fernandes, 2002; Alfonsin, 2014) claim that the 2001 City Statute completely shifted the urban-legal order in the country, resulting also in new eviction apparatuses.

In the previous chapter, I conducted a broader analysis of the documents filed in TJRS. I accessed over 3,000 eviction court records one by one with the aim of extracting key information to use as primary data in graphs and maps. However, I did not have the resources to look at each file closely. My objective was not only to extract specific information from each record, but also to carefully assess selected decisions issued by state judges, paying attention to certain keywords, common explanations, and outstanding logics. As my goal was to understand which legal frameworks

³⁹ The same database I used to conduct the archival research for Chapter 4.

of land use and property rights were being mobilized by the courts when deciding *for* and *against* displacement, as well as how these frameworks are being applied, I targeted specific types of eviction litigations. In other words, I was not interested in eviction lawsuits whose subject was properties within the formal housing market, but in exploring decisions that involved so-called informal tenants.

As briefly explained in the previous section, I limited my search to only include collective eviction lawsuits; that is, litigations whose defendants or plaintiffs were not individual actors, but a group of informal tenants or, as the Judiciary refers to them, squatters (*invasores* or *ocupantes*). I made this decision because collective lawsuits usually have a greater appeal (the impact of removing one hundred tenants is much greater than evicting a single family). Furthermore, the City Statute created legal mechanisms that specifically serve only collective actions (e.g., *usucapião coletivo*).

When accessing the TJRS online database, therefore, I searched for court records' summaries containing the keywords *imóvel* (realty/real estate property) and *reintegração de posse* (repossession action⁴⁰); without the terms *comércio* (business) or *comercial* (commercial); and with one or more of the following terms: *ocupação* (occupation), *invasão* (invasion), *coletivo/a* (collective). My search resulted in 78 eviction records. Nonetheless, after thoroughly reviewing these documents, I discarded those that did not qualify (i.e., those whose subject was procedural matters, those whose subject was partition or inheritance, those whose subject was property lease). Approximately eighty-five percent of the initial records were excluded, following the above-explained criterion. I, thus, performed discourse analysis on the twelve remaining records, as table 4 indicates:

⁴⁰ Lawsuit or action to recover possession; action for repossession; restitutory interdict (Castro, 2013).

Table 4: Number of eviction court records involving squatter groups filed in TJRS for Porto Alegre by year (2001 – 2018)

Source: made by the author based on 2018 TJRS data

<i>Year</i>	<i>Number of qualifying records</i>
2001	0
2002	0
2003	0
2004	2
2005	3
2006	0
2007	0
2008	0
2009	1
2010	0
2011	0
2012	0
2013	0
2014	0
2015	1
2016	2
2017	2
2018	1
<i>Total</i>	<i>12</i>

As highlighted in the previous chapter, TJRS is an appeals court that decides on appeals of decisions already issued by judges from ordinary courts. Therefore, the number of actual eviction litigations involving squatter groups in Porto Alegre between 2001 and 2018 is probably higher. Moreover, the eviction lawsuits in which the occupied property is owned by the federal government cannot be appealed at TJRS. Finally, it is always important to mention that court-ordered eviction is only one subcategory of displacement, and the removal of many informal tenants never actually reaches the legal sphere.

I conducted the discourse analysis of these twelve eviction court records manually. In other words, I did not use specific software to conduct this examination. After reading all the records the first time, I came revisited all the documents, highlighted, and coded keywords and themes that appeared across one or more records. I was, then, able to identify recurrent arguments made by state judges both when deciding for and against the eviction of squatter groups and understand, thus, the context in which these types of justifications were being mobilized (e.g., cases in which squatters occupied public property versus cases in which squatters occupied private property). Through this analysis, I was also able to explore how the courts were interpreting and applying concepts and legal mechanisms directly related to recent land use and property rights legislation, such as about the social function of property.

Before elaborating on the second stage of my methodology, it is crucial to emphasize that, as Moretti (2021) argues, jurisprudential research is important for scholars to understand legal action in Brazil. And this is where the relevancy of my research lies. According to Moretti, jurisprudential research on urban law is crucial to understand whether legislative advances are “out of step” with jurisdictional action. However, for scholars exploring urban law in Brazil, data collection is still very difficult, especially due to the lack of a properly systematized and indexed system within the court archives (Moretti, 2021). In this sense, Moretti (2021) agrees with Alfonsin et. al. (2016) that the fact that urban law is relatively new in the country makes it difficult to collect information on the actual application of related legal instruments and principles.⁴¹ Even after the effort made by CNJ (National Council of Justice) to improve the indexing of court records, and standardize classes and subjects

⁴¹ Moretti (2021) claims that issues of urban law are mostly linked to administrative law and other matters of public law or civil law. The expression “urban policy”, which gives name to a chapter of the 1988 Federal Constitution, in addition to “city”, “social function”, and “master plan”, central categories for urban planning law, are not indexed.

involved in these litigations, search terms do not always lead to decisions aligned with the object of the research (Moretti, 2021). Despite these complications, Moretti highlights that there is an enormous potential for empirical studies based on judicial decisions, including exploring the effectiveness of legislative changes and instruments incorporated into the legal system, which is my case.

Account of key actors linked to eviction litigations

In addition to pursuing jurisprudential research in the archives of courts of justice like TJRS, a methodological option and possible solution to the difficulties described above is to talk to key figures, directly and indirectly, involved in the eviction litigations. Hence, to complement the discourse analysis of the decisions issued by TJRS, in which state judges justify their decisions for or against eviction in a written and concise way, I also interviewed judges, prosecutors, public defendants, lawyers of squatter groups, representatives of housing departments, leaders of squatter occupations and housing movements, and other policy and academic relevant actors.

From 2019 to 2020, I conducted thirty-eight semi-structured interviews with legal, policy, institutional, and civil actors, as table 1, in Chapter 3, indicates, based on snowballing sampling as I briefly explain below. These conversations took place at different locations, including the offices of the parties being interviewed, coffee shops, and squatter “occupations” (*ocupações*). Each interview lasted between 30 and 90 minutes. I obtained the contact information of my first interviewees from urban planning professors from the Graduate Program in Urban and Regional Planning (PROPUR) at the Federal University of Rio Grande do Sul (UFRGS), where I pursue my master’s degree. I was also able to schedule interviews while attending mediation hearings held at the Judicial Center for Conflict Solution and Citizenship (CEJUSC), led by the Rio Grande do Sul Court of Justice (TJRS). These interviewees referred me to other people to interview, and so on. In sum, I used snowball as a

sampling selection method. When sharing quotes from my respondents or paraphrasing them I chose only to specify which group they belong to (e.g., institutional, legal, policy, activist)⁴² instead of revealing their exact affiliation (except for the legal actors). I made this decision in order to preserve the anonymity of my subjects as several of them hold positions that are clearly identifiable.

The semi-structured interviews did not follow a strict schedule, because I was interviewing diverse types of actors and people with different roles. Thus, I had to adapt my questions. Nonetheless, the type of information I sought to extract was the legal understandings of important legal texts like the 2001 City Statue and legal fundamentals such as the right to housing and adverse possession law. I also asked about the encounter between the ideas of private property rights and the social function of property. Finally, I inquired my respondents about their perceptions of squatter occupations, as well as questioned about possible mechanisms that could be enforced legally to challenge evictions. The interview instrument is included in Appendix A.

I audio-recorded and transcribed all 38 interviews and pursued analysis of the data extracted from these interviews in a similar form as with the discourse examination of selected eviction court records. I cataloged responses to each question, looked for common themes, similar opinions, and divergent arguments across all interviews. I also codified certain topics and criticisms that appeared more frequently, paying attention to the different contexts (e.g., groups my respondents were representing) in which these accounts were shared with me.

Brazil and its new urban legal order

The tension between legality and illegality is one of the foundations of contemporary Brazil (Fernandes & Alfonsin, 2003; Fernandes, 2006). When the country was still a Portuguese colony, the

⁴² The only exception was when the legal actor represented the Public Defense's Office or were the lawyers representing the squatter groups.

legal order when it came to land grants was done through a system called *sesmarias*, in which the Portuguese monarchy granted possession rights of plots of land to those who served the Crown. Alfonsin (2001) emphasizes that this concession was conditional on the productive use of land and its effective occupation. Rolnik (1997) highlights that because the exact spatial delimitation of *sesmarias* was quite imprecise, other tenants would simply occupy the interstices of this land grant system. Therefore, although these two forms of land tenure were based on the effective occupation of land, the former was officially recognized and the latter – although considered legitimate at the time – was established through mere possession with no formal registration.

In 1850, nonetheless, things would change with the establishment of the Land Law. This legislation banned informal tenure and ended, thus, the only means by which low-income and ordinary people could access land in Brazil. Starting in 1850, the only legitimate and accepted form of land acquisition in the country was through purchase, absolutizing property rights, and inserting land in an emerging urban real estate market. Thus, land became a commodity (Rolnik, 1997).

Urban policy legislation

It is important to emphasize that before the promulgation of the 1988 Federal Constitution, informal tenants did not have any rights. In fact, Fernandes (2007) claims that the Brazilian judiciary was adverse to what it called “invaders” and did not support land regularization programs. There was little support in existing legal principles for a socio-economic or political justification for such “radical attack” on property rights (Fernandes, 1995). In turn, the defense of private property rights was almost unconditional, since the 1916 Civil Code offered many legal mechanisms, which public authorities or private actors could use to evict informal tenants.

Fernandes (2007) argues that prior to 1988, with the exception of expropriation by the government upon payment of indemnity, the only existing legal possibility of prescriptive transfer of property rights was through *usucapião* (adverse possession), which was also the same legal basis, in theory, for informal residents to claim their rights. The recognition of such procedure implied the loss of property rights by its original owner if the property was used by tenants over a long period of years without an exchange of financial compensation or any kind of payment.

It was extremely difficult, however, for informal tenants to defend their right to stay put by mobilizing *usucapião*. According to the 1916 Civil Code, in most cases, adverse possession required a “peaceful” and uncontested land occupation for at least twenty years. In addition, the 1916 code offered property owners a range of legal instruments to challenge in court the so-called invasion of land, making the occupation no longer “peaceful”. Specifically in the case of informal settlements, it was even more difficult to apply *usucapião* due to its collective nature and different temporal dynamics (i.e., high mobility of informal tenants), not to mention the fact that this legal mechanism was not acceptable for government-owned properties (Fernandes & Alfonsin, 2003).

Furthermore, although the “social function of property” as a principle was already encoded in the 1934 Federal Constitution,⁴³ the concept did not have any legal validity as there was no federal law regularizing it, as the City Statute did almost seventy years later. Expressing an individualist ideology, all constitutions prior to 1988 established that only federal legislation could regulate property rights and relations, and these were understood as a civil issue, not a social or urban matter (Fernandes, 1995).

⁴³ The 1934 Federal Constitution highlighted that “the property right is guaranteed, which cannot be exercised against the social or collective interest, in the manner determined by law.” (CF, Art. 113, 1934).

With the promulgation of the 1988 Federal Constitution, judicial canons on urban policy and property rights started to shift considerably (Fernandes, 1995). Nonetheless, until the establishment of the City Statute in 2001, judges in general still argued that constitutional percepts on urban policy depended on regulation by federal law; this applied both to the concept of “social function of property” and *usucapião*.

The 2001 City Statute instituted a new urban-legal order in the country, regularizing not only old mechanisms and fundamentals but also establishing urban policy guidelines and creating new instruments for municipalities to promote an equitable and sustainable city. Some of these new instruments include adverse possession to be claimed collectively (*usucapião coletivo*) and a mandate requiring cities with a population greater than 20,000 people to promote a participatory process to develop a master plan. The new Statute, formally known as Law n. 10.257, regulated articles 182 and 183 of the federal constitution and stipulated that urban policy should coordinate the full development of social functions of cities and urban properties through guidelines such as land tenure regularization and urbanization of areas occupied by low-income population using *usucapião*, possession rights (*concessão de direito real de uso* or CDRU), among other instruments.

As just highlighted, the City Statute promoted considerable advances when it comes to adverse possession by allowing low-income tenants occupying urban areas with an area greater than 250 square meters for at least five years uninterruptedly and without opposition to claim *usucapião coletivo* even when it is not possible to identify the amount of land occupied by each tenant – conditional on tenants not owning any other rural or urban property (Law n. 10.257, Art. 10, 2001). The judge will assign an equal fraction of land to each tenant, regardless of the plot each one occupies. Finally, another legal instrument regularized by the City Statute is CDRU, originally institutionalized by the Decree-law n. 272 in 1967, ensures low-income tenants, under certain circumstances, with the use right of public

land (making it easier for them to apply for credit and housing financing). Fernandes (2006) argues, nonetheless, that its application is still subject to controversies as it is not fully specified by the 2001 legislation.

Urban law and its echo within the legal system

The 2001 City Statute is a central conceptual framework for understanding and interpreting legal issues when it comes to land use and urban policy in Brazil, including property rights. As explained above, by regularizing the concept of “social function of property”, among other important instruments, the new legislation made the country the first in the world to legally safeguard the right to the city. Nonetheless, Fernandes (2007) warns us that there was a lot of resistance from the Brazilian judiciary to recognize and apply the Statute, mostly due to the conditions that it imposes on private property rights. In other words, despite opening a new chapter in Brazilian history and the trajectory of land use and property rights, the City Statute did not find much resonance within the courts. Before the establishment of the City Statute, local urban policies were applied within the legal framework of the Civil Code (*modelo civilista*), the area of the Law that represents a cornerstone of private law. After 2001, however, the paradigm shift towards public law in the country has been remarkable, according to Alfonsin (2014). Property is no longer a matter of interest of property owners and becomes a topic of collective debate, at least in theory.

In fact, Alfonsin and her co-authors (2016) claim that the City Statute had low effectiveness among the judiciary. Moretti (2021) agrees and highlights that there is still little legal adherence between what conceptual doctrines, laws, and norms prescribe about the city and what is being decided by judges. Alfonsin et. al. (2016) found that Brazil is still governed by a proprietary model, a paradigm committed to a conception of property rights with an absolute, exclusive, individual, and perpetual

nature. Moretti (2021) argues this new urban legal order co-exists even with the old civilian model (emphasizing the prevalence of Civil Law in other legal areas), in which property serves as the basis for the exercise of subjectivities and individual freedoms, granting its holder a privileged legal position and an abstract property right. This right, in turn, is subjected to, at most, administrative restrictions limiting the power of property owners in the name of needs of order and development.

Furthermore, Alfonsin et. al. (2016), while investigating the decisions issued by TJRS to understand the extent in which the City Statute is being applied by the court of appeals, found that there is still an affiliation from the court to the civilian paradigm at the expense of the instruments and principles dictated by the City Statute. Even with massive incorporation of new instruments to local urban legislations, violent court-ordered evictions still occur across the country (Alfonsin, et al., 2016).

To study the applicability of key concepts established in the City Statute, Alfonsin et al. (2016) analyzed how five keywords were being employed in TJRS decisions between 2011, ten years after the establishment of the paradigmatic legislation, and 2015. The chosen keywords were: “master plan” (*plano diretor*), “right to the city/social functions of the city” (*direito à cidade/ funções sociais da cidade*), “social function of property” (*função social da propriedade urbana*), “adverse possession” (*usucapião especial urbana*), and “right to adequate housing” (*direito à moradia*). Furthermore, they chose TJRS because they claim that common sense within the Brazilian judiciary considers the Court of Justice of Rio Grande do Sul as one of the most progressive courts of appeals in the country (Alfonsin et. al., 2016). It is worth discussing their findings at length.

The authors find the keyword “master plan” in 1,230 eviction court records filed in TJRS for the state of Rio Grande do Sul,⁴⁴ from 2011 to 2015. Nonetheless, only 21 records cite “master plan” combined with the term “City Statute”. After discarding those decisions involving procedural matters, only 10 court records remained. The expression “master plan” is mobilized in most of these documents to highlight the lack of public participation during the conception of master plans, which as previously highlighted, is required by the 2001 City Statute. In this first type of decision, TJRS tends to adopt a position clearly identified with the mandate established by the 2001 Law, nullifying master plans approved without popular participation (Alfonsin et. al., 2016).

Additionally, the authors did not find a single eviction court record mobilizing the keyword “right to the city”. They argue that this absence is surprising especially given the fact that these documents normally contain not only the discourses made by judges themselves but also the arguments mobilized by the public defender’s office and the public prosecutor’s office, an authority that was supposed to protect the urban-legal order in Brazil (Alfonsin, et al., 2016).

Over 3,000 eviction court records contain the keyword “social function of property”, however, after eliminating the documents that discussed specific matters about progressive real estate property tax (IPTU progressive) or procedural issues, the search performed by Alfonsin et. al. (2016) resulted in 41 documents. Nonetheless, only 4 of them made reference to the new urban legal order. In one of these documents, it is noteworthy that the rapporteur judge defends that the right to housing should override “mere” private property rights. In turn, in another record, the magistrates decided that legal certainty requires them to recognize, even though the squatters have no place to reside, the prevalence

⁴⁴ While the Alfonsin and her co-authors (2016) are looking at all cities in the state of Rio Grande do Sul, I am focusing my research on the city of Porto Alegre, the state capital for the reasons I already explained in Chapter 1.

of “possessor rights” to the detriment of “invaders’ rights”, according to section 927 of the 1973 Civil Procedure Code (Alfonsin, et al., 2016).

The fourth keyword, “adverse possession”, was found in 91 records, and in 13 of them, the City Statue is also mentioned. Only 9 documents address compliance requirements for this type of possession acquisition. In at least three of these documents, judges argue that they cannot accept *usucapião* of urban properties with an area greater than 250 square meters, even when confronted with the argument that possessors are only claiming property rights of a partial area of the total plot. Alfonsin and her co-authors (2016) claim that this indicates the court’s reluctance to interpret the City Statue in a systematic way and aligned with the premise of ensuring possession to those enforcing the social function of urban property.

Finally, the search for “adequate right to housing” resulted in 2,430 eviction court records, but only a few of them discussed it in relation to the City Statue. The great majority decided on the “un-seizability” of residential properties, discussing the debtor’s exemption. The authors then searched for documents containing both the terms “adequate right to housing” and “master plan” and found only 7 eviction records. Two of these decisions emphasize that occupied properties are located in permanent preservation areas (*área de preservação permanente – APP*) and, thus, do not respect what was established in the master plan of the municipality of Três Coroas. In another decision, the state judges argue for the impossibility of regularizing “clandestine” constructions, imposing their demolition. It was also expressed in their decision that the right to housing is not absolute but subordinated to municipal laws and environment protection laws which, in this case, were ignored (Alfonsin, et al., 2016).

Before discussing the results of my research, it is also important to briefly discuss Milano’s (Milano, 2016) jurisprudential research on the archives of five courts of justice in Brazil, including

TJRS. After conducting empirical research about the decisions on collective land conflicts in the country issued in 2014 and 2015, the author identified the underlying grounds mobilized by state judges when ordering the forced removal of squatter groups. She found that evictions of informal tenants are backed by civil procedure codes, instead of the City Statute. Milano also concluded that the courts' decisions in these cases are rooted in the premise that defendants in these litigations represent not only "invaders" but are also seen as the enemy that needs to be eliminated. This assertion can be illustrated by a statement made by a state judge in the Court of Justice of São Paulo (TJSP) in his remarks when ordering the eviction of the so-called invaders in 2015. The judge stated that poverty does not exempt the poor from complying with the law, nor does it grant them the right to outsmart other poor people like them, be it by force or cunning (Milano, 2018, p. 1283).

Milano (2016) also found that in 52% of analyzed decisions the plaintiffs were not individualized. In the court records, they were often referred to as "unknown invaders", "the ignored", "disfranchised families", "others with undetermined identity", "so-called landless", and "illegal squatters". Furthermore, she argues that in 49% of the decisions there was no reference about the territoriality or spatial features (including area and perimeter) of the disputed property. And in 51% of the documents she explored, the characterization of the area was performed by simply reproducing property registration information indicated by the real estate registry office or informing streets limits. According to Milano (2018), the "jurisdictional translation of space" in most lawsuits she studied is mediated by ownership and titling registration, even though property rights were not at dispute in these possessory litigations.

Hence, Milano (2018) claims that the Brazilian judiciary does not only reinforce but is also responsible for producing socio-spatial segregation and inequalities in the country. She goes even further and emphasizes that, by sanctioning displacement and dispossession and ignoring socio-spatial

dynamics and urban legal fundamentals, the courts in Brazil fail to contribute to the democratization of the right to the city and the application of the right to adequate housing.

Results

To study the reverberation of urban law in jurisprudence, and examine the adherence (or lack thereof) between legal norms and courts' decisions, I looked at eviction litigations involving groups of informal tenants. I assessed the role of the judiciary in those cases both by pursuing a discourse analysis of eviction court records filed in TJRS and by conducting semi-structured interviews with key legal, policy, institutional, and civil actors implicated in these lawsuits.

Records

To conduct a discourse analysis of the narratives state judges mobilized in the twelve eviction litigations I examined, I divided eviction court records in two main categories: cases in which the judges decided against eviction and cases in which they order the eviction of squatter groups. The first group comprises only two cases and the latter the remaining ten (please refer to table 4 in this Chapter).

Decisions in favor of squatter settlements

In the first case in which TJRS ruled in favor of the squatters, the decision was based on the premise that evictions would aggravate the “social problem” of the lack of housing. In the lawsuit arbitrated in 2004, the court accepted the appeal of seventy families. The squatters were occupying property owned by the Rio Grande do Sul Housing Company (*Companhia de Habitação do Estado do Rio Grande do Sul* – COHAB). Although owned by a public authority, the families' legal representative argued that the property had been abandoned for over thirty years and, thus, was not fulfilling its *social*

function. They also claimed that they had the *constitutional right to housing*, and it was the state's duty to grant it to them. The defendants' lawyers also highlighted that carrying out the removal decided by the lower court would result in the eviction of dozens of families that would "be subject to complete abandonment, having nowhere to go". (TJRS, 2004, p. 2).

The court responded to these arguments by stating that:

Although it is necessary to seek in the discipline of the civil law the legal subsidies required to solve controversies, one cannot forget the particularity of this new *social fact* [my emphasis], that of collective invasions, in which people organize themselves in movements that represent neither the solution of an individual problem, nor the interest in individual advantage or benefit, but the fulfillment of a basic need of a community [...]. The right to housing is constitutionally guaranteed and, unless proven otherwise, those who do not have a shelter to live in are in a state of need. (TJRS, 2004, p. 5).⁴⁵

One of the judges assigned to the case claimed that he was grounding his decision, accepted by the other state judges participating in the decision, on two legal principles: the court's responsibility towards the community and the theory of proportionality. The former refers to the fact that the Judiciary needs to take a position on issues of strong popular appeal. He added: "will the Judiciary only represent another instance of power against the citizen, or will it embody the last instance of power, in his favor?" (TJRS, 2004, p. 5). Finally, he also sustained that a judge must seek the "least harmful solution" and asked:

⁴⁵ Although any passage translated into another language is a paraphrasing, I chose to treat the judges' written decisions I translated from Portuguese to English as a direct quotation for stylistic purposes.

[...] to turn away from the needy families who find themselves in the property shooping them away with their junk and pain or delaying the permanent resolution a little more showing understanding of the seriousness of this Brazilian drama? Which of these does not generate irreversible burdens to the other party? (TJRS, 2004, p. 6).

It is interesting to note that the judge suggests that the decision to be issued by TJRS represents a temporary resolution and not a definitive one. He also seems to imply that squatting public land does not represent an irreversible burden to the state.

The second case favoring squatters was ruled in 2016 and the court had similar remarks even though the object of the litigation was privately-owned property. Although the judges did not make direct reference to the social function of property or the constitutional right to housing, they agreed that evicting four hundred families from the private property they were occupying would represent a “social problem of housing” (*problema social de moradia*).

Decisions against squatter settlements

After analyzing the ten eviction court records in which judges ruled against squatter groups, I found that their arguments were basically built around two main principles: the *indisputability* of private property and the fact that these occupations constitute an *illegal act*. The application of these two different discourses, nonetheless, depends on who owns the property being contested – whether a private or public actor. Three litigations involved publicly owned properties and the object of the remaining seven cases were privately-owned properties.

State judges tend to emphasize the illegality of squatter settlements in the lawsuits in which plaintiffs are public entities. In these cases, judges usually remark about the lawlessness of the “infraction” being committed by the “invaders”. The court often claims that these squatter settlements

are unfair in the extent that if the state were to guarantee the right to housing to all those who “illegally occupy a third party’s property”, in their words, other marginalized citizens not adopting the same “occupation tactic” would not be entitled to similar privileges. In turn, when the occupied property is privately-owned, the argument mobilized by TJRS is frequently centered around the premise that collective claims cannot surpass individual property rights.

Private property

In the seven cases involving privately-owned properties, one quote, in particular, stands out because it is repeated in two different decisions, issued in 2004 and 2005. Despite acknowledging the mechanisms created by the 1988 Federal Constitution and the 2001 City Statute, the same judge highlights:

Even when we understand that properties must fulfill a social function, it is not within the scope of a possessory lawsuit that the state should decide whether the owner was subtracting or not the property from its social purpose. If we accept the defendants' [squatters] argument, all property owners would be liable to lose the possession - albeit only in the course of the proceeding - of their properties to the homeless when the latter consider the land a socially unproductive property. The fact that a parcel is not occupied by buildings or plantations, even for a long period of time, clearly does not mean that the property in question lacks a social function; at least while the owner has not been yet questioned by the competent authorities about how he will give a proper social allocation to his property. What cannot be admitted, with the danger of implementing a new form of social and legal insecurity, is that those with no access to housing through planned invasions, executed in the dead of night, settle themselves

permanently in duly registered and regularized urban parcels, on the basis - possible to be invoked in relation to any non-built plot of land - that the property is not meeting its social purpose. To admit this type of conduct would mean to ensure housing only to those who will have the organizational capacity to promote invasions, establishing a real parallel power to that of the state, which, evidently, is not fair, much less acceptable. (TJRS, 2004, p. 3; TJRS, 2005b, p. 5).

Moreover, in the 2005 lawsuit, after citing in his decision that the property owner was not paying property taxes for several years, the state judge argues that this *alleged* fiscal debt is irrelevant in litigations related to possessory claims.

In another case, while ordering the removal of seventy families, another judge maintains that: “[...] the principle of the social function of property, guaranteed by the Federal Constitution, should not be analyzed in isolation, and should coexist harmoniously with the norms codified into the Civil and Civil Procedure Codes that regulate the matter” (TJRS, 2009, p. 5).

Additionally, in a paradigmatic ruling with social relevance and popular appeal due to the work developed by the defendants, the court also emphasized the prevalence of private property rights. The squatter movement, known as Mirabal Occupation (*Ocupação Mirabal*), is a collective that shelters and provides services to poor women domestically abused and their children. Mirabal was occupying a vacant private property owned by a religious institution. One of the magistrates, in the decision, praised the “socially relevant” work being performed by the group but highlighted that the occupied building was private, suggesting that his decision could have been different if the contested property was owned by public authorities. Another state judge, also part of the body ruling the case, seems to misinterpret the concept of the social function of property as he stated that:

However expressive the purpose of the movement is, the protection of private property and its social function is also a fundamental constitutional right. [...] The movement counts with my support as a citizen. As a judge, however, my duty is to protect society, a context in which it is necessary to restrict infractions to principles such as social function and private property, values that constitute the foundations of personal and contractual freedom safeguarding the common good of society. Freedom does not exist, nor does it resist without property and its social function. (TJRS, 2017a, p. 9).

In a case decided in 2018, it is worth highlighting that a judge acknowledges the “efforts of local authorities” arguing that the *political option* adopted by the municipality starting in 2003 towards squatter settlements has changed. That is, the municipal government’s approach was no longer to expropriate “invaded” private property, “in particular, for the purpose of avoiding unlawful land appropriations” (TJRS, 2018, p. 43).

Finally, in one of the decisions involving another private property, published in 2015, the court recognized the *constitutional right to housing* as a fundamental right. However, state judges responsible for the case defended the following when ordering the eviction of the squatter group:

We are not denying the validity of constitutional principles and norms regarding the right to housing or the dignity of the human person [but] it is necessary to consider the impossibility of rewarding the illegal conduct of the aggravating actor - who confessed to having invaded the property of a third party - to the detriment of the other part that obtained the property and exercised its ownership lawfully and regularly. (TJRS, 2015, p. 12).

Public property

Although the eviction litigations whose objects were public properties were far less numerous, I identified the emergence of two main arguments when analyzing these cases. First, as previously indicated, the fact the occupation of the property performed by squatter groups is *outlawed*. This type of discourse can be illustrated by two passages in particular. In one of them, the court decides that “although *legitimate* subjects of debate, it is not possible to admit invasion of public areas for the purpose of claim or protest” [my emphasis] (TJRS, 2017b, p. 11). In another ruling, one of the judges argued that “it is impossible to let them [squatters] stay in the property under the argument that it would be fulfilling with the *social function of the property*, since the article on the social function of property in the 1988 Federal Constitution does not protect those who enter, *irregularly*, in public property” [my emphasis] (TJRS, 2005a, p. 10).

The second premise used by the courts when deciding eviction litigations targeting squatter groups is that the judiciary is not the sphere to solve *housing policy*-related issues. According to them:

Any solution regarding the relocation of those who invaded the property – be they children, elderly, or pregnant women – should be sought in the political arena, in conjunction with competent administrative agencies. The judiciary cannot, under penalty of violating the law that deals with possessory litigations interfere with an exclusive competence of the executive power. [...]. The condition of social vulnerability is not exclusive to the group that invaded the public property in question, as social needs are not an exclusive problem of the municipality of Porto Alegre; in fact, these social needs are present in absolutely all other Brazilian states. (TJRS, 2016, p. 10).

The decision highlighted above, published in 2016, deserves closer attention. The object of the lawsuit was a parcel owned by the DEHMAB, Porto Alegre's Housing Authority. The property was being occupied by three hundred families. The public agency was trying to evict the families from the contested property claiming that the land would serve to accommodate 1,300 other families, which had been removed by the municipality from *another* area that was being "cleared out" for the expansion of the local airport. This expansion was supposedly planned so Porto Alegre could host a few 2014 FIFA World Cup soccer matches. In other words, in this decision from 2016, the court was ordering the forced removal of three hundred families from public property to shelter other families displaced due to state-sponsored infrastructure works. Hence, the irony is that while the magistrates responsible for the case suggested that a solution for the relocation of squatters should be resolved within the scope of the executive power, at the same time the courts determined the eviction of these families to solve a "housing issue" that emerged in another public area close to the airport.

Interviews

The findings described above give us a glimpse of how TJRS is understanding, interpreting, and applying urban law in Brazil, in particular the progressive legal mechanisms regularized by the City Statue starting in 2001. Nonetheless, to complement the discourse analysis of selected eviction court records, I also interviewed not only some of the legal actors involved in these litigations such as state judges, prosecutors, public defendants, and lawyers representing squatter groups, but other institutional, civil, and policy people directly and indirectly associated with these cases as well. Talking to them allowed me to assess more broadly the role of the judiciary when it comes to the court-ordered eviction of informal tenants and to understand, specifically, to what extent and how key land use and property rights legislations resonate in judicial decisions.

On squatter occupations: their struggles, strategies, and encounters with the state

Occupying land in this country represents almost an insult.
(Leadership of a squatter movement, in-person interview)⁴⁶

When I interviewed housing rights activists and local leaders from squatter movements what caught my attention was the fact that all, with no exception, expressed that squatter occupations⁴⁷ in Brazil are seen as something intolerable and unacceptable by the state. They also highlighted that, although many disorganized land occupations, as they call them, can be initiated by tenants who are only looking for a place to live, squatter occupations, in their view, consist of a political act. One leader told me that squatting is “the most advanced method used by housing social movements nowadays. And if you think about it, it is still a relatively peaceful approach, although the judiciary considers it a criminal trespass (*esbulho possessório*), a violent takeover of private property”. Another leader stated that they occupy vacant properties in downtown Porto Alegre, for example, “as a way to call the attention of the authorities for the problem of lack of housing policy, the lack of adequate housing in the city”, since it brings visibility to the movement.

Nonetheless, this visibility does not always bring the intended recognition, especially if we are talking about certain actors within the judiciary. As a matter of fact, although I interviewed several judges and state judges, the most shocking discourses I heard came from city attorneys, those who represent the interest of the executive power. One of them emphasized that she could not see this [occupation] strategy as “a strategy that goes against a series of rules, as something legitimate. It hurts my notion of legality. We work with rights here. We work with norms that should be obeyed by

⁴⁶ All interviews discussed here were conducted between January 2019 and January 2020.

⁴⁷ I am referring both to squatter settlements (that is, the act of occupying land) and squatting existent constructions (e.g., vacant buildings).

everyone. I cannot understand that the correct means to access housing is through squatting, there are other ways to do it.” She went further and even compared squatting to murder: “Validating this strategy would be the same as saying ‘now I can kill criminals because the only way to stop crime is by killing them’ or ‘as there is no way to access housing, I can simply invade someone else’s property’, that is not how it works”.

Another city attorney also told me that she could not understand these ‘political occupations’ as something legit:

How are you going to distinguish what is political pressure from what is really a cry for help? I have worked filing eviction lawsuits here since the 1990s, and from what I see, I could say that only in 30% of the cases people are really looking for housing. In the other 70% cases, tenants are not there to attend their housing purposes, but for economic reasons, because they occupy land and then if they are able to stay, they can sell it. Or they occupy because they want to organize a collective movement, but do not have an interest in housing. It would be easier if they come here, if they talk to mayor if they file an administrative request asking us for housing. We could perhaps find a vacant public property they could use. They do not need to invade, they do not need to draw our attention. Everybody knows we have a housing problem.

This city attorney who condemned the fact that most occupations are a political act is the same person who told me that:

In Brazil, housing is a status issue. If everyone has a home then everyone would be equal, and we would not have, then, a social differentiation. I am not saying this is a good or a bad thing, I am just saying that society needs social differentiation, people need to differentiate themselves socially to know who has more and who has less. The

person that has formal housing ‘is more’ (*é mais*) than someone who does not. Thus, if everyone has access to formal housing, how do we socially differentiate people? If not everyone is having access to formal housing, it is because not everybody wants them to access formal housing. This is a practical issue. Brazilian society does not want that. They do not want it because there is this status thing, otherwise, it would disturb everything.

A prosecuting attorney also argued that occupation represents a social and symbolic violence and noted that “to accept squatting is to accept a violent solution for the protection of the right to housing”. Another prosecutor explained that:

Historically, there are patterns of distrust. That is, there is historical suspicion that remains alive that housing rights movements, including squatter movements, are subversive of the social, political, and legal order. They are considered opponents of legality and, therefore, should not be recognized as legitimate within the judiciary. The judicial sphere is based on legality, they cannot accept that these social movements, especially those fighting for housing, to occupy, to attack the ‘sacred’ private property right within the neoliberal state. In fact, many judicial actors link these movements to crime here in Rio Grande do Sul. Hence, inevitably, squatters need to prove many things to be deemed credible before the judiciary.

He also highlighted a paradox that some informal tenants themselves – those, in particular, involved in disorganized (ad hoc) occupations – often do not want to be associated with occupations organized by housing rights groups. “Some tenants themselves reproduce this discourse against squatter occupations and insist in eviction litigations and that they have nothing to do with movements x or y”. When talking to a lawyer representing many maroon communities (*comunidades quilombolas*)

(groups of descendants of enslaved individuals), he said that *quilombola* families do not wish to be connected to squatting movements. They do not agree, for example, with the concept of “occupation” and prefer, instead, to use the term “repossession” because, “as enslaved African descendants, we have the right for reparation for the imprescriptible crime of slavery, racism, and genocide our ancestors were subjected to”.

Nevertheless, I also talked to other people representing the judiciary who consider squatting, depending on the context, a legitimate action. Another prosecuting attorney, for example, claims that:

Occupations can be a legitimate act. It depends, however, if we are talking about legitimate in the sense of instigating a public discussion about a non-existent public policy, about the executive not solving the housing issue. I think it is totally valid when occupations want to call attention to the enormous number of vacant properties located across the city while thousands of families have no place to live. However, at the same time, it may not be legitimate to allow occupants’ subjectivities to determine what constitutes an idle property or not. That is why, when it comes to squatting, we need to be cautious.

Furthermore, a judge also acknowledged that “because housing policies barely exist, both in relation to land access and housing units properly speaking, sometimes people have no other alternative but to organize themselves in movements and occupy property”.

It is interesting to note that some agents of the judiciary, such as those legally representing the state, only recognized the legitimacy of squatting if it is enacted by tenants with no ties to housing rights movements, in other words, by tenants who just occupy properties to survive and ensure shelter. In turn, there are other actors within the judiciary like prosecutors, whose main job is to supervise and

inspect the legal-urban order, who acknowledge the validity of these occupations precisely because these groups want to send a message.

A lawyer representing squatting occupations emphasized that those people who occupy because they are simply searching for a place to live, and lacking political organization, tend not to look for a lawyer. “They will only have contact with legal aid (usually, the public defender’s office) when they are already being subject to an eviction litigation”. At the same time, housing activists argued that organizing an occupation is not an easy task. “We have to occupy the property, densify it, register all occupants; we need people to fill the property. In fact, our criterion to grant people a spot is participation. Thus, this also makes people engage politically with the movement and become agents of the process”, a local leader shared with me. She highlighted that:

Squatting is not a simple job. Is not like ‘we found a place, let’s occupy it’. It does not work that way. We have to remember that all areas in the city already have an owner, and they usually are not institutional actors. For example, we have the case of drug dealers who unofficially ‘own’ certain places of the city. Thus, it is not that simple to squat, sometimes we also must negotiate with these extralegal forces in order to secure a place.

Another leader of a squatting movement said that “it is very difficult to consolidate an occupation, our ‘flag’ scares a lot of people”. He stated that, in addition to the legal consequences, there are a lot of moral judgments around these occupations. In fact, alluding to the visibility issues discussed at the beginning of this section, a lawyer representing squatting groups claimed that the more visibility an occupation has, the more “fear” it causes, and, consequently, the greater is the government’s reaction:

Politically organized occupations ‘scratch’ power. This was the case, for example, of *Lanceiros Negros* occupation, when they occupied a vacant building near the City Hall, under the mayor’s nose. These types of actions irritate the government so much. Thus, I am actually not impressed with the disproportional force the government used to reprime the movement. Moreover, occupants are often identified as criminals. People do not even think twice or reflect upon what takes someone to squat.

It is important to highlight, nevertheless, that the executive power is not the only branch of the state to promote violence against squatters. The judiciary, for instance, by ordering these evictions and regulating police actions to execute these orders also promotes – physically and symbolically – assaults towards informal tenants. The case referred to above, the *Lanceiros Negros* occupation, is, in fact, paradigmatic due to the context in which the eviction was carried out in 2017, involving children and even resulting in arrests. The operation was so criticized at the time that the judiciary created a task force proposing an eviction protocol to be used after this case. In fact, a judge who I interviewed pointed out that in the eviction order issued by the magistrate assigned to the case was written: “eviction to be carried out during the weekend not to disrupt the traffic”.

Regulating the urban-legal order: new legal mechanisms and their applicability

In Brazil, housing informality rate is extremely high, both within the upper classes and among the urban poor. Everybody defies land use and urban laws.

(Member of the state housing authority, in-person interview)

As explained at length in the previous pages, the City Statute, institutionalized in 2001, regularized key mechanisms that were encoded in the 1988 Federal Constitution, in addition to

creating new ones. In this section, I discuss how the judicial, policy, and institutional actors understand some of these legal concepts, as well as how they are being mobilized (or not) in practice.

The City Statute

Although, as Fernandes (2011) notes, the City Statute was responsible for establishing a new urban-legal order in the country, many housing rights activists are very skeptical about its applicability even almost twenty years after the law was enacted. One squatter occupation leader interviewed stated that because the Statute is not applied by judges, it is as if this legislation does not exist. “There is a saying here in Brazil that argues that ‘there are some laws that stick and others that do not stick’. But why some laws do not stick? Because we, the social movements, do not go to the City Council to complain ‘this law needs to be applied’. Legislative people simply approve the law and that is it. They are not concerned if it will ever be applied”. Another leader emphasized: “Someone could argue ‘but judges do not know the law’. Of course, they know it! It is not a matter of knowing the law, but of ignoring it”. A judge interviewed concluded that “the problem is not the law; good laws have been created. The problem is whether or not people apply it or even under what conditions this law is being applied”.

The discourse of a state judge clearly illustrates the arguments stated above. In addition to mistakenly referring to the City Statute as the Urban Statute, he also defended why he did not use much of the Statute because “I was judging only public law, and in public law, the norms are completely different, there is no adverse possession, none of that”. He also claimed that:

The City Statute is a law and laws are below the Constitution. And one of the main principles of the constitution is the right to private property, it is written there. Thus, it seems to me that any decision must always follow the rule that the property owner has the superior right (*direito maior*). In the case of private properties, I agree that if an

owner abandons his property, someone invades it, and he does nothing to defend his rights, depending on the property's area and the context, the owner may suffer adverse possession. Nevertheless, to be permissive in relation to private property, when the owner is seeking his right, is not acceptable.

Contrary to what the state judge stated, the City Statute does have mechanisms that can be applied to public properties. In fact, the 2001 legislation regularized CDRU, granting use rights to tenants located in public property. Moreover, although the constitution defends private property rights, the document also institutionalized the social function of property, as it will be discussed in the following pages.

Lastly, several legal actors criticized the City Statute for actually making it easier for the courts to issue eviction orders in certain contexts (e.g., when informal tenants are theoretically under danger in cases like settlements located near riverbanks). The legislation establishes that local governments should promote the conservation and protection of areas of environmental interest. Municipalities must also define the guidelines and specific instruments aiming at environmental protection. The law also institutionalizes that urban planning and policies must correct eventual “distortions of urban growth and their negative effects on the environment”, minimizing the exposure of citizens to disaster risks, relocating them if necessary (BRASIL, 2001).

A judge argued that the municipality of Porto Alegre, grounded on principles from the City Statute, tried to evict informal settlements from *Lomba do Pinheiro*, a neighborhood located in the outskirts of the city, alleging that the housing units were excessively close to a stream and the structures could collapse at any moment. “It is really a risky area, but people have been there for over twenty years, and nothing happened”, he said. “My decision, in this case, was to acknowledge that the area was at risk, but I argued that the municipality could not evict tenants until the local government was

able to find a closer area, in favorable conditions, to relocate people to”. A federal judge also highlighted that “if there is a real threat to residents, we, obviously, have to consider the removal of tenants. However, in a case I judged, people have been in the area for 50, 60 years and nothing has ever happened. Thus, I do not think there is a real and urgent risk to them”.

A prosecution attorney also remembered a case she participated in which the judge granted a temporary injunction (*liminar*) ordering the eviction of families occupying a fire-risk structure. However, the prosecutor claimed that the complex was composed of several buildings, and the families were not occupying the part of the structure which was potentially hazardous. Apparently, issuing eviction orders based, in theory, on risk assessment became a common practice among judges in Porto Alegre. As one of the interviewed lawyers put it, “preservation area, risk of collapse, flooding... It is very easy for plaintiffs to manipulate the courts. People have lived in the area all their lives and, suddenly, they are at risk. The courts act almost as if they are doing tenants a favor by ordering their removal”.

Master Plans

The City Statute also mandates that all cities with a population greater than 20,000 people must, through a participatory process, develop a master plan. In addition to being mandated by municipal law, master plans in Brazil also have a fundamental role as they are responsible, according to the Statute, for setting what it means for urban properties to fulfill a social function. Section 39 of the 2001 legislation establishes that “urban property fulfills its social function when it meets the fundamental requirements expressed in the master plan” (BRASIL, 2001). The City Statute also establishes that all master plans must be reviewed every ten years. Porto Alegre’s current master plan, however, dates from 1999, two years before the publication of the Statute.

Furthermore, members of the judiciary interviewed assumed that, in addition to the master plans being outdated, they are not applied because they are a “vague and ineffective instrument”, as a prosecuting attorney put it. A city attorney argued that: “I can say that here we tear up Porto Alegre’s master plan. It does not work here. Why? Because these informal settlements, invasions, and occupations do not respect the master plan, so I do not work with it. Nonetheless, I cannot ignore it exists”. Another prosecuting attorney also said that: “a master plan becomes necessary so that these eviction lawsuits and decisions do not become an ideological war. The parties involved in these litigations must ground their arguments on the master plan. That is why we need to work on the revision of the current master plan, set the instruments, etcetera so that we can legally challenge evictions”.

The lawyers representing occupants also seemed to have a hard time applying the master plan. One of them told me that he does not use the master plan. Another lawyer explained that: “we do not use the master plan in our cases, this [on the master plan] is a difficult discussion to have in the judiciary. We recognize that even we, lawyers representing the defendants, do not know it so well. This municipal law is not something that is being mobilized in pleadings, motions, and legal debates”.

Adverse possession

Another mechanism that appeared many times in the interviews was adverse possession (*usucapião*). As mentioned earlier, the City Statue regulated adverse possession and created a similar instrument, *usucapião coletivo*, that also allows tenants to claim properties’ ownership collectively. During my conversations with legal, policy, and institutional actors, it became clear that this instrument is much more mobilized by the courts than, for example, the social function of property. This might be linked to the fact that, according to my interviewees, it is a much more objective and “normative instrument”, as emphasized by a judge. As explained by a state judge: “what does the judge look for

when someone files an adverse possession lawsuit? If the person has the right or does not have the right to claim it. It does not matter, before the eyes of the judge, if the tenant is part of an invasion.”

Another state judge added:

Adverse possession is a good instrument and is fully applicable. I have judged numerous lawsuits in which the owners abandoned their properties; I think some of them died and their relatives could not be found, or they do not have relatives. Adverse possession is a good form of property acquisition and, if a case meets the criteria stipulated by law (area’s size, length of occupation), I am very favorable in granting adverse possession. I think it works very well within Brazilian law.

Nonetheless, although the courts tend to accept adverse possession as an argument for claiming a property’s ownership, its applicability is still limited. The instrument is not simple to apply. Moreover, it is a very slow process, and it can take many years to finalize the transfer of ownership, as a city attorney recognized. “Adverse possession is a very complex judicial proceeding, and it takes several years to resolve it”, said another city attorney. A prosecuting attorney also added that it is difficult to reach a 5-year peaceful property possession requirement because usually as soon as people occupy someone else’s property, the owner immediately files an eviction lawsuit. “Usually in those cases, the judges issue an eviction mandate because there is nothing to be discussed. These cases are very straightforward: there is the invasion, the nuisance, usurpation of property, in legal terms, and, thus, it is up to the judge to grant the eviction injunction”, stresses a state judge.

Collective adverse possession (*usucapião coletivo*) is still harder to be applied. An interviewed public defense attorney argued, however, that it can be done. Nonetheless, tenants need to organize, and the p[rocess can be quite expensive. According to a city attorney, there are many difficulties in implementing *usucapião coletivo*.

And the reason for that is that Brazil's legal tradition is a tradition of individualization. Although the City Statute implemented important changes when it comes to the collectivization of adverse possession, the civil procedure code did not change, nor followed this shift. There is one adverse possession lawsuit that we participated in that took 15 years to resolve. In urban law, we do not have a tradition of working with collective guardianship of land. We still lack the legal tools and even the cultural conception.

Lastly, some interviewed legal actors highlighted that, although the adverse possession might be understood as an instrument to expand and democratize access to land in the country, it is grounded on the prevalence of propertied regimes. A federal attorney (prosecuting attorney) stated that “adverse possession is a three-thousand-year-old instrument that does not disrupt the socio-economic order. It is not a revolutionary concept. It is, in fact, a mechanism for creating property owners”. Similarly, a lawyer representing squatter occupations concluded that adverse possession was created to protect private property rights.

Right to adequate housing

Although the right to adequate housing is guaranteed by the 1988 Federal Constitution, the City Statute ratified it. Contrary to the right to private property, which is considered a subjective right (right-holders are the individuals themselves), A city attorney reminded that the right to housing is a diffuse and collective right. In other words, it represents a right that is common to an undefined group, class, or category of people brought together by the same factual situation. Like other rights such as the right to education and health, there are many challenges associated with securing the right to housing. As a state judge claimed:

The Brazilian state must guarantee housing and does not guarantee it; it must guarantee education and does not guarantee it; it must guarantee access to healthcare and does not guarantee it. The Brazilian state does not guarantee anything. There is, however, the principle of “reserve for contingencies” which is a theory that we use very much in Public Law.⁴⁸ We cannot think about individual cases when it comes to the public budget, but we must think about it as a whole, to attend everyone’s necessities. Therefore, I cannot think about the right to adequate housing as a fundamental and constitutional right without considering that there are other rights that were also supposed to be protected but are not being granted by the Brazilian state. There is an ideal world and a real one. We, agents of the judiciary, act upon the real world.

A prosecuting attorney, however, argued that diffuse rights such as the right to housing also

Grants each person a subjective right to have access to housing. Furthermore, these rights come with obligations. On the one hand, the state must protect people’s right to housing, by ensuring, for example, through the judiciary and the police, that nobody will take other people’s homes. On the other hand, the government must also promote and create the means through which the right to housing will be materialized, both in terms of normative means – through laws, and decrees – and of execution – through housing policies and land titling programs.

⁴⁸ A lawyer representing informal tenants argues that “although the Constitution secured many rights and the City Statute regularized some of them, judges always evoke the fiscal limit. The reserve for contingencies impacts the execution of many of these rights”.

The social function of property versus propertied regimes

The social function of property is, perhaps, the most important fundament that the City Statue normalized. Although the concept was already present in the 1988 Federal Constitution (as well as in the previous ones), the Statue was responsible for defining, regularizing, and establishing the criteria for the fulfillment of social function by urban private properties. As a judge highlighted: “I consider that the great mark of the 1988 Constitution was the social function of property; it truly promoted a conceptual shift. Nonetheless, prior to 2001, this instrument was very difficult to mobilize. In this sense, we can argue that the City Statue was crucial”. Many of the legal actors I talked to agreed about the relevance of this legal mark and emphasized the social justice aspect of the instrument. As an interviewed judge noted:

Social function, in my view, must overlap with economic interests. I think that way because the first concept is linked to human dignity, to promoting the reduction of inequality, which is in the first section of our constitution. In fact, real estate speculation is something that I pay particular attention to when deciding on eviction litigation; if, for example, owners kept their property vacant waiting for their value to increase. Accumulating or increased equity is a good indication of whether a property is fulfilling its social function or not.

Nonetheless, my interviewees also pointed out that the instrument is hardly applied or even recognized by the courts. A leader from a squatter occupation claimed that “it seems that social function of property is something that only exists in paper, in law books”. In addition, a lawyer representing informal tenants argued that the Brazilian judiciary is marked by private property rights and disregards the principle of the social function of property. Another lawyer concluded that

The fact that the City Statute was published in 2001 seems to have changed very little in the decisions on urban law issues. I think this legal shift penetrates very slowly into the judiciary's verdicts. Moreover, almost everything is decided in Brazil according to Private Law. Although the law institutes the social function of property and argues that everything must be assessed according to the property use, a judge almost never analyzes the use purpose of a property whose ownership or possession is being contested in the court. The judge usually only looks for the owner's name on the property's registration and that is it. The judge ends up deciding these kinds of lawsuits based on what is written on a piece of paper. In fact, we did a survey to see how many times the term "social function of property" was mobilized in eviction litigations filed in TJRS. The results are surprising as the numbers were insignificant. The keyword was cited in less than 1% of all decisions we raised. And in many of these decisions the term "social function of property" was used to deny possession, not to grant it.

A prosecuting attorney seems to agree with the passage above and adds that "judges do not research about the use of a property to determine whether or not the social function of that property is being fulfilled". However, it is not only a matter of investigating how a property is being used, if it is vacant or not. This inapplicability of the social function of property might also result from the lack of knowledge about – or, in some cases, the misrecognition of – the social function of property. When I asked state judges, for example, how the social function of property could be interpreted, one said that it was a very "abstract norm". Another discussed the adverse possession law instead.

This lack of awareness and misuse of the social function of property could be minimized if the other parts of the litigations, public defenders, and other lawyers representing the defendants, specifically also mobilize the concept, according to a prosecuting attorney. In her words,

This discussion on the social function of property needs to be started by the defendants and their lawyers. They should also be invoking the non-fulfillment of the social function of property. Just highlighting that the property remains vacant, however, is not enough. I must link this argument to a norm that explains what constitutes a social function of property and what does it mean to fulfill it. Starting from there, I think we could have a stronger argument because in these cases, even though property owners might still have the judicial possession of the property in question, they do not own the legitimate possession as the constitution establishes. Nonetheless, although we witness housing rights movements making these considerations, I do not see this discussion in the case files. What I see is a generic discussion like “this property is not fulfilling its social function”. Also, I think the social function of property is still very much open to interpretation in Brazil. So, we have a problem because the logic of the private view of the law still prevails. One judge can say “a property owner might live off the income coming from a property, thus, speculating on it is a fulfillment of its social function”.

When I asked a lawyer of a squatter occupation if he mobilizes the social function of property in his cases, he replied “we tried, but usually the generic argument that we use in every pleading or motion includes the right to housing, the City Statute, and the Law n.2220, which regulates special use grants of public properties”.

Proprietary model and conservative ideologies

In a lawsuit against houseless people occupying public land, a state judge decided for their removal as alms is something that she already gives ‘to those living under the bridge’, she said.

(Public defender, in-person interview).

Private property rights have always been one of the foundations of Brazilian society. In fact, an interviewed judge claimed that private property is often perceived by the state, including the judiciary, as something sacred. Nonetheless, the arguments mobilized by the courts when ordering the eviction of squatters are not only embedded in a “privatist” logic (i.e., logic dictated by private rights) but also in evidence, as the passage above illustrates, of a discriminating and excluding ideology. In this third subsection, I address both this proprietary model, that still grounds many of the decisions issued by the Brazilian judiciary and political ideologies that further ostracize poor people, in particular squatters.

Proprietary model

According to the same public defender who shared with me the line above, property within the judiciary has an absolute character, permanent and indissoluble. “If you have the social function of property in one extreme and private property rights in the other, the latter will always win”, added an institutional actor. She called this prevalence of private property rights in the country the “proprietary model”.

A prosecuting attorney with a background in philosophy of law explained that property law has a longstanding tradition in the modern state:

Property law has been one of the foundations of the constitutional state, of liberal democracies. Other rights were later added, but property rights have always been there. Therefore, it is very complicated to defy this idea. Anything that concerns property rights is extremely difficult to challenge because you are dealing with something sacred and dogmatic. Property rights are one of the oldest and most solid, universal, and philosophically grounded concepts in Law. Marx himself starts from the premise that property rights are central to understanding capitalist societies. The same constitution

in Brazil that incorporates the social function of property also dramatically protects property rights. Even the mechanisms created to challenge ownership such as land subdivision, adverse possession, and expropriation are all instruments that protect the institution of property. If the owner does not protect his property, then the state will intervene. I have no doubt that, in the end, there is a certain theoretical and political difficulty in structuring an equilibrium discourse when it comes to the protection of property rights.

Furthermore, a judge argued that property rights represent normative rights, as opposed to programmatic rights like the right to housing, facilitating the “defense of property” in the country. In addition, besides being encoded in the constitution, property rights are also very well established in the civil code. Another judge added that within the “hierarchy of law” it is very hard to attack property rights because the civil code does not establish the circumstances in which property rights will not prevail. “Our judicial system, thus, directs the judge in this way”, he said. “Our law system, our legal culture is still very “privatist”. The constitution establishes the social function of property, but many constitutionalist judges I know ask themselves ‘but what is to fulfill a social function? Who will tell me what is a social function? The master plan?’. Judges do not know master plans and, furthermore, our master plan is outdated”, continued a prosecuting attorney.

Due to this strong and longstanding tradition, and because of the promotion of property rights in Brazilian legislation, including the civil code, a lawyer representing squatters claimed that it is also very difficult to defend the right to housing. “Housing is the tipping point because it picks up where it hurts: on private property”, he noted. In fact, another lawyer argued that human rights such as housing are understood by the courts almost as a violation of positive law and affirmed that “human rights are not defended by the judiciary”. The passage below, by a state judge, illustrates this

lawyer's argument very well, as she completely ignored the City Statute and the social function of property in her account:

Property rights eventually can be contested if the other part is a public entity. For example, when the executive needs to open a road. Nonetheless, this right cannot be contested when another private actor is involved. In sum, the right to private property is constitutional and must be followed, under penalty of creating legal and factual *anarchy* [my emphasis]. The means through which this right will be ensured depends on the legislation, but always having as the major foundation the constitutional right to property.

Excluding ideologies

“Judges not only do not know the law, but they pick a side”, according to a leader of a squatter occupation. His statement summarized what other interviewees also expressed. Many of them suggested that the judiciary is insensitive to poor people's realities. This happens not only because judges are not aware of the legal instruments created to democratize access to land in Brazil, as the curriculum in law schools still does not include urban law, but also because of the enormous socioeconomic gap between them and the defendants.

As an institutional actor pointed out, the same judge that receives housing assistance⁴⁹ also orders the eviction of unemployed people. A lawyer representing a squatter movement also emphasized that judges were never poor in their lives. “They never stayed awake at night, worrying how to pay an electricity bill. And then they get outraged because a guy hotwires the power supply. Judges do not know how difficult it is for someone who earns 980 bucks to pay 100 on an electricity

⁴⁹ Judges in Brazil are eligible to receive *auxílio-moradia*, a housing assistance in the amount of almost four times the minimum wage.

bill”. According to a public defender, at the end of the day, the judiciary is still the “opponent”. Echoing the passage at the beginning of this subsection, a prosecuting attorney added:

When judges order the relocation of tenants, they tend to think “look at these people, they live very poorly, so I am actually doing them a favor, doing charity by getting them a house”. Judges forget that these people are subjects of rights, that they have rights and, thus, should be treated like such and not like invaders or ‘irregular’ occupants (*ocupantes irregulares*).

The interviewed leaders of squatter occupations agreed and claimed that “judges are individuals that live very distant from us, spatially and metaphorically, distant from our struggles, from the hardships that we experience in our everyday lives”. She continued by arguing that:

Properties are concentrated in the hands of a few powerful people, people who have a relationship with the economic elite, people who know judges, or who are their relatives. Those recruited to form the judiciary express their class ideology through their decisions, benefiting people like them. And who end up paying the price are the poor. So much that when we win an eviction lawsuit, we actually get surprised because we are not expecting this victory.

Another leader highlighted that although they are seeing people coming from poor neighborhoods starting to occupy the judiciary, they are just a minority. Most judges still come from very rich families, keeping the judiciary very conservative, very reactive. “The courts treat housing movements as they were criminals as if we were stealing something from someone. We are getting dehumanized as judges cite the plaintiffs as ‘so-and-so and *others*’ [my emphasis]. Judges do not understand that, in fact, we represent the majority of Porto Alegre’s population, that we depend on occupying properties to live”.

A prosecuting office also recognized that the dominant ideology affects the judiciary. He believes that the Brazilian judiciary until five or six years ago was becoming more sensitive to social issues. Nonetheless, after the Worker's Party left the presidency, he saw that the judiciary veered to the Right. In addition to the courts' decisions being influenced by the political context, many legal actors interviewed, as well as squatter movement leaders, believe that the judiciary's insensitivity and hostility towards informal tenants also result from the narrow curriculum in the country's law schools.

A leader from a squatter movement considered the judiciary, from an urban perspective, an "illiterate institution". A prosecuting attorney added that urban law is not a mandatory subject in law schools and, when it is offered as an elective course, the matter is usually taught as part of administrative law. According to him, from thousands of law schools across Brazil, only 84 of them offer a course on urban law. Furthermore, a judge recognized that law schools in Brazil usually focus on civil procedure, criminal law, and administrative law. Humanities is not part of the curriculum. As a result, people with a law degree become technocrats. As a federal judge claimed, "We graduate with a very technical view, almost if we could detach law from all its social, economic, cultural, and historical contexts."

In addition to lacking an urban background, another issue with the judiciary, according to a prosecuting attorney, is the fact that it is very difficult to become a magistrate in Brazil. For someone to become a judge, they need to go through a very difficult selection process as the exams are very difficult to pass. In the end, only those who can afford to spend years without a job to study become judges. A judge told me that he always jokes "that those passing a public tender to become a judge have the luxury to be sponsored by their parents (*"paitrocinados"*). They live inside their own social bubble. Not to mention the 'juvenilization' of the judiciary as very young people are becoming judges, people without life experience, ignoring social realities". An interviewed federal judge said that the

whole process to become a magistrate is based on merit and “we know that meritocracy in a country like ours, in an unequal society, does not represent an egalitarian selection system”.

Lastly, another critique to the judiciary system in Brazil made by judges themselves is related to the lack of a specialized court in urban law.

When you asked me about the City Statue, I wondered myself “what do I think about the City Statue?”. The reality is that there is no time for me to think about it. I have here with me 240 cases ready to be sentenced and they include a review of a bank contract, an eviction action, a car crash, a case of moral damages against a doctor for medical error, among others. We, judges, are kind of generalists. We do everything so, unfortunately, I have no time to reflect upon the City Statue or to discuss the master plan.

When I asked a state judge the same question– how she interprets the City Statue – she emphasized that:

We work with concrete cases. We analyze case by case. The judiciary in Brazil resolves [judicial] process, not conflicts. We limit ourselves to what the paper says. We can solve this or that particularity, but the conflict remains there and will continue. The decision will depend a lot on the judge’s beliefs and points of view. Some judges are more legalists, that is, they follow the law as it is, period. We also have judges that are more sensitive to local contexts and exceptional circumstances and try to find an alternative. However, they do that out of their social conscience, not by a functional obligation. And there are also more academic and such judges. They usually make these considerations [on the social function of property]. But most judges are concerned with legalist principles.

Judiciary's position in specific contexts

It is an unfair struggle. We are always defending ourselves [in the courts].

(Leader of a squatter occupation, in-person interview)

When asked which scenario increased the likelihood of informal tenants not getting evicted by the judiciary, if occupying public or privately-owned property, most of my interviewees had the same answer. Almost all of them, except a city attorney and a state judge, replied that the courts tend to be more “considerate” (i.e., less favoring eviction) in cases in which squatters are occupying public land, compared to situations in which they are occupying private land. Of course, the institutional status of property owners is not the only variable considered by magistrates when deciding for or against eviction. Nonetheless, this section focuses on these differences because the comparison might further elucidate not only how the judiciary understands private property rights frameworks, but also how judges interpret the role of the executive when it comes to housing policies, land use, and other urban initiatives.

A city attorney argued that she thinks that it is more difficult for them, representing the government, to repossess a public area compared to a private actor. This happens because judges usually want the public sector to demonstrate the use purpose of the property being contested. An interviewed federal judge reiterated this argument by claiming that the judiciary tends to “be more attentive” when the eviction litigations involve public property. Furthermore, a prosecuting attorney revealed that:

In the medium and long term, it is easier to “solve” a squatter occupation if they are occupying a public area because, if the state at some point needs to take back that area, it will always propose a solution to the judge. If it is private property, the chances of

the public sector offering a relocation area are very small because it is not their problem.

From the perspective of squatters and their lawyers, they also believe occupying public areas is more guaranteed, as a leader suggested below:

When we occupy public land, the judiciary is, in general, more receptive. If the mayor files an eviction order, the judge can accept his request. However, because it is the municipality's duty to protect its citizens and give an appropriate use to its properties, the magistrate often requires the government to solve the situation by finding an area to relocate the tenants or giving them rent vouchers. That is why people, intelligently, first occupy public properties. Because they know that even in the event of an eviction, they will still have some sort of link with the state and, ultimately, the government will have to assist them. When the property in question is privately-owned it is complicated, as we usually get evicted and end up with nothing.

The lawyers representing the movements agreed and claimed that, in the case of occupations in public areas, the judiciary tends to be more "generous". "If the area in question is private, it is more difficult for the occupants to stay. In this case, the courts are not that demanding [requesting an alternative solution or minimizing the impacts resulting from the eviction]. Usually, if the plaintiff is a private actor, he will do what he wants, there is no margin for negotiation", concluded one of them.

It is also important to note that, although the City Statue does not impose that public properties must fulfill a social function, the Constitution establishes that, as a city attorney noted:

I do not recognize public property without its social function because this is also the logic present in our constitution. When I started here, at the Office of the Attorney

General, in the 1990s, I had the opportunity to follow the post-constitution legal scenario. Prior to the new constitution, the government used to come here and say, “we have a roadbed here, file a lawsuit to remove people from there”. It is not like that anymore. We now must consider how long people are occupying the area, whether they have the right to be there because, at the end of the day, public land must also fulfill a social function.

Even though there is more margin to negation in terms of accepting the eviction request when the plaintiff is a public entity, this does not mean that the judiciary does not order the eviction of tenants occupying public properties. Moreover, according to leaders of squatter occupations and their lawyers, when governmental properties are involved in these litigations, the eviction process per se tends to be much more violent compared to when the lawsuit is filed by a private actor. As a leader of a squatter occupation stressed:

When we are evicted from a public property the first thing that we have to consider is that we will come across the municipal guard who is totally unprepared to deal with these situations. There is a truculence associated with the whole process. If you have a conservative local government that does not want to negotiate with the movements, as we have now, then occupying a public area sometimes can be also tricky. Facing a reactionary government usually means violent confrontation.

One of the lawyers continued by claiming that:

Litigating against the state can be very tough because the state has power, it has the monopoly of the police force. The state has infinite resources, including financial ones. If the state is granted an eviction order, they have all the police force at their disposal, they have the means to perform an eviction. In turn, the private actor has a financial

limitation. Evicting dozens of families is not a simple process. If he wins an eviction lawsuit, the plaintiff will have to hire trucks to take out families from the area, call the bailiff, and if he needs police force, he will have to hire it. All of that represents a lot of money. The virulence is definitely greater when the property in question is public. Of course, all of that also depends on the political narrative of the moment, if there is a public interest in the issue or if the public opinion is on the side of the occupants.

Finally, in addition to the violence mobilized in certain eviction litigations involving the government, another important aspect to keep in mind is the speed of the whole process. Evictions in which the state represents the plaintiff can move much faster because there is no such thing as “old possession”. In the case of private properties, the new civil procedure code (BRASIL, 2015) establishes that the judiciary might grant a preliminary injunction to evict tenants if the occupation is one year and one day old (the so-called “new possession” or *posse nova*). In cases in which tenants are in the occupied property for more than one year and a day (“old possession” or *posse velha*), an evicting preliminary injunction is prohibited, and plaintiffs must wait until the court’s favorable final decision to evict the occupants. Nonetheless, when it comes to public property, all occupations are considered “new possession” and, thus, the state can request a preliminary injunction to evict tenants from the occupied area at any time. In other words, tenants might be occupying a public area for over twenty years and get immediately evicted through an injunction before a final decision is issued by the court.

As summarized by a lawyer of a squatter movement:

When it comes to public property, there is more room for bargaining. Political bargaining, I mean. Tenants can negotiate with the mayor, discuss with city councilors so that families can stay put. Nevertheless, from a legal perspective, they can be evicted faster. Also, in the case of private properties, owners must prove their property

ownership of the property in order to be able to evict people through an injunction.

This does not apply to the litigations involving public property.

Conclusion

In fact, the judiciary sees the demand for housing with a lot of hostility; hostility in the exercise of jurisdiction, while issuing the decision, while granting the appeals. But also hostility in the way the legal system treats people, in the way people are received in court. It is a very hostile environment. As lawyers representing squatters, we know we will lose. There is not much expectation. Furthermore, the poorer the tenants, the greater the hostility from the judiciary.

(Lawyer representing squatter occupation, in-person interview)

This chapter focused on eviction litigations within the informal housing sector, more specifically cases involving squatter groups. My main objective here was to discuss how the courts are mobilizing frameworks on land use and property rights in these eviction lawsuits. After conducting a discourse analysis of selected eviction court records filed at TJRS and of interviews with key people, directly and indirectly, involved in these cases, I was able to verify my hypothesis. My findings confirm that the state, particularly the judiciary, plays a major role in practices of dispossession by ignoring or misusing innovative and progressive legal mechanisms created in the last two decades to expand and democratize land access in Brazil. Moreover, although paradigmatic, the City Statue has also provided the courts with “legitimate” excuses to issue eviction mandates, by making it easier for the judiciary to order the eviction of tenants living in areas considered “at-risk”.

Finally, I also confirmed that judges are mobilizing political ideologies that condemn certain forms of tenure, including collective guardianship of land, in favor of a property model that focuses exclusively on private and individual property rights. Therefore, we can argue that the courts are defying recent and innovative land use legislation in their rulings. Furthermore, the difficulty of searching for specific eviction litigations on TJRS database (i.e., lacking classes and categories such as

“urban law”) also demonstrates the marginalization and invisibility of urban planning and urban issues in TJRS jurisprudence.

I conclude that legislation such as the City Statute still has little reverberation in jurisprudence. In addition to finding little to no adherence between doctrines and judicial decisions in eviction litigations, I also found that the judiciary is embedded with discriminatory ideologies that evict, exclude, and dehumanize the urban poor, especially the informal tenants. In this sense, I agree with Fernandes (2007), who argues that serious issues arise from the ideological confusion of those who do not recognize that regularization programs (including land titling and other forms of transfer of ownership) ultimately aim to guaranteed housing rights.

Additionally, as Sanches and Soares (2018) already pointed out, in addition to neglecting the social function of property and other innovative legal instruments, by ordering the removal of squatter groups from vacant properties, the judiciary also criminalizes housing rights movements. As noted by my interviewees, this attitude of judges towards squatters can be explained first by the scarce debates on urban law in law schools which educate future judges who often mobilize only civil law in their decisions. Second, marginalization might also be explained by the fact that magistrates tend to come from affluent families, with a very detached social reality compared to the livelihood of the defendants represented in the litigations they are judging. Of course, there are exceptions. Some of the interviewed judges, for example, are very progressive and agree that, as one federal judge emphasized, “when housing is not guaranteed, occupying is a right”.

Nonetheless, in addition to judges, the literature reviewed here, as well as the narratives provided by the people interviewed, suggest that other agents of the judiciary are also not invoking the social function of property and related concepts. In fact, prosecuting attorneys and the lawyers representing the defendants themselves recognized that such instruments and even municipal laws

like the master plan are usually not part of the defense's argument. Surprisingly, none of the eviction court records analyzed in this chapter, for instance, mentioned "right to the city".

Moreover, the evidence presented here shows that instruments established by the City Statute, such as collective adverse possession, although innovative, are still very difficult to apply. As a result, as Alfonsin and her co-authors (2016) note, we can argue that deep paradigmatic transitions of the urban-legal order and expansion of rights do not occur with the mere conception and approval of new laws. But these shifts depend, fundamentally, on changes in the legal culture that is heavily influenced still by conservative ideologies and "proprietary" legal frameworks. As the analysis of the eviction records filed in TJRRS demonstrates, the discourse on the indisputability of private property rights is still very much rooted in the Brazilian judiciary. The transition from a paradigm centered on property rights to a model based on the social function of property and, thus, on the right to the city, promotes a deep legal, cultural, economic, social, and political rupture. This struggle, therefore, cannot take place only in the court but must involve the executive and legislative branches, otherwise, housing movements might never be successful in securing their social rights.

CHAPTER 6

Processes of democratization and participation within the Brazilian judiciary: mediation of collective land conflicts

Introduction: democratizing urban planning, democratizing access to justice

As highlighted many times throughout this dissertation, Brazil has established some key legal mechanisms on property rights and land-use over the last twenty years. The institutionalization of such instruments resulted from a massive mobilization led by social movements and joined by several sectors of civil society in the late 1980s, during the country's re-democratization period, after 21 years of military dictatorship (1964 – 1985). The National Movement for Urban Reform (*Movimento Nacional pela Reforma Urbana*, MNRU) was the epitomization of this struggle, originating the “On Urban Policy” chapter of the 1988 Federal Constitution. This was the first time that urban policy was incorporated into the national legislation (Saule Junior & Uzzo, 2009). As also previously explained, the City Statute was passed in 2001 to legally enable this innovative constitutional text. Caldeira and Holston commend that the legislation was a “remarkable law”, embodying 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 inequalities” (2014, p. 2004). Besides regulating the social function of property, the document also stipulated that all municipalities with more than 20,000 inhabitants must have citizen participation while developing or reviewing their master plans.

Twenty years later, as the previous two chapters show, these important legal texts are still not fully applied by the Brazilian courts. Paradigmatic legal fundamentals are often not only ignored but misused by the judiciary, in particular when judges are confronted with frameworks on private property rights. Despite all the innovative legal instruments created in the last two decades – so much

that we can argue that the Brazilian legislation is one of the most progressive when it comes to urban law – many rights of the “unpropertied poor”, as Ghertner (2011) calls them, are still not guaranteed by the Brazilian courts. Moreover, with the judiciary becoming a major player in this process of democratization of urban planning in the country (Caldeira & Holston, 2014), we are witnessing the “judicialization of planning” as some authors have already emphasized (Bois, 2018; Grehs, 2020; Pimentel Walker, Arquero de Alarcón, Penha Machado, & Lemes Avanci, 2020). In other words, by deciding on the relocation of informal settlements and mediating land conflicts, the courts are becoming the ultimate sphere of planning in Brazil.

On the one hand, we can argue that the project led by MNRU was partially achieved, with the creation of new legal tools to expand land access, democratize urban planning, and minimize urban social inequalities in the country. On the other hand, nonetheless, land distribution, access to adequate housing, and citizen participation in planning issues are still not guaranteed. If the site for claiming and securing these rights is the judiciary, occupying the judiciary is crucial for protecting the right to the city. In sum, democratizing access to urban planning does not mean only creating “remarkable laws”, but rests also on democratizing access to the judicial system.

The working group on collective urban land conflicts, at CEJUSC, the Judicial Center for Conflict Solution and Citizenship, led by the Rio Grande do Sul Court of Justice (TJRS), was created to fill this gap. CEJUSC is a conciliation court established in 2013 in Porto Alegre, whose purpose is to develop “actions that encourage citizen participation in forwarding their demands to satisfactorily meet their interests [...]. The parties are invited to take responsibility for choosing the best way to solve their issue, becoming protagonists in the decision-making process” (TJRS, 2021). This working group resulted from a pilot project formed in 2015 at TJRS. The group is one of the four conciliation centers on the issue that have been established in Brazil. This chapter explores the role of CEJUSC in

mediating collective land conflicts in Porto Alegre, including analyzing the extent to which the program democratizes access to justice and challenges land dispossession.

The next section elaborates on the objectives, research question, and hypothesis of my study of CEJUSC. The third part of this chapter focuses on the methodology I used to answer my research question, including participant-observation and semi-structured interviews. Next, I briefly explain the context of the creation of the working group on collective land conflicts at CEJUSC/TJRS, as well as its trajectory and structure. In the fourth section, I discuss the emergence of this conciliation court in conversation with scholarship in citizenship, democracy, and participation. In the fifth part of this chapter, I present my results, first, by accounting for key aspects of conciliation hearings at CEJUSC, which I was able to attend in 2019 and, second, by reporting on my interviews with legal, policy, and civil actors participating in these meetings. Finally, in the concluding section, I review my research question and hypothesis in light of my findings.

Objectives of empirical research

This investigation answers the following question: “*what is the role of conciliation courts, as formal spaces of land dispute in Porto Alegre, in challenging collective dispossession?*”. I hypothesize that, although formal spaces such as conciliation courts were established to expand the access to justice and democratize collective land conflicts in Porto Alegre, these “extra-legal”⁵⁰ assemblies still benefit property owners over squatter collectives. I argue that, while the official purpose of the meetings held at CEJUSC is to create a more inviting environment to informal tenants and seek a participatory resolution to land struggles, these hearings are just a performance. This space still replicates the hierarchy and

⁵⁰ Although the working group on collective land conflicts at CEJUSC is hosted by TJRS, I use the term “extra-legal” here to emphasize that CEJUSC conciliation hearings represent an relatively informal space within the judiciary and that, although mediated by real judges, they have no legal authority there and act only as moderators.

mainstream arguments found in TJRS eviction litigations and ordinary judicial rulings. Moreover, I argue that the claims of the defendants participating in these meetings are often disregarded and invalidated.

The purported aim of the mediation court at TJRS is to democratize access to the judiciary and de-bureaucratize judicial litigation processes. Although CEJUSC audiences are hosted by TJRS, where prosecuting attorneys, public defendants, and city and state housing officials participate, the hearings significantly differ from traditional jurisdiction practice. Even though agreements between plaintiffs and defendants facilitated at CEJUSC – in case parties reach a settlement – are later approved by the judiciary, the meetings do not follow a rigid protocol or are limited to the initial matters of the procedure. As one state judge quoted in chapter 5 mentioned: “The judiciary in Brazil resolve [judicial] process, not conflicts. We limit ourselves to what the paper says. We can solve this or that particularity, but the conflict remains there and will continue”. This logic does not apply to CEJUSC, though. According to Ari Mello (2017), in conciliation hearings parties can go beyond the specificities of each case, are not restricted to legislation or other legal concepts, and might engage in a broader discussion about related urban and land issues.

In sum, my goal in this chapter is to discuss rights in the context of democratization, including what is participation when it comes to the judicialization of planning. Furthermore, with this study I hope to understand if this new model of justice, through informal conciliation hearings, results in a real redistribution of power and resources. Hence, to verify my hypothesis, I acted as a participant-observer at CEJUSC mediating hearings and subsequently interviewed key actors involved in these meetings.

Methodology

I attended four mediation hearings at CEJUSC throughout 2019 as a participant-observer. In addition, I conducted interviews with some of the actors involved in these hearings, including prosecuting attorneys, conciliator judges, public defenders, representatives of municipal and state housing authorities, and lawyers and leaders representing the squatter groups.

Participant-observation

Between June and December of 2019, I attended four mediation hearings at CEJUSC. Each of these hearings lasted from approximately 30 to 90 minutes. All of them were held at the same room at TJRS' main office, in Porto Alegre, at the same day of the week, at the same time. Although these hearings are open to the public, I contacted the judge mediating the cases before attending them. Prior to the start of each hearing, she would briefly introduce me out loud to the other actors participating in that audience, sharing with them my name and institutional status, as a Ph.D. candidate in urban planning at UCLA, "a university located in the United States", according to her. During the hearings, I barely interacted with the parties and sat at the end of the room to actively listen and take notes. Nonetheless, once the hearing was over, I tried to talk to the legal, policy, and civil actors, including the defendants and their representatives. While some of them did not engage in a longer conversation with me, I was able to have my initial contact with some of my interviewees through these meetings and schedule an appointment with them on another day.

During the hearings as a participant observer, in addition to being interested in learning the details about each case, the arguments of both parties, and the role of each actor (e.g., municipality's representative, prosecuting attorney, defendant, etc.), I also paid close attention to the meeting's social context, dynamic, and potential hierarchies. One of the key differences between traditional jurisdiction

and CEJUSC conciliation hearings is the fact that the latter, according to TJRS's own website, "encourages citizen participation". CEJUSC also represents an "essentially welcoming space, in which people with facilitators with related work experience stimulate the participation and autonomies of citizens received there" (TJRS, 2021) Hence, one of my main objectives while attending those meetings was to verify if the conciliation court, in fact, encourages participation and fosters proactivity and autonomy of the parties involved in the case, especially those of informal tenants.

I would characterize my involvement at CEJUSC hearings as passive participation. Passive participation refers to when researchers are present in a particular social context but do not actively involve themselves in the activities and "they observe an event and take notes without being immersed in the situation" (Frey, 2018, p. 1215). In this sense, "because of the researchers' position as an outsider to the social group, they get to know the people and the environment and learn how to act appropriately in the setting as an addition to the group dynamic" (Frey, 2018, p. 1215).

I did not take any photographs or recorded the meetings. Instead, I took field notes during the events, as well as after the observations. As emphasized in the previous paragraphs, in addition to taking notes about the cases, arguments, resulting agreements, and roles of each actor, I also documented the interactions I had after the hearings and the context in which each meeting occurred. After each hearing I attended, I typed all my field notes into the computer.

Finally, in terms of my fieldwork analysis, I organized, stored, and examined my data in a similar way I did for the discourse analysis of eviction court records (reported in Chapter 5). After typing all my notes and reviewing the registers of all hearings, I organized my data based on recurrent themes, arguments, and discussed topics. I also set specific thematic categories (e.g., conditions of the agreement, state's or municipality's type of interference, etc.) that will be discussed in length in section

six. To complement this analysis, I also conducted interviews with some of the people participating in these hearings, as I explain next.

Interviews with actors participating in the mediation hearings

I conducted twenty semi-structured interviews with legal, policy, and civil actors directly involved in CEJUSC mediating hearings, as table 5 below indicates. The conversations happened between late 2019 and early 2020 and took place either at the office of my interviewees or at public spaces such as coffee shops. Each interview lasted between 30 to 90 minutes. Since conciliation courts on collective land conflicts are relatively new in Brazil, and CEJUSC operation is also not yet very well documented among researchers, I chose to open the interviews with generic questions about the operation of CEJUSC and my subject's perceptions of the meetings. All the interviews occurred after the mediation hearings, which allowed me to better tailor the questions and direct the conversation based on the performances I had observed in the CEJUSC audiences and well as based on the roles of each interviewee in those meetings.

Similar to what I did for the interviews I conducted for chapter five, after transcribing the audio-recorded interviews, I systematized the accounts of my subjects, looking for common themes, similar and divergent arguments. Finally, when sharing quotes from my respondents or paraphrasing them, I decided to specify their roles. I made this decision because the institution or group they belong or represent at CEJUSC is extremely relevant for my study, especially considering that I am also interested in the context in which some narratives emerge, and the hierarchies enacted in these meetings.

Table 5: Number of interviews by group

Source: made by the author

<i>Type</i>	<i>Role</i>	<i>Number of interviews</i>	<i>Number of interviews by group</i>
Legal Actors	Judge (conciliator)	2	14
	Attorney General Office (city attorney)	3	
	Prosecuting attorney	3	
	Public Defender	3	
	Lawyer/legal assistance to defendants	6	
Policy Actors	State Housing Authority	1	2
	Municipal Housing Authority	1	
Institutional actors	NGO (technical assistance to defendants - architecture)	1	1
Activists	Housing Rights Movement (local leaderships)	3	3
<i>Total</i>			<i>20</i>

Working group on collective land conflicts at CEJUSC

Before describing the organizational structure of the working group on collective land conflicts at CEJUSC/TJRS, it is important to explain the legal context in which this conciliation court is inserted. In 2010, the National Justice Council (CNJ) published resolution n. 110, recognizing the social, political, and legal peculiarities of such forms of judicial litigations. The document also indicated the importance of building mechanisms for consensual resolution and the need for a dialogue between the judiciary and other segments of the government in order to seek agreements for these types of conflicts (CNJ, 2010). More than five years later, section 565 of the new Code of Civil Procedure for the first time *required* judges to designate a mediation hearing for collective land litigations in certain situations.⁵¹ These specific situations were: litigations whose subject was the possession of public or

⁵¹ The previous code of civil procedure specified that judges *might* designate mediation hearings for possessory litigations (CPC 1973).

private property occupied for at least one year and a day and when an evicting injunction issued by a judge was not executed within one year (CPC, 2015). The new CPC also stipulated that the State Prosecution Office – whose task is to protect the legal-urban order – and the Public Defender’s Office must attend these conciliation hearings, and representatives from both the municipality and state government might also be requested to attend. Hence, while only the judge, plaintiffs, defendants, their legal representatives, and witnesses can attend traditional jurisdictional hearings, in conciliation hearings other legal actors representing the state, as well as agents of the executive might be called upon.

Marinoni et. al. (2015) argue that the participation of other legal representatives, as well as of the executive power, aims both to ensure a broader resolution for the conflict, but also to engage the local government in the resolution of the issue, which surpasses a simple private divergence and represents an important political and social matter. Furthermore, Ari Mello (2017) argues that mediation becomes a new form to protect the right to adequate housing, claiming that mediation hearing in possessory actions dealing with urban occupations represent a new alternative for the jurisdictional guarantee of the right to housing. He continues by emphasizing that, although mediation cannot replace the material assurance of the right to housing, the mediation process has an intrinsic value by promoting access to justice for those experiencing housing vulnerability (Idem, p. 2079).

Although new normative rules regarding the conciliation of collective land conflicts were instituted by the 2015 Code of Civil Procedure, the working group on possessory collective litigations at CEJUSC/TJRS resulted from a mobilization led by the Rio Grande do Sul State Forum of Urban Reform (*Fórum Estadual de Reforma Urbana do Rio Grande do Sul – FERU-RS*), created by human rights activists. In fact, the 2015 CPC was published only in early 2016, while the working group at CEJUSC was launched in June of 2015 (Azevedo, 2016). The initiative started as a pilot project.

In December of 2014, FERU organized an investigative mission, visiting public hearings, state and legal officials, and nine areas targeted with eviction orders in the metropolitan region of Porto Alegre (Fogliatto, 2014). The action also aimed to give visibility to the agenda of squatter occupations in the city and to open a negotiation among defendants, representatives of the local government, and housing authority, as well as actors from the judiciary. As a result of FERU's efforts, an experimental and inter-institutional working group on mediation and conciliation of collective land conflicts was established by TJRS in 2015 (FERU, 2016).

According to Azevedo (2016), over the course of 90 days, the pilot project focused on 14 cases, held 40 mediation hearings, and involved 1,835 families. In eight of these cases, an eviction order was avoided. Due to the project's positive experience, the TJRS decided to make it a permanent initiative inside CEJUSC. In addition to the conciliation court on collective possessory actions at CEJUSC coordinated by a judge, there are also mediation hearings facilitated by lay judges taking place outside TJRS.

The hearings held at CEJUSC are presided by a conciliator judge and attended, besides the parties involved in the litigation and their lawyers, by a state prosecution attorney, public defender, city attorney, and a DEMHAB⁵² representative. Occasionally, a representative of the state housing authority might also join the meeting. Other interested actors such as academics might also attend the hearings to assist the defendants with technical advice. City councilors have also joined some of the hearings. However, the judge responsible for the project prohibited the presence of candidates to electoral mandates to avoid turning the audiences into a platform of electoral campaign. Originally, the pilot project predicted two or three hearings per case, with the first hearing serving to introduce the project to the parties, as well as to discuss its objectives. Also, tenants are encouraged to choose

⁵² Porto Alegre's Housing Authority.

community leaders to attend subsequent meetings. In subsequent hearings, an agreement is sought through negotiations facilitated by the judge and other legal actors. Nonetheless, there is no limit on the number of hearings to discuss a single case. The parameter used by the judge when deciding for a follow-up hearing is based on the real prospect of conciliation between the parties involved. There is also no minimum or maximum temporal distance between hearings. This interval is also decided by the facilitator judge based on the established conditions and deadlines set by the ongoing negotiation (Mello, 2017).

Finally, when a case is submitted to CEJUSC, the related judicial process is not paused. The procedure remains active. Nonetheless, it is expected that in cases with an injunction evicting order in progress, the eviction mandate is informally suspended until options are exhausted at CEJUSC. If an agreement is reached during the conciliation hearings, the settlement is then approved by the natural judge of the case.⁵³ If there is no agreement between the parties, the original lawsuit continues normally. Any of the following actors might request the case to be sent to CEJUSC: natural judge, plaintiffs, defendants, the State Prosecutor's Office, or the Public Defender's Office. Nonetheless, due to the limited working capacity, only the requests made by the State Prosecutor's Office, Public Defender's Office, or the natural judge are usually discussed at CEJUSC/TJRS. Other collective possessory actions are mediated outside the physical structure of CEJUSC and led by lay judges, who are indicated by TJRS though (Mello, 2017)

Urban citizenship, democracy, and participation

Evictions and dispossession processes more broadly imply not only the loss of land and housing, but also other rights and, as a result, the reframing of citizenship itself. It is important to

⁵³ Judge responsible for the original litigation.

emphasize, though, that citizenship does not only refer to national membership or judicial status but is also related to the active process of rights practicing in informal settings by ordinary people (Secor, 2004). In this sense, the city becomes a strategic site for disrupting formal and established conceptions of citizenship and represents the claimed object itself. As noted in the first chapter of this dissertation, Yiftachel claims that displacement has become a metric of contemporary urban citizenship. According to him, “the greater the threat of displacement, the weaker the urban citizenship” (2020, p. 162).

As a response to the weakening of urban citizenship faced by marginalized groups, Miraftab and Willis (2005) argue that poor people’s movements create alternative spaces of participation to demand rights. These “invented spaces”, as the authors put it, boost the emergence of different kinds of citizenships. They contend that as the neoliberal state privatizes the city and promotes exclusion and segregation, the urban poor use insurgent citizenship to hold local authorities accountable and enact their rights. Nonetheless, Miraftab (2004) has also emphasized that, in addition to creating invented spaces of participation, it is also important to occupy the “invited spaces” of citizenship. These are often mediated and controlled by the state or other authorities. Holston (2008), for example, shows how urban residents from São Paulo’s peripheries successfully mobilized the law and occupied formal spaces such as the courts to fight for formal tenure. Social movements, hence, might turn to the courts to enact social rights if these formal spaces, while in parallel engaging in contestation and bottom-up informal practices.

In fact, the mobilization of the judiciary by housing activists and marginalized groups can be part of a greater strategy. As one of Miraftab’s respondents highlights:

We understand the limitation of the legal system. We can’t confine the struggle to the legal system [and have] the courts become the site of our struggle. Using the court is one technique that we use, but it is not the most effective tactic. But we’ll use it if there

is space to use it in that case and at that level. [...] We are very conscious about how we use the law and when we use the law. (Miraftab, 2006, p. 200).

While the courts epitomize an authoritative and state-sanctioned site, Smith and Rubin (2015) argue that they might represent, in fact, an alternative space of struggle and negotiation. The authors claim that “social movements and communities seek litigation for a variety of reasons, including frustration with the existing invited/invented spaces of engagement and the need for new sites of recourse, redress and engagement with the state” (Smith & Rubin, 2015, p. 251). They continue by defending that courts, as they embody aspects of both invited and invented spaces and can be understood as a “third space” of participation and enactment of citizenship. According to them, “the court is turned to for redress and voice when all other channels have been blocked. Unlike other invited spaces, the courts have a set of rules and protocols that are outside of the participants’ purview and in a sense shares some of the characteristics of invited spaces: state-controlled, top-down, with outcomes over which communities and residents have very limited control” (Smith & Rubin, 2015, p. 250). Nonetheless, court rulings might also push this line by ensuring interaction and engagement between the state and civil society and mediating and enforcing the outcomes of such an encounter, “which is a new and different role to the court as a traditional site of redress” (Smith & Rubin, 2015, p. 250).

To conclude, since the promulgation of the 1988 Federal Constitution, the judiciary became an important platform to protect and enforce social rights in Brazil. Especially after the institutionalization of the City Statue in 2001, the courts have become a key arena to housing rights groups (Earle, 2012). Nonetheless, the courts are still seen with much distrust by some activists and marginalized groups. As Caldeira notes, a series of issues, including a complicated legal system and a perceived contradiction between local and state laws, produced a lack of faith in the judiciary among

Brazilian citizens, especially among vulnerable groups as they saw justice as “a privilege of the rich” (2000, p. 345). Although there is no guarantee that this format will produce social justice, court mediation may symbolize a third alternative for the enactment of citizenship (Smith and Rubin, 2015).

On the one hand, these conciliation spaces are still sanctioned by the state and represent an “official” and recognized means to guarantee rights. On the other hand, mediation technically allows ordinary citizens to actively participate and, in certain circumstances, dictate the terms while negotiating with private and public actors. To understand if and to what extent informal tenants secure control over displacement and dispossession processes in mediation spaces, challenging state oppression and the hegemonic power of the legal system per se,⁵⁴ in the next section I share my findings on collective possessory actions at CEJUSC.

Collective possessory actions and spaces of mediation

As explained in the previous pages, the conciliation of collective possessory actions at CEJUSC/TJRS started in June of 2015 (see figure 36 below). While interviewing the conciliator judge and also coordinator of CEJUSC in 2019, she told me that in about thirty to forty percent of the cases, the parties achieve an agreement, which does not necessarily mean allowing occupants to stay in the occupied property, but it may result in relocation and other types of housing assistance. The CEJUSC group focusing on collective possessory actions meets once a week. When I attended the hearings, they held the audiences on Tuesday afternoons, from 2:00 to 4:00 PM. Depending on the duration of each meeting, CEJUSC mediates between eight to ten cases per month, with usually two hearings scheduled per week.

⁵⁴ Caldeira and Holston (2015) argue that the formation of a new paradigm within urban policy in Brazil, which reinvented master planning requiring citizen participation, occurred over the tutelage of the judiciary. As the courts represent a major force of Brazil’s democratization, though, the authors claim that there is a judicialization over the terms of popular participation and in planning more broadly.

Figure 36: The first conciliation hearing on collective possessory actions at CEJUSC in June of 2015:

Source: Eduardo Nichele/TJRS via ClicRBS.



CEJUSC mediation hearings

I attended four conciliation hearings at CEJUSC during the second semester of 2019. Three of these cases involved public properties, with two properties being owned by the state government and the other by the municipality. In two cases, eviction orders were not suspended, in another, a litigation focusing on land regularization of a private area, occupants were able to stay. The fourth case did not involve an eviction request. In two cases, the hearings I attended were introductory meetings, while the other two discussed cases were already in progress at CEJUSC. Since most of the follow-up hearings were scheduled for three, sometimes six months later, unfortunately I was not able to attend more than one hearing discussing the same case. Hence, what I describe below are glimpses of four single cases at different stages of the conciliatory process.

Case #1: municipality of Porto Alegre versus occupants

The first mediation hearing I attended lasted approximately thirty minutes and discussed the case of seven families occupying land owned by the municipality of Porto Alegre. The municipal government represented the plaintiff and was requesting the eviction of these families because the area would be used for infrastructure works. The introductory mediation hearing's purpose was, thus, to negotiate the value to be paid by the municipality to the families as an indemnity for their removal, since Porto Alegre's local government did want to allow the families to remain in the area. Initially, the city attorney, representing the local government, offered 17,000 R\$ BRL⁵⁵ to each family. According to him, the amount was low because the state was only compensating each household for the *benfeitorias* (improvement work) done at the site. In other words, this value corresponded to an estimate of how much houses were worth, not the land they were built on. The families did not accept this initial value and were able to increase the price to 40,000 R\$ BRL with the help of the conciliator judge. The condition of the agreement was that the families would have thirty days to leave the area, which sounded alarming given the fact that the payment would also be made within thirty days.

What first caught my attention during this hearing was the fact that the conciliator judge scolded one of the occupants for being fifteen minutes late to the meeting. The occupant immediately apologized and attributed her delay to the long distance she had to travel by bus to arrive at TJRS, also informing the judge where she lived. The judge promptly replied that she herself also lived near that area and told the occupant that she “should leave her house earlier like she (the judge) does”, ignoring the fact that, unlike the occupant, she owned her own mode of transportation. I noticed that, while the occupants called all the legal actors present at the hearing “doctor”, the judge used an

⁵⁵ Approximately 16 times the monthly minimum wage in Brazil.

informal tone to speak with the occupants and did not refer to them as “mister” or “miss”. Furthermore, all the legal actors in the room tended to use judicial jargon (e.g., “to file a motion”).

While introducing the meeting to the occupants, the judge stressed that:

This is a confidential environment in the sense that the things we discuss here will not be taken to the original lawsuit. There is no verdict here. This is an impartial environment, and I am not against or in favor of *anyone*; I do not represent any of the parties involved and I am only here as a conciliator *servicing* the judiciary [my emphases].

Despite highlighting that she was not favoring anyone, the conciliator judge told the families that the infrastructure works to be done in the area from where the families were getting removed from “would benefit all Porto Alegre’s population”. Furthermore, when one of the occupants argued, during the negotiation, that she does not wish to leave her house because her two grandchildren went to a daycare center nearby, the judge, looking surprised by the woman’s age, promptly responded: “Holy Mary! Two grandchildren already?”, leaving the occupant quite uncomfortable.

Finally, when the hearing was almost over, the judge seconded the “advice” from the city attorney, telling the occupants to be very cautious when choosing the next place to live, because if they occupy other public or private areas one more time, they might be “on the streets again” soon (*estar na rua de novo*). The judge emphasized that “*we* [the judge herself and the city attorney] have the obligation to alert you about this because *we* worry about you [my emphases]”.

Case #2: land regularization case involving private parties

The second hearing I attended involved only private parties. The plaintiff, however, was the State Prosecutor Attorney’s Office, as this office is in charge of defending the interests of society broadly speaking and defending the urban-legal order in Rio Grande do Sul. The case concerned a

widowed woman who, together with her late husband, owned a large plot in the outskirts of Porto Alegre. Starting in 1996, they started subdividing their property and informally selling the smaller parcels to other families. Throughout ten years, they sold fifty lots for a price ranging from 2,700 to 13,000 R\$ BRL. Only the widowed woman (property owner) and her son attended the hearing. No representative of the fifty families was present. Although this is supposed to be a conciliation court, there was no negotiation. The judge and prosecuting attorney essentially spent the entire hearing convincing the woman to regularize her situation (including paying late real estate property taxes) under penalty of facing criminal charges.

The woman claimed that she could not afford to pay real estate property taxes. In addition, she also declared that she could not afford to regularize the sale of the parcels as they would have to hire topographers, engineers, and other technical personnel to survey the area, according to the municipality's bureaucratic procedures, officialize the sale, and issue registration dates of the sold properties. When the women argued that she earned a minimum wage, the city attorney warned her that it was her and her late husband's responsibility subdividing the property without the municipality's approval and that this represented a crime. Although these conciliation hearings are supposed to serve as space for negotiation, the dialogue below followed:

Defendant: "But I am in no conditions to pay."

Prosecuting attorney: "We are here to help you".

Defendant: "But what do you want me to do?"

Prosecuting attorney: "It is not me; it is the judge who is *deciding* this [my emphasis]."

At the end of the hearing, the prosecuting attorney, one more time, took the lead and stipulated that the follow-up hearing would occur in four months. Hence, different from the other hearings I attended, what surprised me in this audience was the fact that the city attorney, representing the plaintiff, was leading the meeting instead of the conciliator judge. Even though the conciliator judge did not talk much during the hearing, she warned the defendant that, in case she did not regularize her situation, she would “transfer the problem to her son and, if he would not be able to solve it either, then the problem would pass to her grandchildren”. The judge also emphasized that her case could not be helped and told the defendant to “don’t cry over spilled milk” (*não adianta chorar pelo leite derramado*). Lastly, it is worth mentioning that, when the defendant contended that many of her neighbors were informally subdividing and selling out their properties in the 2000s as well, the prosecuting attorney reacted by encouraging her to denounce them, by telling the defendant: “send me an email with their [neighbors] names and addresses so I can look this further.”

Case #3: state of Rio Grande do Sul versus occupants

This meeting was the longest I attended. It lasted approximately 90 minutes and it was a follow-up hearing, one year later, discussing the case of over forty families squatting on state-owned land in Humaitá, a poor neighborhood situated in northern Porto Alegre. Besides living in the area for nineteen years, the squatter, forming the Vila da Beira do Rio’s Friends and Residents Association (*Associação dos Moradores e Amigos da Vila da Beira do Rio*), also worked on recycling waste and, thus, have built a shed to storage residues (see figure 37 below). The eviction lawsuit was filed in 2005, but the eviction order has still not been executed. The state wanted to sell the area to a private company and claimed that the area could not be urbanized and, consequently, squatters could not request its regularization because the property was located on a swamp.

Figure 37: Shed at Vila da Beira do Rio’s Friends and Residents Association in Porto Alegre
Source: Josieli Silva/CMPA



In addition to the two occupants representing the occupation (the president and vice-president of Vila da Beira do Rio’s Friends and Residents Association), their lawyer, and the conciliator judge, also attended the hearing the prosecuting and city attorneys, a representative of DEMHAB (Porto Alegre’s Housing Authority), and the Rio Grande do Sul Housing Department’s director – who was 10 minutes late for the meeting but did not hear any complaint from the judge. Despite being legally obligated to attend the meeting, the public defender did not show up. Furthermore, when I arrived at CEJUSC, the hearing had not started yet, but all participants – except for the occupants, their lawyer, and the state housing director – were already there, discussing details about the case. It is also worth mentioning that, when the two occupants arrived at CEJUSC, the judge asked to see their

identification documents “just so we know who is who”. She did not ask for the identification document of the defendants’ lawyer, nor of anybody else in the room.

Given the government’s refusal to allow occupants to remain in the area, Vila da Beira do Rio squatters requested at least to be relocated to a nearby area that could accommodate not only their housing units, but a shed and a waste area so that they could keep working. The residents’ association president stressed that: “Nobody is refusing to leave the area. However, we just want a place for us to have a little house, a shed for us to work”.

Rio Grande do Sul Housing Department’s director argued that it would be impossible to relocate the families to a social housing complex as they were all full and that, at the moment, there was no housing policy to do so at a state level. Moreover, he also claimed that he would try to find a public area in Porto Alegre for the occupants to be relocated to, but he also said that he did not want to create unfounded expectations among the squatters. Additionally, he explained that the “vast majority of areas belonging to the state in the city were either used for another purpose or already *invaded* [my emphasis] too”. Finally, the state housing director also said that the state land bank (*banco de terras*) was outdated and that the government was planning on doing another survey of vacant public properties. Nonetheless, according to him, this process could take anywhere from six months to over eight years as they were short in personnel.

The state prosecuting officer, who this time facilitated the hearing more than the judge herself, raised two concerns. First, she asked the state representative to “at least send a social worker to the occupied area to prepare families for the removal”. After the state housing director replied that “the state could not promise this as the only social worker available was attending cases across all the state”, one of the occupants claimed that they did not want a social worker, they wanted to be relocated. The defendants’ lawyer continued by saying that “these things [sending a social worker] do

not work, it is just a palliative measure”. He also emphasized that there were 42 children among the occupants that could not live on the streets. One of the occupants concluded that:

We are occupying an area unsuitable for housing. When people have nowhere to go and find an abandoned or vacant area that is not fenced, they will build something there to live. Where else would they go? To live below a bridge? We must have a place to live and work otherwise we will starve to death. We are hardworking people; we are not vagrants.

The judge intervened and reminded the occupants and their lawyer that the original judge to the case had already issued an eviction order. Therefore, she claimed that they were at CEJUSC to negotiate a “peaceful resolution, a way for this decision [eviction order] to be executed with *minimal damage* [my emphasis] to everyone, especially to you [occupants]”.

The second issue raised by the prosecuting attorney was a request by the occupants to form a housing cooperative. In fact, the DEMHAB representative attended the meeting with that purpose, to explain to squatters how this process worked. The defendants’ lawyer tried to resist the idea arguing that the occupants were already organized and had a residents’ association. The judge, however, insisted and concluded the meeting by emphasizing that a cooperative must be created in order to “assist them in other ways”. She also explained that by forming the housing cooperative the occupants “would have another possibility of negotiation”, although she did not specify which possibility was that. The conciliator judge scheduled the next audience for six months later and urged occupants to form a cooperative and the state housing director to find an alternative area to relocate the squatters.

Right after the hearing, the judge told me:

Being honest with you, here at CEJUSC we try to let people stay put, but in certain cases, like this one, it is impossible to do that and what we end up doing in these hearings is to negotiate a peaceful removal. We try our best to avoid traumatizing experiences to squatters, but at the same time, if the area cannot be regularized, where are we going to *stick* these people [my emphasis]?

Case #4: Dois de Junho occupation

The last hearing I attended was perhaps the most paradigmatic in terms of popular appeal. It was the only case whose contested property was located in Porto Alegre's city center. In fact, defendants were squatters living in an occupied building since 1999. Although the state had obtained an injunction years ago to evict the 52 families living in the building, the eviction order was never executed. The squatter occupation, known as *Dois de Junho* (see figures 38, 39 and 40 below), was initiated by the wives of the state police force (*Brigada Militar*), which paradoxically executes eviction mandates in Rio Grande do Sul state. At the meeting, the squatter families were represented by only two occupants, an architect providing technical assistance to the group, and their lawyer. Besides them and the conciliator judge, the public defender and two state prosecuting attorneys were also present, in addition to a city attorney and representatives of the government of Rio Grande do Sul, the owner of the building. From all the hearings I participated, this was the busiest with the 20-seat room almost full.

Figure 38: Dois de Junho squatter occupation in Porto Alegre

Source: Guilberme Santos/Sul 21.



The audience was a follow-up hearing to discuss an agreement between representatives of the state government and squatters. In the previous hearing, the possibility was discussed of using Law n. 13.465, published two years before (BRAZIL, 2017), to grant *Dois de Junho* squatter occupation ownership rights of the government-owned building. The law regulates a procedure informally known as REURB, an acronym for *Regularização Fundiária Urbana* (or Urban Land Regularization). This mechanism has become a legal mark by allowing the sale of public properties without involving the legislative power. As it will be further discussed in the next section, informal settlements located both in private and public land might be regularized using REURB. There are fundamentally two types of REURB. The first one, coined REURB-S (“s” as for “social interest”), can be applied by low-income

tenants⁵⁶ and all the regularizing process costs are usually paid by the state, including eventual infrastructure provision. Nonetheless, for tenants to be eligible for REUB-S, their informal settlements must have been consolidated prior to 2017. The second type of REURB, REURB-E, allows tenants from other income brackets to promote land regularization by paying a series of associated fees (registry, real estate property tax, etc.).

Figure 39: Dois de Junho squatter occupation in Porto Alegre

Source: Joana Berwanger/ Sul 21.



Although the occupation was almost 20 years old, adverse possession was not applicable in this case as the property was owned by the government. Hence, in the previous hearings it was

⁵⁶ Income in this case is self-declared.

suggested applying REURB-S to obtain ownership rights of the building, an innovative proposition since the new procedure has only been used in the state to regularize *settlements* and not housing units. Since the structure was already fully built and was located in the urban core, there was no infrastructure work necessary. Squatters, therefore, were interested in applying REURB to gain formal titling of the building.

Figure 40: Dois de Junho squatter occupation in Porto Alegre

Source: Guilherme Santos/Sul 21.



Nonetheless, two limitations were blocking the agreement. First, it was the fact that the occupied construction was owned by the state government, more specifically to Rio Grande do Sul workers' pension fund (*Instituto de Previdência do Estado do Rio Grande do Sul – IPE*). The second issue was that, before proceeding with any negotiation, the state of Rio Grande do Sul requested the

“readjustment of the unit”. In other words, they required a renovation of the building’s electric installations as, according to the government, there was a serious fire risk, and if any incident happened the state would be held responsible. However, the estimated costs of an urgent rehabilitation of electrical connections and fire hydrants totaled approximately 25,000 R\$ BRL, according to the occupants.

The latter concern was contested by one of the occupants present at the hearing. As an electrician by profession, he claimed that, although the electrical installations were not in accordance with the Rio Grande do Sul Electric Power State Company (CEEE) protocols, there was no immediate fire risk to the structure. The state representatives, however, insisted on the improvements needed to be made and did not agree to help occupants pay for the repairs. The conciliator judge, then, determined that squatters would have 60 days to complete the electrical rehabilitation of the building in order for the negotiations to continue. The architect present at the hearing, providing technical assistance to *Dois de Junho* occupation, complained about the deadline with no success. Furthermore, when she tried to show the renovation project to the legal actors, she was ultimately ignored, and the judge and other legal actors including city and prosecuting attorneys did not even look at the blueprints.

Moreover, the same architect argued that not all housing units had access to a bathroom – the structure did not originally serve a residential purpose – and, thus, she claimed, this perhaps represented a more urgent issue than renovating the electrical installations of the occupied building. The judge promptly replied that “not having a bathroom is really a nuisance, but we can discuss about this at another time”. The conciliator judge continued with the session, suggesting that she and the state government felt responsible for the occupants and could not admit a fire hazard: “what matters most to me is people’s safety”, the judge noted.

Additionally, the transfer of ownership rights to squatters through REURB was also hindered by the fact that the building belonged to the state's pensioners. Plaintiff and defendants did not reach a settlement at this hearing but agreed to come back to continue to discuss a potential solution. I found out later, after interviewing the architect technically advising the occupation, that squatters suggested that the state could make an exchange. The state government could donate another property to IPE while allowing the families to proceed with REURB of the occupied structure. The state, nonetheless, did not accept this proposition. Although the occupants have not been evicted yet, as of December of 2021, the eviction order can be executed at any time.⁵⁷

Before moving on to the next section, it is important to highlight that, similar to other observed cases, the legal actors, including the city and prosecuting attorneys present at the meeting, used legal jargon and even some words in English (e.g. "hall") when talking to the occupants. Moreover, the prosecuting attorney representing the State Prosecutor's Office for the Defense of Public Estate, left at the middle of the hearing. Finally, at the end of the hearing, the conciliator judge complained that the occupants had shared photos of the last hearing on their Facebook account. The judge claimed that CEJUSC is a space for parties to engage in negotiation and could not be used "for political purposes". Otherwise, she stressed, it would "disqualifies the work being done here [at CEJUSC], a work that aims to help other people that are 'irregular'⁵⁸ like you [occupants]". Additionally, the conciliator judge expressed that she had not authorized photos of her to be published by the group and she did not want to "expose her figure" on social media. The lawyer representing the occupants replied that in the last but one hearing there was a photographer taking pictures of the

⁵⁷ *Dois de Junho* collective published an open letter in November of 2021 to the state of Rio Grande do Sul, entitled "Alert of threat of violation of the right to housing", urging the government to accept the building's regularization through REURB. <https://www.brasildefatores.com.br/2021/11/30/familias-da-cooperativa-de-trabalho-e-habitacao-dois-de-junho-denunciam-ameaca-de-despejo>

⁵⁸ Although the literal translation of the word the judge use is "irregular", she meant people not complying with the law.

entire meeting and occupants had not consented to that either. The city attorney stepped in and quickly justified that the photos were being taken because the state housing secretary attended the hearing that day as they were anticipating that the parties would reach an agreement [what did not occur] and, thus, they “wanted the photos to be taken to publish them in the newspaper”.

Interviews with actors involved in CEJUSC's collective possessory actions

In total, I interviewed twenty actors involved in the conciliation of collective possessory actions at CEJUSC, including prosecuting and city attorneys, conciliator judges, lawyers of occupants, and the occupants themselves. After transcribing, reviewing, and coding these unstructured interviews, I found six common topics that ran through most of these conversations. I discuss each of these themes in detail in the subsections below.

CEJUSC: a space for open debate?

The premise of the conciliation court for collective possessory actions at TJRS is to serve as a space for open debate, in which parties will discuss, negotiate, and eventually spontaneously reach an agreement. The conciliator judge and other legal actors involved in the process are not supposed to interfere. Instead, they will act as mediators and facilitate the settlement whenever possible. Nonetheless, after talking to my respondents, it became clear that, in practice, the space does not allow an open and egalitarian exchange.

The conciliator judge and person responsible for the project claims that CEJUSC's work has been extremely satisfactory in every way and argues that, even when an agreement is not possible, “there is a dialogue maturation, which sometimes even enables a discussion outside CEJUSC”. All other subjects I talked to, however, had a more critical view about these conciliation hearings. Although a lawyer representing occupants recognized that the project improved compared to the

launch of the project, she claimed that the hearings still do not create a space to discuss the rights of squatters. She noted that:

In the beginning it was not even a real conciliation. There was no conversation at all. They would just sit there to discuss the date occupants would leave the area. Something like “leave peacefully and do not make noise”. Now we can see an evolution, many magistrates have already passed through CEJUSC. Nevertheless, these hearings never represented a site to debate and effectively execute the right to adequate housing.

A prosecuting attorney added that CEJUSC promotes a politicization of collective possessory actions but not in a productive way for occupants. He claims that the conciliation hearings became a political tool for the judiciary to show performance: “it is advertised as ‘the judiciary solves housing issues, look how wonderful and responsive we are, in 500 hearings we resolve everything’”. A lawyer concluded that these conciliation hearings are “just for show (*para inglês ver*) as they ultimately serve to legitimize the discourse that ‘all negotiation attempts were exhausted and, not having achieved a settlement, a coercive measure is necessary’”.

Autonomy and degree of participation of occupants

In addition to claiming that CEJUSC is a space for open debate, TJRS itself⁵⁹ and the conciliator judge emphasized that the hearings enable a participatory justice, not only by expanding the access to justice for defendants usually representing a marginalized group, but also by allowing them to proactively engage in discussions that will result in their own enactment of rights. Two mediator judges and a public defender supported this view. The latter argued that “it is a wonderful space because we allow people to participate in the process, we bring the very people that bring social

⁵⁹ <https://www.tjrs.jus.br/novo/servicos-administrativos/apoio-jurisdicional/manuais-e-orientacoes-de-2o-grau/cejusc-guia-pratico-de-gestao/cejusc-sobre-o-cejusc-apresentacao/>

function to the property together to learn about the procedure”. The judges went even further, with one stating that “it is a pedagogic exercise; these conflicts will always exist, but perhaps in the future the parties can reach an agreement without requiring the judiciary to step in”. The other judge held that:

Because it is a conciliation hearing, any solution that comes out of them is a solution built by the parties themselves. We give them this type of autonomy. We only support their needs and facilitate the process and eventually re-educate people to do that. This is citizenship. And within this scope of citizenship, it is important to give people this ability to solve their own problems.

This discourse of being agents of their own transformation was not echoed by the legal representatives of squatter groups though. One of them highlighted that, while occupants can voice out their demands and concerns at the hearings, other actors involved in the process do not see them as human beings and people with rights. “Occupants speak, speak, and speak and they might not sound objective because they did not understand that the audience is a negotiation place and not somewhere for them to validate their condition or complain that they do not have a place to go”, she says. The architect providing technical assistance to squatter occupations stressed that in the conciliation meetings, occupants are constantly reminded from where they come.

You enter the hearing, and it seems that you are entering a meeting of the Brazilian Bar Association (OAB); there is them and there is us, the occupants, their lawyer and me. They read the procedure, discuss it with a vocabulary that scares you. I am used to work in the middle of lawyers, but even I do not understand what they are talking about. Occupants do not know if they are being kicked out or allowed to stay. Then you begin talking and others intervene, interrupt you. And the judge speaks with the

city attorney “but how are *they* going to pay for this? How are *they* going to regularize this?” referring to the occupants as they were not there [my emphases].

The judiciary’s competence

The same architect also contended that at CEJUSC, the conciliator judge and other legal actors intervene in the work of other disciplines. According to her, in addition to invalidating her, by ignoring her technical expertise, they also issue recommendations that are out of scope of their knowledge and experience. In the hearings she attended, for example, she noticed that the judge and the city attorney decided on architectural and engineering issues, by determining structural suitability of an occupied building and the duration renovation works should take. The judiciary, she continued, does not understand that the approval process by the municipality is different for a single-family unit and a multi-family building: “the requirements are different. If we apply REURB to regularize a property and grant titling rights to occupants, it is important to know that occupied multi-family units will not require infrastructure works such as water provision. Nonetheless, they might need other types of improvements”.

When talking to a conciliator judge, I noticed this patronizing discourse directed at defendants. She claimed that:

If the plaintiff decides to sell his property as part of the negotiations, the municipality has to assist in the regularization process. That is why, even in cases involving only private parties, we invite Porto Alegre’s housing authority, the state prosecuting attorney. Sometimes, the State Prosecution’s Office might say ‘look, you can stay in this area, this is a riverbank, it is dangerous for you to live there’. When people occupy an area, they do not pay attention to these habitability issues. Usually, poor people (*pessoas mais simples*) do not have all the knowledge of what it takes for regularization.

Thus, we have at the hearings the municipality to explain the situation of a particular area.

An engineer from the State Housing Department I interviewed had opinions similar to those of the architect. “We still lack a better interaction among the state prosecuting attorney, technicians from the state and municipal housing authorities, and the occupants themselves”. She continued by claiming that in one of the hearings she attended, the legal actors, including the judge, had unreal expectations when it came to the occupants’ socioeconomic registry and the topographic survey of an area which was the object of a regularization process, setting a timeline impossible to be met for the housing department to conclude these tasks.

Furthermore, some of my respondents shared the view that the judiciary, through CEJUSC/TJRS, judicializes planning issues. According to a lawyer representing occupants at conciliation hearings, many of the collective possessory actions discussed at CEJUSC require a coherent and continuous housing policy. “Nonetheless, as soon as the case lands at CEJUSC, the only thing that gets discussed is which punctual actions the municipality will take to solve a certain issue, while the municipality will argue that it has no money, and that is it; this is, basically, how urban and housing issues are being solved at CEJUSC”, according to him. A prosecuting attorney, in fact, suggested that, starting in 2017, the legal instrument to regularize public and private areas, REURB, became the only form of “housing policy” discussed at CEJUSC hearings.

Nonetheless, it is also important to point out that the judicialization performed at CEJUSC hearings occurs in an environment more sensitive to social realities compared to traditional jurisdictional practice. Conciliation audiences “end up being a more compassionate setting, where people can put themselves in other people’s shoes and understand their perspective”, argued another public defender. A lawyer of squatter groups added that:

I do think CEJUSC represents an instrument that turns the litigation into a much more humanized process, where people can meet, discuss, and try to find a solution. In that sense, the case is not just one more document that goes from one side to the other getting stamped. At CEJUSC at least the legal actors and plaintiffs get to see the defendants' faces.

Moreover, the meetings are not constrained to the due process of law. A public defender, for example, praised the work being done at CEJUSC by suggesting that it is an opportunity to discuss the cases without “fighting over procedural matters”. A lawyer representing occupants also highlighted that, in addition to not being restricted to procedural details, at CEJUSC “there is no limitation to the scope or type of demands”. She explained that, while the judge deciding in a traditional litigation case will only magistrate over what is being requested by the plaintiff of the lawsuit, at conciliation hearings parties can go beyond the original matter of the case.

A conciliator judge summarized that:

We are not bound by a legal discussion; we do not debate law issues (*questões de direito*) nor laws and legal instruments like adverse possession. We do not do that because I am not there to magistrate, I am not there to issue a verdict. The cases are not mine to decide, they already have an assigned judge. Hence, at CEJUSC we can discuss issues outside the scope of law, we do not restrict ourselves to the terms of the original lawsuit. The discussion being held at conciliation courts is bigger than the procedure itself.

Commercial negotiation

The fact that the primary objective of CEJUSC hearings is the achievement of an agreement between the parties and that, as the conciliator judge highlighted in the previous paragraph, law issues are not discussed at the meetings might help to contextualize the remarks shared by some of my respondents in this subsection. They argue that CEJUSC is not a platform of participatory justice or to allow parties, especially the defendants, to be agents in the process. Instead, some of the actors I interviewed claim that conciliation hearings, in fact, became commercial negotiation meetings.

A lawyer representing squatter groups argued that plaintiffs often agree to participate in these hearings because, even if the judge rules in his favor and issues an eviction mandate, that mandate is very difficult to be executed. The plaintiff knows that he will not recuperate his property (at least, not at any time soon) and, thus, agrees to sell it to occupants because “in this way at least he gets something out of it”. Another lawyer told me that at CEJUSC hearings “we are not actually discussing about rights to housing. These became meetings to negotiate a commercial contract. What is actually being done at CEJUSC are purchase and sale negotiations”. An architect providing technical assistants to occupants added that: “it is a negotiation to settle a price for that property. Nobody is claiming ‘squatters occupied the area because the property was abandoned, it lacked a social function’. No, it is a meeting to stipulate the price to be paid by occupants. The plaintiff says, ‘this area interests us, but if you really want to stay, we can sell it to you’.

The passage below, by a leader of a squatter occupation, summarizes what other respondents also told me. It is worth citing it in length:

[CEJUSC] is a real estate trading desk. The conciliator judge asks the property owner “how much do you want for your property?” and then looks at the occupants and asks “how much you can pay for the property?”. This is the negotiation that happens at

CEJUSC, do you see? And what is the result of all this? Occupants are purchasing land with no infrastructure. At the end of the day the poor keep the land that real estate speculation does not want. The price that occupants are paying for the land, though, might seem low. But in fact it is a very expensive amount if we consider that it is a plot with no sewage, no water, no roads. Why people end up buying land under these circumstances? Because the only other way for you to acquire land in this country is through financing. And you can only access credit at the bank. Squatters, however, do not have proof of residence or income to be eligible to bank credit. Thus, the only alternative left for them is to purchase land at these hearings because at least they do not have to pay the amount in full, they can pay several installments to the former property owner. And this commercial negotiation can also be applied to public property due to REURB. It becomes, thus, an opportunity for the government to make money.

When it comes to public property, a public defender highlighted that usually the government is, indeed, willing to negotiate with the occupants; “even a neoliberal government”, she stressed. “Nevertheless, they only accept an agreement if occupants are willing to purchase the land as it cannot look as if you [the government] are implementing an agrarian reform, giving that land for free to them [occupants]”, she concluded.

A prosecuting attorney, however, alerted that, even though the property sale is a solution that, in general, pleases the property owner, the purchasing process itself can be very difficult and does not end at CEJUSC. “Urban areas are quite expensive, they can cost millions of Brazilian reais and, even if the purchase is formalized by the judiciary, there is an enormous risk of default over time because

it is a collective agreement, but each household pays for their share. And if one person does not pay, the whole purchase is under threat”, he asserted.

The issue with housing cooperatives

The concern shared above by the state prosecuting attorney was reiterated by an engineer representing Porto Alegre’s Housing Authority (DEMHAB). He explained that self-organization is a key factor when negotiating these agreements at CEJUSC. To solve this problem, he explained that DEMHAB, Porto Alegre’s Housing Authority, helps occupations to form housing cooperatives. He noted that:

The housing cooperatives are a great way that the municipality of Porto Alegre came up with to solve land regularization issues. As much vulnerable a community might be, they are able to organize themselves, they are able to contact architectural firms, to contact engineering firms, to contact legal aid to proceed with REURB. In this way, when they come to DEMHAB they already have all the paperwork, socioeconomic registry, topographical surveys, all the documents ready. So at the end it becomes a much more agile process and we gain the scale factor because when people organize they end up also helping us to assist more communities.

Nonetheless, besides being critical of the government coordinating an organizing process and transferring to the squatters the task that should be executed by the executive power,⁶⁰ the four actors providing technical or legal aid to squatters I interviewed, also emphasized that this is being imposed upon squatters as the perfect solution to their problems. “I attended several audiences, DEMHAB

⁶⁰ As already explained, low-income communities may regularize their settlement situation through REURB-S. Under this type of REURB, the municipality must be responsible for the regularization process, including the socioeconomic registry of the occupants and the topographic survey of the area in question, and the provision of necessary infrastructure.

always suggests that housing cooperatives are the answer for everything. They basically try to ‘push’ squatters to take what is their [DEMHAB] responsibility”, one lawyer said. Another lawyer added that:

The housing cooperatives is the only *assistance* [his emphasis] the municipality offers. And, after all, what is this instrument? What is the involvement of the local government in this process? How does the municipality help occupants while forming these housing cooperatives? Are they helping them by funding the cooperatives? Are they helping them by creating the cooperative’s statute? What kind of help is being provided? None. This, ultimately, does not even represent a governmental assistance as the occupants are being responsible for the whole process. Furthermore, the formation of housing cooperatives has been imposed largely at CEJUSC hearings, as a one size fits all, as all cases were the same. In fact, we had a case just like that. Forming a housing cooperative was an actual demand by the municipality, otherwise the occupants would get evicted from the area. And when I complained and asked the conciliator judge to write in the meeting’s minutes that this condition was imposed upon the defendants by the municipality, the DEMHAB representative violently opposed it and requested the judge not to add this part to the document.

At the end, the architect providing technical assistance to the movements emphasized that many housing cooperatives that were created, did not last.

A strategy for housing movements

Finally, despite the many points of critique against CEJUSC made by several respondents, most of them, including four lawyers representing occupants, recognized that the conciliation meetings at least represent a way to delay the eviction process and allow squatters to gain time. Even

a prosecuting attorney recognized that “at the minimum, occupants are able to negotiate a deadline to leave or eventually buy the area”. Additionally, the architect providing technical assistance to occupations emphasized that “by buying more time, we can mobilize people, do the necessary political arrangements, pressure the legislative, talk to city deputies and try to cancel the eviction order”.

A lawyer representing squatter occupations argued that:

In this type of litigation, our main concern is to gain time because if we do nothing, an injunction will eventually be issued by the judge ordering the removal of the occupants. Thus, each year, each month, each day that goes by and the occupation can continue in the area is a form of victory. Participating in all that, going to the hearings with little prospect... it seems like a lot of effort for nothing, but this is the space we get. In fact, this is something that I learned from them [occupants]: we cannot give up, we must go all the way, take advantage of every minor gap, exhaust all the possibilities, try to schedule a meeting with the judge, with the Prosecutor Attorney’s Office. Giving up is not an alternative.

Conclusion

The findings discussed in the previous section show that the conciliation court of collective possessory actions at CEJUSC/TJRS might promote some advances compared to ordinary judicial rulings. However, it still tends to replicate the hierarchies and limitations found in traditional jurisdiction practice. Hence, I verified my hypothesis that, although formal spaces such as conciliation and mediation courts were established to supposedly expand access to justice and democratize collective land conflicts in Porto Alegre, these spaces still mostly benefit plaintiffs over occupants. Moreover, while the official purpose of the meetings held at CEJUSC is to create a more inviting environment to informal tenants and seek a participatory resolution to land struggles, these hearings

are just a performance. The site still replicates the authoritative environment and mainstream arguments found in TJRS eviction litigations.

I also confirmed that the claims of the defendants participating in these meetings are often disregarded and invalidated. As many of my respondents highlighted and as I observed when attending those meetings, CEJUSC hearings are not a place made to discuss the social function of property, or to ensure the constitutional right to housing, or a platform to avoid at any cost the dispossession of informal tenants. CEJUSC hearings, in fact, represent a negotiation platform to discuss the sale and purchase of real estate properties in Porto Alegre. And, whenever this type of agreement (i.e., a commercial contract) is not possible, discussions held at CEJUSC then become a conversation between people representing legal and executive powers to essentially try to find a “peaceful way” to remove occupants — in a patronizing tone and as if occupants are being evicted for their own good and safety. Although the conciliation hearings could technically go beyond procedure matters, legislations, and other legal specificities, they do not offer an open and broader debate about housing rights, the role of the executive branch in executing them, and the lack of housing policies.

Additionally, my research revealed that conciliation courts like CEJUSC might allow defendants to voice their concerns and requests, but they ultimately do not expand access to justice for disenfranchised groups. In other words, these hearings might allow defendants to participate in a way that it would be impossible for them to participate in traditional jurisdictional practice, but the terms of this participation are not democratic. As one of my respondents claimed, these hearings became almost a political tool for the judiciary to demonstrate how “responsive” they are when discussing possessory actions and solving housing and urban issues.

In sum, my study showed that this new model of justice, through conciliation and mediation hearings, does not result in a real redistribution of power and resources. Marginalized groups are still

ignored and eventually dehumanized. The fact that conciliation hearings, despite focusing on cases often encompassing hundreds of families, meet at a 20-seat room and are scheduled in the middle of the afternoon of a business day already implies what kind of participation the judiciary is expecting to welcome at CEJUSC. Conciliation hearings might allow plaintiffs and other actors involved in the case to see the face of the defendants and hear their stories. Nevertheless, the discourses mobilized by legal actors (e.g., “do not be late”, “how come you already have grandkids?”, “we are here to help people like you”, “we can photograph you but you cannot take pictures of us”, and other moral judgments or comments on the occupants’ personal lives) indicate that at CEJUSC is still “us *versus* them” – with “them” being the plaintiff, the conciliator judge, and legal and state representatives.

While Miraftab (2009), other authors studying citizenship (Holston, 2008; Earle, 2012), and the occupants themselves have emphasized that it is important to occupy formal spaces of participation, the courts – including conciliation courts – still represent spaces where the urban poor are just “invited”. Thus, it remains crucial for housing rights movements and squatter occupations to “invent” spaces of participation to claim their rights, enact their urban citizenship, and confront exclusion and discrimination.

CHAPTER 7

Conclusion:

The politicization of the judiciary and the judicialization of resistance

The findings discussed in this dissertation showed that the Brazilian judiciary not only ignores, but often misuses innovative and progressive legal mechanisms created in the last two decades by paradigmatic texts like the City Statute, institutionalized in 2001. Chapter 4 demonstrated how key concepts, such as the social function of property, are barely cited by the courts. And when such concepts are included in judicial decisions, judges usually use them in contrast to property rights, upraising the latter and issuing eviction mandates favoring property owners, as chapter 5 showed.

Moreover, I also concluded that courts are mobilizing political ideologies that condemn certain forms of tenure that challenge the idea of private ownership and are embedded within discriminatory principles that displace, dispossess, exclude, and dehumanize the urban poor, especially squatters. Similar to what others have shown for the case of India (Ghertner, 2013; Bhan, 2016), this dissertation revealed that the Brazilian judiciary has become the ultimate sphere of urban planning. In addition to transforming eviction in acts of governance rather than a violation (Ghertner, 2015), the courts are redefining land uses, promoting the relocation of informal settlements, determining who has access to housing assistance (and under what terms), essentially, leading urban policies in Brazil.

Furthermore, CEJUSC, a platform that was supposedly created to expand access to the judiciary and promote a participatory justice, tends to reproduce the same discriminatory and marginalizing discourses found on traditional jurisdiction practice. Chapter 6 showed that, although they might delay the execution of eviction orders, conciliation hearings do not substantially change

the evicting verdicts by ordinary judicial rulings, nor do they challenge land dispossession. Conciliation courts, I suggest, primarily consist of just a performance. These courts imply citizen participation and equal treatment, but they essentially treat defendants in collective possessory litigations in a patronizing and condescending way, serving the interests of property owners – including the state and economic elites. Before discussing the legal remedies that could be developed in order to challenge land dispossession in Brazil, I elaborate on the politicization of the Brazilian judiciary. I do that by heavily relying on Hirschl's (2006) and Bhan's (2016) frameworks on the judicialization of politics and also on the accounts shared with me by respondents during fieldwork.

Judicialization of politics

According to Hirschl (2008), the judicialization of politics refers to the reliance on courts and other judicial means to address public policy, political matters, and other social and moral issues. The author explains that,

Armed with newly acquired judicial review procedures, national high courts worldwide have been frequently asked to resolve a range of issues, varying from the scope of expression and religious liberties, equality rights, privacy, and reproductive freedoms, to public policies pertaining to criminal justice, property, trade and commerce, education, immigration, labor, and environmental protection (Hirschl, 2008, p.253)

When discussing this theory in relation to urban planning, Bhan (2016), who analyzed court-ordered evictions of informal settlements in India, argues that the “juridicalization” of politics, as he calls it, in Delhi is embedded within the emergence of new urban policy and legal frameworks, discourses, and practices that are mobilized in the urban space through the judiciary as opposed to other governmental and civil institutions. According to him, however, this judicialization implies the expansion of jurisdiction not only of the courts, but also of the legal apparatus within the sphere of

urban planning. According to him, “as the sphere of authority of the Courts widens in the city, a series of questions, concerns, interventions, processes and debates within urban politics come to seen, articulated, and addressed as juridical questions – they speak and are spoken about within the frameworks of law” (Bhan, 2012, p. 2).

Bois (2019), when exploring the case of squatter occupations in São Paulo, found that, even though the judicialization of planning had enabled the promotion of the urban reform agenda in Brazil throughout the late 1980s to early 2000s, it did not necessarily bring social justice. In fact, she indicates that, “although the urban-legal infrastructure has been important to curb violation of rights caused by the state, it has not changed the primacy of the private order in urban land conflicts” (Bois, 2019, p. 25).

Although a state judge I interviewed claimed that the judiciary does not produce public policy “only applies it”, many housing activists and leaders of squatter movements emphasized that the judiciary does enter in a field that was supposed to be the executive power’s arena. Moreover, another respondent, a prosecuting attorney, stressed that Brazil has created a monopoly of the judicialization of social rights, which, in his opinion is very alarming, as “we cannot leave the agenda for the protection of social rights in the hands of public agents”.

It is important to note, though, as a lawyer representing squatter occupations told me, that they and their clients do not originally mobilize the judiciary, they only respond to an initial “judicialization”.⁶¹ According to her, “we do not mobilize the courts to guarantee our right to housing. Property owners and the government are the ones who go to the courts to defend their property rights”. Regarding this ‘reactive judicialization’, she further adds that “these demands [on housing and

⁶¹ She uses the term “judicialization” more in the sense of “appellate to the judiciary” and less in consonance with the connotation implied by Hirschl (2008) and Bhan (2016) .

land rights] must occur outside the judiciary because as soon as these prerogatives can be guaranteed by the executive power this judicialization of rights can finally end”.

Finally, another lawyer representing housing rights groups highlighted that the fulfillment of social rights must be a political dispute. Nonetheless, with the judicialization of urban politics, this locus is shifted to the legal arena and to the law. As a result, the judiciary becomes a central actor in the definition of the urban agenda.

From democracy to juristocracy

The result of the judicialization of politics is the emergence of the courts and the whole judicial system as part of a country’s national policymaking apparatus, or as Hirschl (2004), suggests, the transition from democracy to a “juristocracy”. In other words, this shift from representative institutions to judicial ones results in the rise of a new political regime. Juristocracy, the author explains, is part of a broader context in which “whereby political and economic elites, while they profess support for democracy, attempt to insulate policymaking from the vicissitudes of democratic politics” (Hirschl, 2004, p. 73). Additionally, the emergence of this new framework is quite paradoxical, in the sense that the expansion of democracy itself – including the constitutionalization of rights – is a main foundation of judicialization and judicial power (Hirschl, 2008).

In the case of Brazil, this process can be observed in the institutionalization of the 1988 Federal Constitution. Barbosa and Polewka (2015) state that the new constitution transformed the Supreme Court (STJ) into one of the most powerful courts worldwide institutionally speaking. STF represents a constitutional, revisional, and penal authority. Moreover, although the constitutionalization of social rights and urban regimes during Brazil’s redemocratization was strongly guided by the mobilization of social movements, demanding structural reforms on land issues and the reverse of social inequalities, this process gave an unprecedented amount of power to judicial

institutions. In sum, Hirschl (2008) argues that, even though judicial empowerment through constitutionalization did not have a major impact on the advancement of progressive ideas of distributive justice, it had a major influence on political discourses.

The politicization of planning

Hirsch (2008) asserts, though, that courts and judges cannot not be understood as the central source of judicialization of politics. According to him,

Courts are first and foremost political institutions. Like any other political institutions, they do not operate in an institutional or ideological vacuum. Their establishment does not develop and cannot be understood separately from the concrete social, political, and economic struggles that shape a given political system. Indeed, constitutionalization, political deference to the judiciary, and the expansion of judicial power more generally, are an integral part and an important manifestation of those struggles, and cannot be understood in isolation from them. (Hirschl, 2008, p.268)

As “an inevitable flip side of judicialization” (Hirschl, 2008, p.268), the politicization of the judiciary in Brazil becomes evident in the discussions in chapters 5 and 6 about eviction litigations involving informal tenants. During the last decades, by becoming increasingly relevant and powerful in urban politics, the conservatism of the courts, dominating possessory actions’ decisions, also ultimately dictates urban policy in Brazil.

According to Alfonsin et. al. (2016), this politicization of the judiciary is embodied in a “judicial activism inside out”.⁶² The authors claim that instead of trying to create jurisprudence of innovative

⁶² Judicial activism, according to Barroso (Barroso, 2012) (2012), is a broader and more intense participation of the judiciary in the fulfillment of constitutional values and purposes, with a greater interference in the scope of actions of the other two branches of government.

interpretations of the law, the judiciary becomes an instrument of “civilist conservatism” against not only constitutional normative provisions, but also challenging the autonomy of the legislative and executive powers by promoting the depletion of their functions and prerogatives. It also reveals a “naturalization” of the proprietary model, followed by the idea that the enactment of social rights must occur exclusively through the executive power (Idem). In addition to these limitations, I would also add that another resonance of politicization of the judiciary is the criminalization of housing rights movements, including squatter groups, as illustrated in one of my interviews with a state judge who stated: “when it comes to someone’s property, the right term to designate possessors is ‘invaders’, not ‘occupants’”.

These conservative political ideologies on which jurisdictional practice and verdicts are grounded, become evident even in so-called progressive and participatory judicial platforms such as the conciliation courts. In addition to the decisions issued by traditional courts, the discussions held at CEJUSC are also not based on legal principles and constitutional rights, but on moral judgments.

Judicialization of resistance

I have been going more to the Court of Justice than to the City Hall
(Leader of a housing rights movement, in-person interview)

I heard the quote above in December of 2019, while doing fieldwork. The leader added that “in the last two or three years I have seen more judges than politicians. After the Worker’s Party left the presidency, there exists an environment of criminalization of social movements, and land occupations, as well as an extreme judicialization of matters that could be mediated by the government”. Other housing activists have shared with me similar remarks. Another leader emphasized that, although he has always engaged with the judiciary, at least “when we have a

progressive government we do not need to engage only with the police and the courts as we have the possibility to negotiate with the municipality, with the state government, we are not only confined to the judicial decision”.

These processes illustrate what Bhan (2012) calls the “juridicalization of resistance”. He uses this framework to explain the fact that squatters must negotiate with the judiciary instead of other branches of the government. From the above quotes, we can also imply that this judicialization results from a previous one: the judicialization of urban politics, already described above. Once again, as one squatter told me “we do not judicialize, we respond to a prior judicialization”. These narratives suggest that housing rights movements do not choose to forward their demands to the courts. In fact, Bhan argues it is challenging “for movements to translate their right-claims, their political identities and histories, and even their understanding of the processes of city formation and the production of urban space, into legal petitions” (2012, p. 3). He also adds that certain spaces of political engagement like the courts exclude modes of engagement and possibilities of negotiation and confrontation.

The challenges resulting from the judicialization of resistance are not only limited to traditional jurisdictional practice; conciliation courts also present similar difficulties. Still borrowing from Bhan’s (2016) analysis of India, I claim that the disparities between right claims within and outside courtrooms are also indicative of the limitations of the conciliation hearings held at TJRS. While CEJUSC might be referred to as a space of justice, it is indeed a space *for* justice.⁶³ Hence, instead of expanding the enactment of rights for the “unpropertied poor” (Gherner, 2011), by deformalizing, de-hierarchizing possessory litigations, CEJUSC, in fact, further legitimizes and enables legalized displacement.

⁶³ Justice here means the people who oversee the court of law.

Legal remedies

In addition to my theoretical contributions on the processes that legitimize judicial dispossession, it is also important to discuss concrete suggestions that might help informal tenants in their struggle to adequate housing. Below I briefly elaborate on the legal remedies that could be mobilized by housing rights activists throughout the litigation process to contest court-ordered evictions, as well as additional recommendations.

Judicial inspections

After talking to squatter groups and their lawyers, it became clear that one of the most effective mechanisms that can help occupants in their effort to stay put are judicial inspections of occupied areas. Although the new CPC specifies that, in cases of collective possessory litigations, judges *might* visit the contested area if his presence is necessary “for the fulfillment of jurisdictional protection” (CPC, Art. 565, 2015), judicial inspections to contested areas are never required. Nonetheless, housing activists and their legal representatives told me that this visit is an important initiative that might sensitize the judges and, thus, make them decide in favor of occupants. By visiting the area, they are not only magistrating “based on what the paper says”, as a lawyer pointed out. Through judicial inspections, judges can meet with occupants and understand the complexities associated with the occupants’ living conditions. A judicial inspection request, however, is almost never granted by the judge. One of the lawyers I interviewed said that in over thirty years of legal practice, only on three occasions the judge accepted his request and visited the occupation; and in all three of these cases the magistrate’s decision eventually benefited the squatters.

Request a conciliation hearing

After all the critiques I made against CEJUSC, it might seem contradictory that one of my recommendations is to request the case to be sent to conciliation courts. Nonetheless, the housing movements themselves recognized that when their cases are discussed at CEJUSC, at least they can buy more time so occupants can organize, mobilize more people, pressure the legislative, and talk to city deputies. Whereas conciliation court hearings do not “freeze” the progression of the original procedure, any eviction order that might be issued is informally canceled until parties finish negotiating at CEJUSC, which can take several years.⁶⁴

Public Civil Action (collectivize cases)

Because individual possessory actions are not eligible to be facilitated at CEJUSC, one way to address this limitation is to collectivize similar cases through a Public Civil Action, filed by the Public Defender’s Office. Although this move might not take the case to the conciliation court, collective actions have a greater popular appeal, involve other legal actors such as prosecuting attorneys even when contested properties are privately-owned, and tend to compel the judge to look at the case more carefully.

Final comments

After the promulgation of the City Statute,⁶⁵ encoding the right to the city in the country, Brazil witnessed statutory advancements with the emergence of a new urban-legal order based on the democratization of land access. Nevertheless, urban regimes produced by jurisdictional practice have

⁶⁴ Two of the cases discussed in the conciliation hearings I attended in 2019 were still not terminated by CEJUSC.

⁶⁵ While this shift was occurred within the legislative power, the judiciary did not follow the change in paradigm.

furthered inequalities and social injustice, putting at stake the decades of struggle enacted by social movements and housing activists for an urban reform. As Alfonsin and her co-authors (2016) note, deep paradigmatic transitions of the urban-legal order and expansion of rights do not occur with the mere conception and approval of new laws. Or, as a leader of a squatter movement told me, “creating new laws is not enough, we have to ensure they are used in the best way”.

Shifts on the judiciary’s decisions depend, fundamentally, on changes in the legal culture that is heavily influenced still by conservative ideologies and ‘proprietary’ legal frameworks (Idem). My analysis of the eviction court records filed in TJRS, including the discourses being mobilized by judges, and of conciliation hearings demonstrates that the Brazilian courts still reproduce agendas based on individual ownership of land. Even though the right to adequate housing is not necessarily linked to ownership rights, but to other tenure security fundamentals, the indisputability of private property rights is still very much rooted not only within Brazilian judiciary but in Brazilian society more broadly. In sum, to shift from a paradigm centered on property rights to a model based on the social function of property, there must first occur a deep legal, cultural, economic, social, and political rupture.

Housing movements *cannot* rely just on the legal system to ensure and promote the enactment of social rights. The struggle for adequate housing and the right to the city *cannot* take place only in the courtroom. Instead, it must involve the executive and legislative branches. While innovative text-based law may have become a crucial part in the understanding of urban citizenship by marginalized groups (Earle, 2012), the pursuit of “rights to have rights” (Holston, 2008) *cannot* end in the Judiciary.

As a lawyer representing informal tenants told me during my fieldwork:

Law is the legal form of the capital. Judges always find a way to build an argument for ordering the eviction of squatters, they always find an excuse to say that the City Statute does not apply in ‘x’ or ‘y’ situations. Thus, it is not that our struggle cannot take place

in the judiciary, so much that *I* am here [my emphasis]. But it cannot happen *only* [my emphasis] in the judiciary. The courts cannot be our ultimate goal, we cannot depend on judges applying a particular law because when we need them the most, they betray us.

Appendix A

Interview questionnaire

1. Could you tell me more about your trajectory and role when it comes to eviction litigations or support to squatter groups?
2. What is your legal understanding of the 2001 City Statute in terms of expanding access to land in Brazil?
3. How do you see mechanisms such as *usucapião* and *usucapião coletivo* (adverse possession laws). How do you interpret and apply them – or think they could be applied?
4. How do you see mechanisms like CDRU (direito de uso), how do you interpret and apply it?
5. How do you see the concept of *função social da propriedade* (social function of property)? How can it be enforced?
6. Do you see any entanglements between private property rights and *função social da propriedade* (social function of property)? If yes, how so?
7. How do you see the legitimacy of *ocupações* (squatter occupations)?
8. Do you think it is easier for squatter groups to be evicted from public or privately-owned land? Why?
9. How do you think the constitutional right to housing can be guaranteed and enforced?
10. What are some of the legal remedies that you think could be used to challenge eviction of informal tenants?

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