

UC Berkeley

UC Berkeley Previously Published Works

Title

Contesting privilege with right: the transformation of differentiated citizenship in Brazil

Permalink

<https://escholarship.org/uc/item/1rq1j53q>

Journal

Citizenship Studies, 15(3-4)

ISSN

1469-3593

Author

Holston, James

Publication Date

2011

Peer reviewed

Article Proofs Cover Sheet

Manuscript Information

Journal acronym	CCST	Author name	J. Holston
Volume/Issue	15/3-4	Manuscript number	565157

AUTHOR: Please find attached a copy of the proofs of your article. These have been copy-edited and now require your attention. When reviewing your proofs you should:

- Answer all queries raised during the editing of your manuscript (see below).
- Check for any other factual corrections (**NB – only minor changes can be made at this stage; major revisions cannot be accepted**).

All required corrections should be submitted using the CATS online corrections form. Once you have added ALL query answers and corrections, please press the SUBMIT button.

PLEASE NOTE THAT ONCE YOUR CORRECTIONS HAVE BEEN ADDED TO THE ARTICLE, IT WILL BE CONSIDERED READY FOR PUBLICATION.

QUERY NO.	QUERY DETAILS
General Query 1	<p>As an author you are required to secure permission if you want to reproduce any copyrighted material in your article. For further details, please visit http://journalauthors.tandf.co.uk/preparation/permission.asp. Please confirm that:</p> <ul style="list-style-type: none"> • permission has been sought and granted to reproduce the material in both print and online editions of the journal; and • any required acknowledgements have been included to reflect this.
General Query 2	<p>Please confirm that all affiliation details for all authors are present and correct. Please note that with the exception of typographical errors/missing information, we are unable to make changes to authors or affiliations. For clarification, please see http://journalauthors.tandf.co.uk/preparation/writing.asp</p>
AQ1	Please check the usage of the term ‘right-claims’.
AQ2	Please suggest whether the ibid citation in the sentence ‘Young’s solution is to...’ can be replaced by Young’s (1989).
AQ3	Please note that the reference citation Hohfeldian (1978) has been changed to Hohfeld (1978) with respect to the reference list provided.
AQ4	Please check the sense of the sentence.
AQ5	Please provide page range details for references Foucault (1980) and Hohfeld (1978).

AQ6	Please check the inserted location details for references Holston (2008), Kymlicka (1995), Pateman (1989), Taylor (1992), and Vlastos (1984).
AQ7	Reference Holston (2008) is provided in the list but not cited in the text. Please supply citation details or delete the reference from the reference list.
AQ8	Please check the edit of the sentence.

Contesting privilege with right: the transformation of differentiated citizenship in Brazil

James Holston*

Department of Anthropology, University of California, Berkeley, CA, USA

(Received 1 September 2010; final version received 14 February 2011)

This paper suggests that new understandings of rights associated with the right to the city movements in many cities around the world are subverting special treatment rights (understood as privilege) and the systems of differentiated citizenship that support them. To make this case, this paper examines the Brazilian formulation of differentiated citizenship as a telling historical example of a politics of difference based on a combination of universal membership and special treatment rights. It argues that by denying the expectation of equality and emphasizing that of compensatory equity in the distribution of rights, Brazilian citizenship has become an entrenched regime of legalized privileges and legitimated inequalities. This paper then analyzes the insurgence of an urban citizenship in the poor peripheries of Brazilian cities since the 1970s, which promotes new kinds of contributor rights, the text-based rights, and the right to rights. This paper ends with a discussion of the entanglements and contradictions of these formulations of citizenship and rights.

Keywords: differentiated citizenship; rights; privilege; right-to-the-city; urbanization democracy; Brazil

Contemporary democracy is a force of destabilization, though often promoted as the contrary. Since the mid-1970s, the insurgence of new democracy has undeniably disrupted established formulas of rule and their hierarchies of place and privilege in the most diverse societies worldwide. To be sure, it is not the only force of destabilization, and it gets entangled with others. Yet democracy's force is itself enough to erode taken-for-granted categories of domination and deference that give both political regime and daily life their sense of order and security. If it did not, democratization would be inconsequential. Categories of domination and deference are typically grounded either on legitimations of history, which accord powers to certain strata of a society on the basis of historical precedents, or on legitimations of nature independent of history, which consider them immanent in certain kinds of people, human nature, or divine cosmological order. In disrupting these legitimations, democracy is as destabilizing of history as a foundation of society and state as of nature. Thus, it challenges natural rights by positing the legitimacy of claims based on use, practice, productivity, settlement, and custom. Yet democracy may also trump historically specified rights with the 'Rights of Man' when it posits human nature as the essence of human beings and ascribes a universal dignity to it. Both kinds of disruption have been the characteristic of democratic change, at times simultaneously.

*Email: jholston@berkeley.edu

I focus on one sort of democratic destabilization in this paper that strikes at the foundations of entrenched systems of inegalitarian citizenship. I focus on the subversion of privilege by right as people transform their needs into citizen rights. To do so, I investigate why people think they deserve rights, analyzing the kinds of justifications people use to legitimate their demands. The reframing of needs as rights generally changes the reasoning by which people think they deserve rights, changing in turn the conceptualization of right itself. There are other possible justifications of demands, including universal human needs, revolution, and divine orders. But in the last 40 years, rights-based legitimations have trumped alternatives and become established at the core of citizenships worldwide. I want to emphasize the importance of democratic citizenship of these changing conceptions of rights.

Urbanization and rights change

There are several paths to rights transformation. The most significant during the last half century has been the intersection of democratization and urbanization – both are of unprecedented global scope – which has made cities the strategic arena for the development of new citizenships. Although this combination is intensely local in combustion, it produces a remarkably similar condition worldwide: one has only to think of São Paulo, Johannesburg, Cairo, Jakarta, and Mumbai to realize that enormous numbers of the planet's population now live in impoverished urban peripheries in various conditions of illegal and irregular residence, around urban centers that benefit from their services and their poverty. Yet this new urbanism also generates a characteristic response: **Q1** precisely in these urban peripheries, residents come to make right-claims for their needs on the basis of their dwelling there. That is, residents come to understand their basic needs in terms of their inhabiting the city, suffering it, building their daily lives in it, and making its cityscape, history, and politics. The many meanings of this making often coalesce into a sense that they have a right to the city – in effect, a right to what they have made. This right to urban production is generally articulated not within a frame of clientalism, class revolution, or human nature. Rather, residents increasingly formulate this right to the city in terms of the legal, ethical, and performative registers of citizenship.¹ Thus, urbanization becomes not only the context of democratization but also its text as urban residents mobilize into new kinds of citizens to redress their conditions of daily life through right-claims.

My argument is twofold. In articulating the right to the city as a right of citizenship, the urban poor are also inventing an insurgent urban citizenship as distinct from the national. By citizenship, I mean membership in a political association or a community that articulates a relation (not a dichotomy) between structures of power and practices of social lives, a relation typically expressed in terms of security, liberty, justice, equality, respect, difference, and participation and formulated in the language of rights, powers, and vulnerabilities. By urban citizenship, I mean a citizenship that refers to the city as its primary political community and concerns an agenda of right-claims that address city living as its substance – issues of housing, property, tenure, transportation, day care, plumbing, and so forth, largely understood to constitute a residential domain of social life. By insurgent urban citizenship, I refer to the political transformations that occur when the conviction of having a right to the city turns residents into active citizens who mobilize their demands through residentially based organizations that confront entrenched national regimes of citizen inequality. Not all urban peripheries produce this kind of insurgence of city against state. But enough do to qualify this collision of urban and national, local and

99 imperial, insurgent and entrenched citizenships as a global category of conflict. My second
 100 point is that with the development of urban citizenship, claiming the right to make and
 101 inhabit the city often leads to a more general conception of a right to rights, the former
 102 being a path to the latter. Thus, in what follows, I focus on the destabilization of privilege
 103 by the right to the city and the right to rights.

104 The results of these processes in Latin America, Southern Africa, India, and elsewhere
 105 have been contradictory. If democratization would seem to hold special promise for more
 106 egalitarian citizenships, and thus for greater citizen justice and dignity, in practice, most
 107 democracies experience tremendous conflict among citizens as principle collides with
 108 prejudice over the terms of national membership and the distribution of rights. If cities
 109 have historically been the locus of citizenship's expansion, contemporary peripheral
 110 urbanization creates especially volatile conditions, as city regions become crowded with
 111 marginalized citizens and noncitizens who contest their exclusions. Thus, the insurgence
 112 of urban democratic citizenships in recent decades has indeed disrupted established
 113 formulas of rule. However, such destabilization also provokes strong reactions, often
 114 violent, some to restore the old paradigms of order and others to express outrage that they
 115 still persist, now more visible because disrupted. Thus, democracy brings its own kinds of
 116 destabilization, delegitimation, and violence. The result is an entanglement of democracy
 117 with its counters, in which new kinds of urban citizens arise to expand democratic
 118 citizenships and new forms of urban violence, inequality, impunity, and dispossession
 119 erode them.

120 To examine the transformation of rights under such conditions of expansion and
 121 erosion, it is necessary to understand the dominant formulations of citizenship within
 122 which alternatives develop. I begin, therefore, with a brief conceptual–historical analysis
 123 of these formulations before discussing insurgent urban citizenship and its new forms of
 124 rights. I close with a discussion of some of their limitations. Throughout, I draw on my
 125 own research in Brazil and, specifically, in São Paulo.

127 **Differentiated citizenship and the distribution of special treatment**

128 All regimes of citizenship develop formulations of equality and inequality to manage the
 129 differences they recognize among citizens. Like totemic systems of social organization,
 130 they determine who is alike and who is different for certain purposes and what that
 131 determination means for the distribution of rights and resources. Actual systems of
 132 citizenship do so in many different ways, combining principles of equality, equity, and
 133 inequality with formal qualifications of membership (e.g. *ius soli* and *ius sanguinis*) to
 134 produce historically specific distributions of the substance of what it means to be a citizen
 135 to those formally deemed citizens – distributions of rights, resources, powers,
 136 vulnerabilities, practices, identities, and so forth. To understand changes in the conception
 137 and distribution of rights in specific citizenships, we must first unravel several problems
 138 common to contemporary debates about citizenship. They are prevalent especially in
 139 discussions proposing to ground citizenship in a politics of difference that institutionalizes
 140 difference-specific treatment for oppressed social groups. These problems make it difficult
 141 to assess the issue of legalized privilege.

142 I use Young's (1989, p. 251) influential advocacy of a 'differentiated citizenship as the
 143 best way to realize the inclusion and participation of everyone in full citizenship'. By
 144 differentiated citizenship, she means one that formulates special rights for group
 145 differences, contrasting it with difference-neutral or difference-blind citizenship. She
 146 argues that by enforcing equal treatment for all, the latter disrespects the salient
 147

differences of the many peoples and cultures that constitute modern nation-states, particularly of oppressed groups. The key problem, Young (1989, p. 250) argues, is the formulation of ‘equality conceived as sameness’: equal treatment homogenizes the differences of minority and marginalized citizens into common denominators that are little more than reflections of the particular interests of the dominant culture. Thus, Young (1989, p. 271) writes that ‘to the degree that groups are culturally different . . . equal treatment in many issues of social policy is unjust because it denies these cultural differences or makes them a liability’. Many have made this argument in similar if not identical terms, including Pateman (1989), Minow (1990), Taylor (1992), and Kymlicka (1995). Additionally, Young focuses on ‘the paradox of democracy’ by which the ‘equality of citizenship makes some people more powerful citizens’ (p. 259) and ‘strict adherence to a principle of equal treatment tends to perpetuate oppression’ (p. 251). Thus, Young rejects equality-as-sameness with the charge that its homogenization not only disrespects but also creates norms of assimilation that in fact oppress.

Q2 Young’s solution is to propose a group-differentiated citizenship that ‘articulat[es] special rights that attend to group differences in order to undermine oppression and disadvantage’ (ibid.). Such rights undermine oppression because they compensate for the liabilities that marked cultural differences create. Thus, differentiated citizenship in her account is just because of the compensatory value of the special treatment it distributes. As described in her discussions of affirmative action and workplace rights for pregnancy and maternity leave, this compensation is fair not because it rewards ‘the deviant until they achieve normality [but because it] denormalize[s] the way institutions formulate their rules’ (p. 273) and redresses ‘the cultural biases of standards and evaluators’ (p. 271). She does not specify what compensation entails, whether it is based on past or present disadvantage or both, how it is calculated, or when it is terminated. In her discussion of democracy, she says that ‘specific representation [is] only for oppressed or disadvantaged groups, because privileged groups already are represented’ (p. 262). But she does not seem to think that after the former receive special treatment that, in this way, they might also legitimately be called ‘privileged’. Nevertheless, she clearly indicates that her vision of differentiated citizenship entails an unequal distribution of rights to make up for the disadvantages of ‘particular circumstances’ (basically involving negative cultural attributes of race, gender, and class) and that, since everyone has a particular life that expresses ascribed group attributes, ‘at certain levels of abstraction everyone has “special” rights’ (p. 269, note 20). Thus, Young’s system of differentiated citizenship allows for a generalized distribution of specific legalized privileges to compensate for various kinds of difference.

This kind of differentiated citizenship has many contemporary proponents, and its politics of difference often dominates today’s discussions of citizenship, justice, and rights not only in the developed but also in the developing world. While that much is easily evident, it may surprise many in these discussions to learn that most of the world’s citizenships beyond the North Atlantic are decidedly differentiated. In fact, in its generalized form, it has been the dominant form of citizenship in most countries. Young does not give this history, possibly because the specific propagation of its inequalities is little studied and still less compared and because this specificity is not revealed in institutional or legal history alone but more in studies that also analyze citizenship as a history of processes, mechanisms, and practices. Indeed, Young’s account is largely ahistorical and uncomparative (despite phrases like ‘the exclusion of blacks’ in American history) as an argument that begins *from* a set of political theories and generalized concepts and moves to another.

197 Thus, a significant problem in this account is its conceptualization of citizenship as a
 198 historical subject, both as supposedly universalizing and as differentiating. To use
 199 Foucault's (1980, p. 117) similar complaint about pseudo-history and anthropology,
 200 citizenship here is treated as 'either a transcendental subject in relation to a field of events
 201 or runs in its empty sameness throughout the course of history'. I use the example of
 202 Brazilian citizenship in the rest of this paper to suggest a different sort of concept work and
 203 analysis: one that investigates the efficacies of the constructions, categories, and rules of
 204 citizenship in relation to the perpetuation and transformation of specific formulations of
 205 inequality and equality to arrive at an understanding of the constitution of citizenship as a
 206 mode of both belonging and rule within specific historical frameworks.

207 I begin sometime near the end of the Brazilian Empire (1822–1889) when the
 208 politician, lawyer, abolitionist, and republican Rui Barbosa is credited with coining a
 209 maxim about justice and equality that has become a mantra for Brazilian law students ever
 210 since: 'Justice consists in treating the equal equally and the unequal unequally according
 211 to the measure of their inequality.' Barbosa's maxim recapitulates a concept of justice of
 212 classical foundation, traced to Aristotle who, like Plato and other Greek thinkers, believed
 213 that a just distribution is generally an unequal one. In the *Nicomachean Ethics*, Aristotle
 214 (1962, p. 118) argues that a just distribution allocates the right share to the right person,
 215 such that 'the ratio between the shares will be the same as that between the persons. If the
 216 persons are not equal, their just shares will not be equal.' The key meaning of equality
 217 (*isotes*) here is one of proportionality: a proportionally equal distribution to people who are
 218 unequal (i.e. who have different measures of merit, need, and worth) would have to be
 219 unequal to be fair. Thus, at least since the Greeks, systems of differentiated citizenship
 220 have found legitimation in the argument that justice should be a regime of proportional
 221 inequality in which citizens are compensated or penalized differently according to the
 222 measure of their differences.²

223 In Brazil, this notion of differentiation became a fixture of legal education,
 224 jurisprudence, and legislation. When I consulted legal textbooks and law students,
 225 professors, and judges in São Paulo, they all gave essentially the same assessment: they
 226 took the phrase to mean that unequal treatment is a just means to produce equality by
 227 leveling or adjusting preexisting inequalities. While this view of Barbosa's maxim clearly
 228 reproduces its classical roots, it emphasizes the effect of leveling, which was, most
 229 probably, not Aristotle's concern. Yet, in fact, the consequences of this method of leveling
 230 are contradictory and problematic in ways that few people appreciated. For example,
 231 nearly all of my sources provided the same example, the one commonly found in standard
 232 Brazilian law books (e.g. Silva 1992, p. 199): the law permits women to retire 5 years
 233 earlier than men. This discrimination is just because over the course of a normal life,
 234 working women 'have more service' than working men in that, in addition to work outside
 235 the home, they have to do the housework and childcare in which they are little aided by
 236 their husbands. 'Thus,' renowned law professor and scholar Silva concludes, 'she has an
 237 overload of services that is just to compensate by allowing her to retire with less time of
 238 service and less age.' The solution for the social facts of inequality in this case – that
 239 working women are unequal because they work more – is not to propose to change the
 240 social relations of gender and work. Rather, it is to produce more inequality, in the form of
 241 the compensatory legal privilege of earlier retirement.

242 None of the legal professionals I asked or textbooks I consulted questioned this
 243 solution. None considered that whether its compensatory function is actually realized; this
 244 kind of justice not only legalizes new inequality but also reinforces existing social
 245 inequalities by rewarding them. None suggested that it uses the legal system to distribute

unequal treatment throughout society. None observed, furthermore, that in Barbosa's maxim the unequal may also be the elite who, because of their individual education, wealth, or achievement, deserve to be treated differently. Does not the maxim justify their different standing at law and different recompense, on the basis of different individual capacities, from that of the illiterate and the poor? For example, by this legal reasoning – as standard today as it was in the nineteenth century – it is not unjust to treat a slave differently from her owner, but only to treat the one as the other or to treat the members of each group differently among themselves. Until recently (1985), the same compensatory logic justified that only literates had the right to vote and hold elected office and, until just 2009, that university graduates (and other 'dignitaries') had the right to a private jail cell. In these examples, the preexisting measures of elite inequality justify their special treatment rights, even though their inequality amounts to privilege.³

Rui Barbosa's justice may be a means of compensating an inequality of disprivilege by legalizing privilege. But it may also compensate an inequality of privilege by legalizing more privilege. In either case, it reproduces privilege throughout the social and legal system. It is, moreover, a static concept of justice. It does not contest inequality. Rather, it accepts that social inequalities exist as prior conditions of either disprivilege or privilege and treats them differently by distributing resources accordingly. Thus, the justice system in which Barbosa's maxim is a taken-for-granted standard enforces a differentiated citizenship: it maintains a society of social differences by organizing it according to legalized privileges and disprivileges.

Brazilian elites formulated this notion of justice out of Greek (and French) elements because it made sense to them as a foundation of citizenship during the nineteenth century and, indeed, throughout the twentieth. Like other nationalizing elites, Brazil's founders faced the problem of how to construct a national citizenship to regulate the vast social differences of the inhabitants. I cannot review their debates here but refer the reader to my 2008 book. Like so many other nationalizing elites beyond the North Atlantic, their solutions combined a proportional notion of equality with a liberal one – the latter maintaining that individuals are formally equal before the law and equally free to pursue their differences in the market. But they rejected what they perceived to be a revolutionary French concept of democratic equality that established standard measures of substantive rights and opportunities for all citizens regardless of other differences.

Instead, from the beginning of the Brazilian nationhood, they created a national citizenship that was universally inclusive in membership and massively inegalitarian in the distribution of rights and resources. The founding constitution (1824) established that the only criterion for citizenship among Brazil-born residents was freedom. Its *ius soli* citizenship was inclusive and unrestricted for all free people regardless of race or religion. Hence, there was never any doubt, unlike in the USA, that freeborn Brazilian blacks, free Indians, and freed slaves were anything but national citizens.⁴ Although an inclusive status, however, Brazilian national citizenship was not an egalitarian one. From the beginning, inclusion mattered less than the kind and quality of included citizen. All free native-born residents may have been Brazilian national citizens, but not all citizens had legally equal and uniform rights. For example, the first republican constitution (1891) used gender and literacy to restrict political citizenship to literate male citizens, while denying education as a citizen right. It thereby eliminated the expectation that nonwhites and women would become literate and politically empowered as a norm. In legalizing such differences, the constitution denied political rights to the overwhelming majority of Brazilians who were all, nevertheless, national citizens – an enactment of proportional inequality in effect for nearly 100 years, until 1985. In this manner, Brazil's differentiated

295 citizenship consolidated social inequalities and perpetuated them in other forms
296 throughout society.

297 I define this kind of citizenship as differentiated because, in terms of its formal and
298 substantive principles of organization, it uses social differences that are *not* the basis of
299 national membership – primarily differences of education, property, race, gender, and
300 occupation – to distribute different treatment to different categories of citizens. It thereby
301 generates a gradation of special treatment rights among them, in which many rights are
302 available only to particular kinds of citizens and exercised as the privilege of particular
303 social categories. This paradigm of inegalitarian national citizenship is pertinacious.
304 Q8 Brazilians has persisted to this day under every kind of rule, thriving under monarchy,
305 civilian and military dictatorship, and political democracy. It is a type of citizenship that is
306 also widespread. In fact, most nations have developed differentiated citizenships at one
307 time or another to manage social differences. Their consequences are, moreover, similar:
308 by legalizing special treatment as a matter of course to attend to group differences, they
309 legitimate and reproduce inequality throughout the social system. What Young proposes is
310 thus a token of this historical type of citizenship, albeit the one she imagines restricted to
311 compensating oppressed social groups. Considering its world history, it is difficult not to
312 conclude that this thinking is wishful, if not deluded.

313 A significant part of the problem of history and ethnography in proposals like Young's
314 for a politics of difference also derives from their static conception of equality as a mode of
315 sameness. If equality is a condition, a status, it is the one that is produced by various kinds
316 of operations. It results from processes whereby measures are taken and considered. The
317 Greek meaning of *isotes* as proportionality conveys this sense of process. It emphasizes the
318 equality that results from a determination of ratios and from their equalization. In more
319 modern terms, this method of proportional reckoning for establishing what is fair may be
320 called an equity consideration. It compensates 'priors' (ascribed or achieved differences)
321 with special treatment for specific purposes, resulting in the legalization of difference-
322 based privileges and a politics of differentiated citizenship. This process of equalization
323 contrasts with another that, instead of compensating for prior differences between people,
324 it equalizes them in ways that result in standard measures of treatment. Actually, existing
325 regimes of citizenship use both equality and equity as principles of equalization according
326 to which they recognize and manage the differences they distinguish as salient among
327 citizens and between citizens and noncitizens. Their particular combinations give them
328 historical character. Therefore, branding specific citizenships as 'difference-neutral' or
329 'difference-specific', as is common in discussions of the politics of difference, is a false
330 dichotomy.

331 Rather than categorizing citizenships ahistorically as one or the other, the key question
332 is to investigate historically and ethnographically how a citizenship problematizes the
333 equalization and the compensation of prior differences and deals with the problems of
334 justice and politics that result. Although the management of difference is an overarching
335 purpose of citizenship, it generates chronic conflict. Inevitably, citizens face massive
336 amounts of differences among them. They confront each other in assessing these
337 differences, making decisions about their significance, assembling regulations for their
338 management, and realizing them in practice. In this process, they calculate the
339 consequences of legalizing differences to legitimate inequality or denying them to
340 establish standard measures. Both moves have problems. A specific right – habeas corpus –
341 may be legislated to ignore social differences and in that way be considered difference-
342 neutral. But the citizenship that makes it meaningful had to problematize these differences
343 for that specific purpose to produce it. All citizenships engage in this political calculation

and are generally forced to reevaluate it periodically. Thus, they must be studied historically and ethnographically to understand the politics, the decision-making processes, by which they equalize differences either to standardize or to compensate them. In the social world, equality is never merely ‘sameness’.⁵

Some so-called difference-neutral citizenships have consistently generated extraordinary turmoil in structuring the differences and equalities of their citizens. Thus, American citizenship has set armies of people against each other and erected libraries of legal opinion to figure out how both to standardize and to legalize differences – for example, whether to admit free blacks as full citizens or preemptively exclude them and whether to give special treatment to veterans (on civil service exams), farmers (crop subsidies), and minorities (admission to university). The latter questions remain passionately debated. Thus, American citizenship combines problems of equalization and differentiation in matters of both incorporation and distribution, and it struggles with the legitimacy of each combination.⁶ The equal protection clause of the US Constitution does not forbid legalizing distinctions and classifications based on differences among citizens. The question Americans debate is rather in what manner. That problem generates endless conflict. The extent to which the American concept of citizen equality allows differentiation has been so divisive that the courts have created a jurisprudence of ‘strict scrutiny’ to determine whether the legalization of a discriminatory practice (such as affirmative action for veterans and minorities) is constitutional.

By contrast, Brazil’s citizenship has managed the differences of Brazilians – no less great than those of Americans – in very different ways. While Americans fought over inclusion, Brazilians opted for universal membership. But by denying the expectation of equality in distribution, Brazilian citizenship became an entrenched regime of legalized privileges and legitimated inequalities. It is theoretically important to stress that its disabilities for the majority of Brazilians result from a differential distribution of rights, not from an explicit exclusion from citizenship itself. If the Brazilian poor were excluded, for example it would be difficult to explain why they (or the Mexican, Indian, Egyptian, or South African poor) have a strong sense of belonging to the nation. Rather, they are citizens who are discriminated against because they are certain kinds of citizens. The analytical question to ask, therefore, is what kinds and how the application of a particular type of citizenship generates their discriminations.

Thus, some citizenships – those I call differentiated – manage differences by taking for granted that they should be legalized. Through this norm, they consistently legitimate and reproduce inequality, even though, like Brazil, they may standardize social differences for national membership to create national societies of vast diversities. Probably the majority of the world’s national citizens live under such differentiated citizenships. As a result, most of them have been denied political rights, forced into segregated and often illegal conditions of residence without infrastructure, estranged from law, and funneled into servile labor.

However, even the most entrenched regimes of inegalitarian citizenship can be undone by insurgent citizen movements. The Brazilian example of the transformation of rights to which I now turn shows this to be the case. It shows that in the peripheries of Brazilian cities, since the 1970s, working class residents have formulated an insurgent citizenship that destabilizes the entrenched. The foundations of this insurgence are found in the conditions of urban life in these peripheries, particularly the hardships of illegal residence, house building, and land conflict. These conditions became both the context and substance of a new urban citizenship that mobilized residents. Contrary to so much, the nineteenth-

and twentieth-century social theory about the working classes, residents became new kinds of citizens not primarily through the struggles of labor but through those of the city.

This incitement happened in the realm of everyday and domestic life taking shape around the construction of a home. It began with the struggle for the right to have a daily life in the city minimally bearable, a life with a minimum of dignity. Accordingly, its demands for a new formulation of citizenship got conceived in terms of housing, property, plumbing, day care, security, and other aspects of residential life. Its leaders were the ‘barely citizens’ of the entrenched regime: women, manual laborers, squatters, the functionally literate, immigrants, and, above all, those in families with a precarious stake in residential property, with a legal or illegal toehold to a house lot somewhere far from elite centers. These are the agents who, in the process of building and defending their residential spaces, not only constructed a vast new city but, on that basis, also proposed a city with a different order of citizenship.

The analysis of rights that follows is thus about the persistence of inequality and the possibilities of change. However, it presents no linear progression. Rather, it shows that the dominant historical formulations of citizenship both produce and limit possible counter-formulations. As a result, different regimes of rights, both insurgent and entrenched, remain conjoined.

Rights

‘Why do you think you have rights?’ I asked a pioneering resident of one neighborhood in São Paulo’s urban peripheries, a retired textile worker and former neighborhood association president who had moved there in the late 1960s, at the beginning, when it had no infrastructure at all, when it was still ‘bush’:

Well, one part is just what we were saying. I am an honest person, thank God. I don’t steal from anyone. I am a worker. I fulfill my obligations at home, with my family. I pay my taxes. But today I think the following: I have rights because the *Constituinte* [i.e. Constitution] gives me these rights. But I have to run after my rights. I have to look for them. Because if I don’t, they won’t fall from the sky. Only rain falls from the sky. You can live here 50 years. You can have your things. But if you don’t run after your rights, how are you going make them happen?

The public spheres of citizenship that emerged in Brazilian peripheries forced the state to respond to their new urban conditions by recognizing new kinds and sources of citizen rights. These rights concerned issues of both substance and scope that the state’s existing laws and institutions had generally neglected. In that sense, they developed on the margins of the established assumptions of governance: they addressed the new collective and personal spaces of daily life among the poor in the urban peripheries; they concerned women and children as well as men; they established that the state had an obligation to provide services. Without doubt, the greatest historical innovation of these rights is that they initiate a reconceptualization: their advocates began to conceive of them as rights of general citizenship (how this is defined, we examine later) rather than of specifically differentiated categories of citizens, such as registered worker. In these ways, the emergence of new participatory publics in the peripheries not only expanded substantive citizenship to new social bases, it also created new understandings of rights as something other than privilege.

Yet, as the resident’s statement above indicates, this foundation of rights remains a mix of new and old formulations. When I ask residents why they think they have rights and on what basis, they consistently invoke an amalgam of three conceptions. They speak about rights as privileges of specific moral and social categories (‘I am honest; I am a worker’),

442 as deriving from their stakes in the city ('I pay my taxes', 'I built my home and helped
443 build this neighborhood'), and as written in the Constitution ('the *Constituente* gives me
444 rights'). In other words, they present a hybrid of what I call special treatment rights,
445 contributor rights, and text-based rights.

446 This typology has a temporal development, following the participatory strategies
447 residents deploy in their housing and land conflicts, in which the understanding of both the
448 eligibility for rights and their exercise changes. Thus, text-based rights appear only after
449 the Constitutional Assembly (1986) and remain mixed with the other two in discussion.
450 This is not to say that people never referred to earlier constitutions and laws. But when a
451 few occasionally did, it was to complain that, with the exception of labor rights, they did
452 not apply to them. Furthermore, people use the same concept in these three formulations to
453 describe the realization of rights. They speak of 'looking for your rights' or 'running after
454 them', a notion of agency. However, doing so generally means something different in each
455 case, with a different outcome.

456 The conceptualization of right as the privilege of certain kinds of citizens provides the
457 foundation on which all systems of differentiated citizenship thrive. As long as it prevails,
458 citizenship remains, overwhelmingly, an entrenched means for distributing and
459 legitimating inequality. As it is a foundational concept for citizen differentiation, I
460 discuss its conversion of right into privilege and duty into favor in greater detail.

461 *Rights as privilege*

462 Residents use the category 'rights' in three modalities. It may denote a specific right
463 (*direito de*), a condition of having rights (*ter direitos*), and a condition of being right (*ser*
464 *direito*). The last refers to a moral condition of correctness: having rights depends on being
465 right and being right is a matter of achieving certain statuses, in Brazil basically those of 'a
466 good worker, family provider, and honest person'. Those who have citizen rights deserve
467 them because they are morally good and socially correct in these publicly recognized
468 terms. Similarly, those who fail to be morally right – criminals, squatters, deviants – an
469 expandable category to be sure – deserve to be denied rights. By extension, the logic of
470 this special treatment citizenship also produces the *a priori* judgment that those who lack
471 rights – the poor, for example – must be assumed to have failed morally. Both negative
472 judgments allow some Brazilian citizens to assume that other Brazilian citizens lack rights
473 in relation to themselves and, therefore, that they have no duty to them if they consider
474 them marginals in one way or another.

475 Thus, access to rights in this conceptualization of special treatment depends on two
476 conditions. On the one hand, people think they have rights because they hold statuses
477 recognized and legalized by the state. On the other, the state only bestows these rights on
478 the right people. Laws establish both conditions. For example, the 1937 Constitution
479 created a perduring construct of social marginality and exclusion by conferring special
480 rights on those with registered formal sector jobs and discriminating against those who are
481 unemployed or work only in the informal economy. However, having or not having rights
482 is not only a determination of law. Rather, legal rights may be available to all workers in
483 theory (as Vargas's populism proposed), but they can only be acquired and realized by
484 those who deserve them in terms of specific personal attributes (e.g. whether they became
485 literate or registered in a profession). For most residents of the urban peripheries,
486 therefore, the rights exclusions of differentiated citizenship often appear to result less from
487 legal and political causes than from personal failings. This depoliticization perpetuates the
488 legitimacy of exclusionary citizenship rights by blaming the excluded for not having them.
489
490

491 It also perpetuates by assigning to the privileged the powers to determine, through their
492 recognition, those who have the right statuses to deserve rights. As these rights can only be
493 acquired by the right persons, people who need to use them ‘have to chase after their
494 Q8 rights’. In the context of special treatment citizenship, the ubiquitous phrase ‘look for your
495 rights’ means not only knowing what rights adhere to a particular status but also having to
496 prove to the proper authorities that you possess the right status to deserve its rights. Such
497 proof is not only a matter of knowing what rights people have – 25 years ago a knowledge
498 not easily obtained and typically requiring the help of someone in the know (a ‘good boss’,
499 a ‘special bureaucrat’). It depends much more on proving to the authorities who provide
500 the benefits of rights that the petitioner is worthy, that is, not a ‘marginal’ of any sort. This
501 proof requires having correct paperwork – clear police report, signed work contract, voter
502 registration card, house payment receipts, tax records, and so forth – because only honest
503 persons and steady workers are assumed to have such records.

504 Fundamentally, however, this proof requires that the correct status and paperwork of
505 the petitioner be acknowledged by the provider, typically a bureaucrat, official, or
506 employer. This personal acknowledgment is required not only because special treatment
507 rights always depend on the identification of subsets of statuses within the general status of
508 citizen. More significant, it is necessary because the application of law in Brazil is rarely
509 routine or certain. Rather, it must be made to apply through the personal intervention of
510 someone in a position to acknowledge the good standing and just deserve of the petitioner.
511 The need for such special pleading exacerbates the struggle of the poor to run after their
512 rights. It always puts them on the defensive, forces them to find the right person to
513 intercede on their behalf, renders uncertain their dignity and respect, and makes them
514 acknowledge their inferiority. Consequently, proving one’s worth to find one’s rights is
515 always frustrating and often impossible for them. It is, therefore, not surprising that being
516 ‘treated like trash’ is a reason I frequently hear to explain why people quit pursuing their
517 rights.

518 The personalization of rights means that their exercise depends on the discretion, not
519 the duty, of someone in a position of power to recognize the personal merit of the
520 petitioner and grant access to the right. This discretionary power converts the rights into
521 privileges, in the sense that it becomes a privilege to obtain what is by law a right. A right
522 creates a duty when it makes someone vulnerable to a claimant’s legal powers. In that
523 sense, it empowers the claimant. When these relations depend on personal intervention,
524 Q3 discretion, and mediation, they become legally subverted. In Hohfeld (1978) terms, the
525 acknowledger now has the power to decide when rights apply and yet no duty to make
526 them available. He is not liable to the claimant’s legal power and has thus gained an
527 immunity. In turn, the claimant is vulnerable to the exercise of that power, having no right
528 to determine its course. He, therefore, suffers a disability that can only be overcome by
529 personal intercession. When the latter occurs, the claimant exercises his right only as the
530 favor of the person who grants it.

531 In a system of citizenship rights thus based on the immunity of some and the disability
532 of others, rights become relations of privilege between some who act with an absence of
533 duty to others who, in turn, have no power to enforce claims. The consequences are
534 profound. The disprivileged lack rights and are vulnerable to the power of others. The
535 privileged experience citizenship as a power that frees them from the claims of others,
536 leaving them unconstrained by legal duty and exempt from legal responsibility. These
537 personalized relations of privilege and disprivilege constitute the core relations of power
538 that define differentiated citizenship.
539

540 Thus, when I first went to Brazil in 1980, I rarely heard the words citizen or citizenship
 541 in everyday conversation because it was not an especially meaningful category for rights.
 542 Certainly, people spoke about having particular rights. But they did so without an apparent
 543 connection with citizenship. Rights seemed to exist apart, conferred by statuses other than
 544 citizen, such as worker. When I noticed the use of ‘citizen’ (*cidadão*), it mostly had a
 545 different sense among the Brazilians of all classes. It meant someone with whom the
 546 speaker had no relation of any significance, an anonymous other, a John Doe – a person, in
 547 fact, without rights. When I asked directly, people described themselves as Brazilian
 548 citizens and suggested how their citizenship (*cidadania*) had changed under Brazil’s
 549 military dictatorship (1964–1985). Occasionally in our conversations, people also used
 550 the words as a status of respect, for example to complain that they were ‘not being treated
 551 as citizens but as marginal’s by public officials. But at the same time, among themselves,
 552 they generally used ‘citizen’ to refer to the insignificant existence of someone in the world,
 553 usually in an unfortunate or devalued circumstance. People said ‘that guy is a *cidadão*
 554 *qualquer*’ to mean “a nobody”. They said it to make clear that the person was not family,
 555 friend, neighbor, acquaintance, colleague, competitor, or anyone else with a familiar
 556 identity; to establish, in short, not only the absence of a personal relation but also the
 557 rejection of a commensurable one that would entail social norms applied in common.
 558 ‘Citizen’ indicated distance, anonymity, and uncommon ground.

559 The new urban citizenships that have arisen in the peripheries confront this core
 560 formulation of rights as privilege and duty as favor with new and insurgent
 561 conceptualizations of rights. In Brazil, the two emerged as residents in the urban
 562 peripheries developed new participatory spheres of citizenship. The coexistence of these
 563 conceptions creates a mixed and at times unstable foundation for the development of
 564 citizenship. In what follows, I give an account of their emergence based on my
 565 ethnography. However, I know of no thorough history of the intellectual sources that
 566 influenced the triumph of rights-based legitimations in Brazil. Such a history would surely
 567 consider the global rise in the 1970s of rights discourse as the central component of
 568 democratization and, somewhat later, the internationally sponsored promotion of human
 569 rights directed at nations like Brazil under dictatorship. Additionally, it would investigate
 570 the influence of certain global currents on Brazilian leftist intellectuals with grassroots
 571 affiliations, particularly of the Workers’ Party (PT), and on intellectuals of the opposition
 572 to dictatorship generally. Important in this regard is the work of Antonio Gramsci on the
 573 Brazilian legitimation of democracy over revolution and the insistence that democracy
 574 must transform society and culture and not just the political system (see Dagnino 1998) –
 575 though the Left in Brazil habitually distrusted both rights and citizenship as bourgeois and
 576 ‘egoistic’ and had little to say about the foundation of rights in Marxist thought.

577 Of greater importance for the ‘rights turn’ in the urban social movements was the
 578 influence of Lefebvre’s (1968) work on right to the city and everyday life as the arena of
 579 political struggle. Also significant was Castells’ (1972, 1983) works on the urban question
 580 and grassroots movements, and Harvey’s (1973) work on social justice and the city – even
 581 though both Castells and Harvey were initially critical of Lefebvre’s right to the city
 582 arguments. These ideas captured the imaginations of planners, architects, lawyers, and
 583 social scientists who promoted the urban social movements and who eventually became
 584 leaders of NGOs and local government. I would, moreover, point to the significance of
 585 classically liberal arguments for the rule of law and for the respect of rights to property and
 586 political citizenship. These also framed the broad coalition against dictatorship and helped
 587 to legitimate rights as the currency of a project of democratization. However influential
 588 these intellectual sources may have been, the development of new understandings of rights

589 that ensued in Brazil required masses of urban Brazilians to invent them for their own lives
590 and put them into practice.

591 *Contributor rights*

592 The first new conceptualization of rights to emerge refers to what I call contributor or
593 stakeholder rights. Whereas the rights that workers ‘paid for’ under the old regime of
594 citizenship were overwhelmingly labor rights, contributor rights constitute a different set
595 of new substance and ethical significance. They concern the rights to the city that were
596 fundamental in mobilizing the new practices of citizen participation in the peripheries –
597 rights to public services, infrastructure, and residence that pertain to urban life as a
598 condition of dwelling. I call them contributor rights because residents advance them as
599 legitimate claims that they think they deserve on the basis of their contributions to the city
600 itself – to its construction through their building of homes and neighborhoods, to city
601 government through their payment of consumption and employment taxes, and to the
602 city’s economy through their consumption. They are stakeholder rights because residents
603 ground their legitimacy in the making and appropriation of the city through these means.

604 Contributor/stakeholder rights are, therefore, based on three identities unprecedented
605 for most of the urban poor: property owner, tax payer, and mass consumer. These identities
606 engage an agency of self-determination entirely different from that embedded in rights-as-
607 privilege and state-supplied labor rights. Yet, as not all Brazilians share these statuses,
608 they also ambiguously perpetuate some elements of special treatment citizenship.

609 The fundamental attribute organizing the bundle of contributor rights is that of
610 homeownership, especially referring to the ownership (however contested) of a house lot.⁷
611 For most people, it motivates both their claims and their duties in relation to the city. For
612 most, their identities as tax payers and consumers also develop around the requisites of
613 residential property, as they pay taxes and fees for their residential lots, buildings, and
614 services and as much of their consumption consists in purchases for their homes. As the
615 rate of homeownership in São Paulo’s peripheries is remarkably high, varying between 70
616 and 90%, the identity of homeowner is predominant. Yet, with regard to landed property,
617 ownership excludes squatters and renters. Although they account for a comparatively
618 small number (10% on average), the distinction between those who have some claim to
619 own their residential lots and those who do not is sharp and often antagonistic among the
620 residents.

621 Nevertheless, the sense of having stakes in the municipality is not confined to lot
622 owners in the peripheries. Squatters often own their homes, many of which are well
623 furnished and equipped. Moreover, most residents pay a variety of service fees and taxes
624 as consumers, including those for utilities, retail sales, and industrial production.
625 Moreover, some pay income tax. Thus, although the identity of stakeholder is without
626 doubt strongest among those who have ownership claims to real property, residents very
627 generally view homeownership, tax paying, and consumption as evidence of their stakes in
628 the city. This conviction not only legitimates their demands for the right to the city, but
629 also gives residents the sense that they are citizens of the city, for many a first substantive
630 understanding of their citizenship and its agency. ‘If he pays taxes, he is a citizen and must
631 be respected wherever he goes’ is an assertion I hear routinely among residents of the
632 urban peripheries when I ask why they have the rights.

633 In the stakeholder conceptualization of rights, the ‘municipitizen’ (a revealing phrase I
634 sometimes hear) merits respect not because he or she is a good honest worker or family
635 provider. He does not have to prove some personal moral attribute individually to an
636
637

official or have it acknowledged by the state to ‘find his rights’. Rather, urban citizens find their rights by demanding them. They insist without relying on the *quid pro quo* of deference and favor precisely as ‘municipal citizens’, citizens of the municipality.

This change in attitude results from the conviction that urban citizens have earned their rights and respect by building the city, paying its bills, and consuming its products. As a result, they demand their rights on the basis of self-determination, accomplishment, and earned independence. Contributor rights thus promote a citizenship based on an entirely different agency from privilege or state recognition. Whereas the latter are fundamentally other-determined, this agency of urban citizenship is ‘autoconstructed’ – ‘autoconstrução’ (*autoconstrução*) being the term they use to describe their house building. Thus, as city builders, tax payers, and consumers, these urban citizens have inverted the real-stakes argument that the nineteenth- and twentieth-century liberals used to exclude Brazil’s poor from citizenship rights. Instead, they use that very argument, turned inside out, to justify their rights to full citizenship.

Text-based rights

On occasion, I have seen people at neighborhood meetings pull a concise edition of the Citizen Constitution from their back pocket and purse to make a point. More frequently, I hear them refer to what it ‘says in the Constitution’. This reference to the constitution and the legal codes deriving from it secures the second new understanding of rights to emerge in the urban peripheries. It is based on textual knowledge. To residents, text-based rights are evident, clear, accessible, and above all knowable precisely because they are written down for all to see. People access them in three ways. They read them in inexpensive paperback editions of the 1988 Constitution available at any newsstand. Some consult Q8 them online. Many utilized new government institutions are also associated with innovations in the Constitution. These innovations aim to democratize access to and information about rights as a matter of policy and to make them work for citizens by simplifying legal bureaucracy. Hence, residents frequent Small Claims Courts, Poupá Q4 Tempo (literally, Save Time), ProCon (consumer rights bureau), and various departments of public administration that are now more numerous and accessible in the peripheries. As one resident put it, these institutions constitute ‘a source for you to go to and get a return for your effort; today, you can get a return’. It is no small historical irony that this confidence in text-based rights has turned the popular classes of São Paulo into enthusiastic positivists, not so distant from those of the ‘Order and Progress’ positivism that some of Brazil’s nineteenth-century nation-builders venerated.

The keystone of this new foundation of rights is access to knowledge. If, in the past, it was almost impossible for a poor person to know her rights without the intercession of a superior, today’s access to this information is practically self-evident. It is common in the contemporary peripheries to hear people speak about law in terms of researching its texts. If they have a problem, they search for the legal text that establishes their rights. Access to text-based knowledge has given the urban popular classes an unprecedented confidence in their struggles to achieve citizen rights and respect. Coupled with their sense of being stakeholders, it provides an effective means to challenge the culture of deference that dominated the practices of differentiated citizenship.

This sense of security in knowledge does not mean that residents do not tremble before the legal system that has historically humiliated them. Yet, the access to text-based law and the sense of empowerment it brings have fundamentally changed the meaning of ‘look for your rights’ for the working class citizens. Today, they not only emphatically say that

687 ‘a person has the right to look for his rights’, echoing precisely Arendt’s (1968, pp. 296–
 688 302) notion of justice. The important point, they overwhelmingly tell me, is that ‘if you look
 689 today, you always find them.’ They are certain of this outcome, because the rights they
 690 seek are accessible, demonstrable, tangible, look-and-point at, written text. These battle-
 691 seasoned residents know that knowing rights does not insure getting justice. But as a
 692 director of one neighborhood residents’ association observed, ‘without knowing the laws,
 693 one cannot know justice.’ Moreover, the justice they seek is not only that of social rights
 694 and labor law. Text-based rights now refer to other kinds, including property, consumer,
 695 personal, human, and ecological rights, including the civil rights that have been a
 696 particular problematic aspect of Brazilian citizenship.

697 In large measure, this momentous change depends on citizens conceiving of their
 698 citizenship as a means to establish a common ground and standard measure among them,
 699 not the proportional inequality of differentiated citizenship. In turn, this commensurability
 700 depends on their sense that their status as citizen has an unconditional, equal worth in
 701 rights, one not based on individual market value or on any other status. In that evaluation,
 702 rights become egalitarian. There is much to suggest that the deep involvement of the urban
 703 popular classes with drafting the 1988 Citizens’ Constitution and its text-based principles
 704 created conditions for that kind of assessment. Even though the Constitution contains
 705 many provisions for special treatment, residents overwhelmingly understand it as a charter
 706 that establishes rights of equal treatment.

707 Their participation in its construction was grounded in their insistence that the new
 708 charter include as a foundational source of social rights and justice, their experiences as
 709 the modern urban residents of Brazil, as its urban citizens. This insistence resulted in the
 710 submission of 122 ‘popular amendments’ to the constitutional assembly (1986–1988),
 711 based on over 12 million signatures gathered by these organized urban citizens. These
 712 signatures represented approximately 12% of the electorate, an enormous portion
 713 considering the extensive formal requirements necessary for submission.

714 A new agent of Brazilian citizenship thus emerges. It is the anonymous citizen, a
 715 condition that has virtually no utility in the regime of differentiated citizenship, one who is
 716 poor yet civic. These new citizens among the urban working classes constructed a new
 717 foundation for rights in the life of the city and in the text of the constitution. It confronts
 718 the old regime by advancing equal treatment as the outcome of citizenship practices.
 719 Coupled with new civic participation, the new understandings of rights sustain the growth
 720 of significant measures of egalitarian citizenship. The equality of inclusion it demands is
 721 insurgent, even though it elbows into the existing system rather than insisting on replacing
 722 it. It is insurgent because the *right-to-rights* that citizens claim is not minimal. It already
 723 assumes the totality of possible rights for those who have historically been denied the
 724 exercise of most rights. Hence, the recognition of these citizens as right-to-rights bearing
 725 members creates a radical opportunity to remake Brazilian citizenship for a democratic
 726 society.

727

728

729

Entanglements and contradictions

730 The development of citizenship in the Brazilian urban peripheries remains, nevertheless,
 731 contradictory: residents support anonymous citizen equality while also holding that various
 732 kinds of social inequality justify the legalization of special treatment. I want to be absolutely
 733 clear that, in theory, I am not opposed to equity considerations in developing special
 734 treatment rights as a mean to address significant social issues. But I would insist on two
 735 points. One is that neither equity nor equality be taken-for-granted or normalized responses.

736 The qualifications and distributions of standard-measure or special-measure rights must be
 737 debated so that the consequences and pitfalls of each strategy become apparent. The other is
 738 that such debates be historicized, that the issue in question be problematized in terms of its
 739 historical and ethnographic frame of citizenship.

740 Problematising the Brazilian case in these terms demonstrates that when a citizenship
 741 of special treatment becomes the norm, it creates relations of immunity and disability
 742 throughout society, which entail privilege and disempowerment in the mediation of rights.
 743 In such a system, the ‘search for rights’ engages the poor in a perverse exercise of
 744 citizenship which those with immunity and privilege bypass: it not only perpetuates but
 745 also legitimates the distribution of inequality, because it gets individuals to defend special
 746 treatment for themselves and disqualification for others as the means to confirm their
 747 particular worthiness and attain their hard-won recognition, respect, and recompense. In
 748 this exchange, it induces the poor to accept the legitimacy of citizenship’s distribution of
 749 unequal treatment as a just means to compensate for, if not reward, preexisting
 750 inequalities. It gets them, in other words, to approve compensating inequalities of privilege
 751 by legalizing more privilege.

752 When I discussed questions of privilege and right in the neighborhoods, I found that
 753 most people took it for granted that unequal special treatment was a just way to offset
 754 preexisting inequalities, especially among the poor. However, some also observed
 755 critically that this compensatory logic legitimates the rights of elites to special treatment.
 756 They understood that as a general social principle, compensatory privilege also justifies
 757 unequal treatment for the preexisting measures of elite inequality (i.e. their superiority),
 758 even though that may amount to legalizing more privilege. Thus, one resident commented
 759 that ‘legally, the rich prisoner is treated unequally in prison ... if a person from the
 760 periphery is jailed, see if anyone lets him have a television in there or a private cell as
 761 happened with that banker who was jailed.’

762 Nevertheless, this same resident maintains a contradictory position. After condemning
 763 this scheme of justice for perpetuating elite privilege, he uses its logic to justify special
 764 treatment rights to compensate for inequalities among his own class. I found this
 765 contradiction among many residents. It was typically expressed, for example by both men
 766 and women with regard to the special rights for women to retire 5 years earlier than men I
 767 discussed earlier. Here is a sample response:

768 I think it is just. Because if you think about it, a housewife who has a job outside works
 769 double. When I arrive home from work, what do I do? I take a shower, watch television, sit on
 770 the sofa doing whatever; or I go to the bar and have a beer. What does the woman do? When
 771 she arrives from work, she makes dinner, takes care of the children, cleans the house, arranges
 772 the kitchen, washes and irons clothes. She works about double my work, if you analyze the
 773 question. Therefore, I think that she should have even more time [than 5 years] to retire before
 774 a man, because there still exists a lot of discrimination in the work of women.

775 Like nearly every man *and* woman who discussed the issue with me, this resident does
 776 not argue for changing the social relations of work and gender, let alone his own behavior,
 777 as the means to redress this discrimination. Rather, he wants to keep the laws
 778 discriminatory by allowing a compensatory legal privilege that rewards women for their
 779 extra work but leaves the causes of inequality untouched.

780 Most residents held similarly mixed or contradictory opinions with regard to various
 781 kinds of rights. They gave some version of universal constitutional equality, as in ‘the
 782 Constitution says that all are equal; it doesn’t matter if you are white, black, or Japanese. If
 783 you are in Brazil, you are equal.’ Yet most accepted affirmative action for blacks in
 784 education, separate courts for military police, and both special compensations and

785 restrictions for women (e.g. paid maternity leave, early retirement, and off-limit jobs).
 786 Although two members of the residents' association in one neighborhood who strongly
 787 identify with being black were against affirmative action in any form, most people justified
 788 it by arguing that 'if there weren't a quota, the black would never enter university.'

789 Many argued, furthermore, that illiterates should not have political rights because they
 790 lacked independence and would not know how to vote; that children should have special
 791 rights but really problematic ones could lose them by becoming wards; and that 'even
 792 though criminals are citizens, they don't deserve rights'. There was, in addition, general
 793 agreement that 'honest people, good workers, and tax payers have to have rights' and that
 794 'criminals, layabouts, and squatters do not.' The same resident who says in one breath that
 795 'today, for me even marginals are citizens,' says in another that 'we consider ourselves
 796 citizens because we are honest persons.' When we discussed the many social inequalities
 797 that exist in Brazil, many affecting them directly, none had a problem legalizing new
 798 inequalities in the form of special treatment rights as a means to redress existing inequalities.

799 These pioneers of an insurgent and participatory urban citizenship thus continue to
 800 perpetuate key elements of the regime of differentiated citizenship that discriminates
 801 against them and that they oppose in many ways. They generally accept without extended
 802 reflection the principle that existing social inequality justifies further unequal treatment as
 803 compensation. In doing so, they continue to legitimate the reproduction of more inequality
 804 and privilege throughout the social system. For them, the equity solution that compensates
 805 remains a norm. The difference is that it is no longer the overwhelming norm of Brazilian
 806 citizenship.

808 Acknowledgements

809 I would like to thank Julia Eckert for her encouragement in developing this paper for the conference
 810 that she and Lale Yalçın-Heckmann organized on 'Re-thinking Citizenship' at the Max Planck
 811 Institute for Social Anthropology in 2008. The paper draws on my book, *Insurgent Citizenship*
 812 (2008). A fuller account and supporting data for many of the arguments can be found there.

814 Notes

- 815 1. For example, see recent studies of urban India for the change from favor to rights and from
 816 clientalism to citizenship in the mobilizations of both lower and middle-class residents, e.g.
 817 Mukhija (2003), Anjaria (2009), and Bhan (2009). This sort of change happened several decades
 818 earlier in urban Latin America.
- 819 2. In his famous oration to the law students of the class of 1920 at the University of São Paulo,
 820 Barbosa (1999 [1921], p. 26) restates his maxim in terms that emphasize the notion of allocating
 821 shares in a regime of proportional inequality: 'The rule of equality consists in nothing other than
 822 distributing shares unequally to the unequal according to the measure by which they are unequal.
 823 In this social inequality, proportioned to natural inequality, one finds the true law of equality.'
 824 See Vlastos (1984) for a study of the Greek foundations of this concept of differentiated justice.
- 825 3. Until 1985, every Brazilian constitution since the founding of the Republic stipulated that
 826 illiterate citizens could not register to vote and that only registered electors could vote. Article
 827 295 of the Code of Penal Procedure in effect from 1916 to 2009 maintains the right of Brazilians
 828 who have completed a university degree of any kind to an individual (and typically better-
 829 appointed) jail cell if arrested. An expert in the Brazilian prison system I consulted thought that
 830 the date of the original statute giving this article its current form was around 1970. Although I
 831 verified later that this was not the case, the expert added that 'before then, the right was
 832 customary as there was simply no need to state the obvious.'
- 833 4. Brazilian society was and remains racist but not, as in the USA, in terms of formal national
 citizenship. For more on race and citizenship, see my 2008 book.
5. Furthermore, the equalities of citizenship always produce new inequalities as well as the means
 to contest them. Thus, the equal rights of citizens to associate generate organizations of unequal

- 834 capacities and powers. As citizens advance their interests, these groups are set against each other
 835 in the arena of citizenship. In this way, citizen equality becomes the foundation on which new
 836 inequality is built. This contradiction is not ‘the “paradox of democracy” we need to solve now,’
 837 as Young claims, because it is internal and normal to the dynamic of democratic citizenship. It
 838 is, moreover, also the means by which new inequalities may be challenged by new citizen
 839 organization. Of course, there are no guarantees, and an unorganized citizenry is easily
 840 dominated. But democratic citizenship is always a risk in this regard.
- 840 6. See, for example Kettner (1978), Shklar (1991), and Smith (1997) for studies of American
 841 citizenship that focus on conflicts over the regulation of social differences and equalities.
 - 842 7. I cannot discuss here the fundamental issues of illegality in the housing and settlement of Brazil
 843 generally (by both rich and poor) or of violent cycles of illegal land occupations and evictions in
 844 cities that mobilized residents to form new kinds of citizen associations. I must refer the reader
 845 to my 2008 book.

846 References

- 847 Anjaria, J.S., 2009. Guardians of the bourgeois city: citizenship, public space, and middle-class
 848 activism in Mumbai. *City and community*, 8 (4), 391–406.
- 849 Arendt, H., 1968. *The origins of totalitarianism*. Orlando, FL: Harcourt.
- 850 Aristotle, 1962. *Nicomachean ethics*. Trans. M. Ostwald. Indianapolis: Bobbs-Merrill Company.
- 851 Barbosa, R., 1999 [1921]. *Oração aos moços*. Vol. Edição popular anotada por Adriano da Gama
 852 Kury. 5th ed. Rio de Janeiro: Fundação Casa de Rui Barbosa.
- 852 Bhan, G., 2009. ‘This is no longer the city I once knew’: evictions, the urban poor, and the right to the
 853 city in millennial Delhi. *Environment and urbanization*, 21 (1), 127–142.
- 854 Castells, M., 1972. *La question urbaine*. Paris: Maspero.
- 855 Castells, M., 1983. *The city and the grassroots*. Berkeley: University of California Press.
- 856 Dagnino, E., 1998. Culture, citizenship, and democracy: changing discourses and practices of the
 857 Latin American left. In: S.E. Alvarez, E. Dagnino, and A. Escobar, eds. *Cultures of politics,
 858 politics of cultures: re-visioning Latin American social movements*. Boulder, CO: Westview
 859 Press, 33–63.
- 859 Foucault, M., 1980. *Power/knowledge: selected interviews and other writings, 1972–1977*.
 860 Q5 Ed. C. Gordon. Brighton: Harvester Press.
- 861 Harvey, D., 1973. *Social justice and the city*. Baltimore, MD: Johns Hopkins University Press.
- 862 Hohfeld, W.N., 1978. *Fundamental legal conceptions as applied in judicial reasoning*. Ed. Walter
 863 Q5 Wheeler Cook. Westport: Greenwood Press.
- 863 Holston, J., 2008. *Insurgent citizenship: disjunctions of democracy and modernity in Brazil*.
 864 Q6 Q7 Princeton, NJ: Princeton University Press.
- 865 Kettner, J.H., 1978. *The development of American citizenship, 1608–1870*. Chapel Hill, NC:
 866 University of North Carolina Press.
- 866 Q6 Kymlicka, W., 1995. *Multicultural citizenship*. Oxford: Oxford University Press.
- 867 Lefebvre, H., 1968. *Le droit à la ville*. Paris: Anthropos.
- 868 Minow, M., 1990. *Making all the difference: inclusion, exclusion and American law*. Ithaca, NY:
 869 Cornell University Press.
- 870 Mukhija, V., 2003. *Squatters as developers: slum redevelopment in Mumbai*. Aldershot and
 871 Burlington: Ashgate.
- 871 Q6 Pateman, C., 1989. *The disorder of women*. Stanford, CA: Stanford University Press.
- 872 Shklar, J.N., 1991. *American citizenship: the quest for inclusion*. Cambridge: Harvard University
 873 Press.
- 874 Silva, J.A. da, 1992. *Curso de direito constitucional positivo*. 9th ed. São Paulo: Malheiros Editores.
- 875 Smith, R.M., 1997. *Civic ideals: conflicting visions of citizenship in U.S. history*. New Haven: Yale
 876 University Press.
- 876 Taylor, C., 1992. The politics of recognition. In: C. Taylor and A. Gutmann, eds. *Multiculturalism
 877 Q6 and the politics of recognition*. Princeton, NJ: Princeton University Press, 25–73.
- 878 Vlastos, G., 1984. Justice and equality. In: J. Waldron, ed. *Theories of rights*. Oxford: Oxford
 879 Q6 University Press, 41–76.
- 880 Young, I.M., 1989. Polity and group difference: a critique of the ideal of universal citizenship.
 881 *Ethics*, 99 (2), 250–274.
- 882