CONSTITUTIONALIZING THE PROPERTY AND CITY SOCIAL FUNCTIONS IN BRAZIL: INTERNATIONAL AND NATIONAL PILLARS AND INFLUENCES[1]

Constitucionalização das funções sociais da propriedade e da cidade no Brasil: pilares e influências internacionais e nacionais

Felipe Jardim
State University of Rio de Janeiro (UERJ) and Friedrich-Schiller Universität Jena (FSU – Germany)
Lattes: http://lattes.cnpq.br/5339482051252227 ORCID: https://orcid.org/0000-0001-7364-3662
E-mail: felipejardim@outlook.com

Danielle de Melo Rocha
Department of Architecture and Urbanism at the Federal University of Pernambuco (DAU/UFPE) and the Postgraduate Program in Urban Development at UFPE (PPGDU/UFPE). Brazil.
Lattes: http://lattes.cnpq.br/5339482051252227 ORCID: https://orcid.org/0000-0002-7323-0187
E-mail: danielle.melorocha@ufpe.br

Maria Angela de Almeida Souza
Postgraduate Program in Urban Development at Federal University of Pernambuco (PPGDU/UFPE). Brazil.
Lattes: http://lattes.cnpq.br/8276915082480930 ORCID: https://orcid.org/0000-0002-8808-1479
E-mail: souza.mariaangela@gmail.com

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ABSTRACT

The study investigates international and national influences and pillars shaping the social functions of property and city constitutionalizing process in Brazil. Using qualitative research with an inductive approach, based on bibliographic and documentary research, the paper traces the global evolution of these concepts. After the Introduction (Section 1), Section 2 highlights the historical progression from Aristotle's emphasis on collective interests to John Locke's defense of property as a natural right, culminating in the 20th-century recognition of property as a social responsibility, notably marked by Léon Duguit. This global evolution influenced constitutional and legal frameworks, leading to the acknowledgment of property's broader societal role. Section 3 focuses on Brazil, reviewing relevant land systems, the institutionalization of urban reform movements, the dispute for constitutional amendments, and the 1988 Brazilian constitutionalizing process of property and city social functions. Section 4 concludes that the concept's development is intertwined with cultural, religious, intellectual, historical, and legal factors. Understanding this complexity is crucial for leveraging the role of Law in promoting urban resilience against inequalities.

Keywords: Brazil; City; Constitution; Property; Social functions.

RESUMO

Este artigo investiga as influências internacionais e os pilares nacionais que moldam o processo de constitucionalização das funções sociais da propriedade e da cidade no Brasil. Utilizando pesquisa qualitativa com abordagem indutiva, baseada em pesquisa bibliográfica e documental, o artigo examina a evolução global desses conceitos. Depois da Introdução (Seção 1), a Seção 2 destaca a progressão histórica desde a ênfase de Aristóteles em interesses coletivos até a defesa de John Locke da propriedade como um direito natural, culminando no reconhecimento, no século XX, da propriedade como uma responsabilidade social, marcada especialmente por Léon Duguit. Essa evolução global influenciou quadros constitucionais e legais, levando ao reconhecimento do papel mais amplo da propriedade na sociedade. A Seção 3 foca no Brasil, revisando sistemas de terra relevantes, a institucionalização de movimentos de reforma urbana, a disputa por emendas constitucionais e o processo brasileiro de constitucionalização de propriedade e funções sociais da cidade em 1988. A Seção 4 conclui que o desenvolvimento do conceito está entrelaçado com fatores culturais, religiosos, intelectuais, históricos e legais. Compreender essa complexidade é crucial para alavancar o papel do Direito na promoção da resiliência urbana contra desigualdades.

Palavras-chave: Brasil; Cidade; Constituição; Funções sociais; Propriedade.

1. INTRODUCTION

The social multiple role of property encompasses the responsibility of property public or private owners to employ their assets for societal objectives, striving to strike a harmonious equilibrium between individual property rights and communal rights. This adherence to legal frameworks has both direct and indirect ramifications on the societal functions within the city, such as housing, leisure, or mobility. These notions are deeply rooted in historical contexts dating back to Ancient Greece and evolving through various philosophical, legal, and socio-political frameworks, and have consistently undergone transformations.

Given that, what are the international influences and national pillars of the constitutionalizing process of property and city social functions in Brazil? In view of that, this paper seeks to explore the global and domestic influences and foundations shaping the constitutionalizing process of property and city social functions in Brazil. For that, this qualitative research with an inductive approach was based on bibliographic and documental research (books, academic papers, laws, Brazilian Federal Constitutions, conference proceedings, reports).

After this Introduction (Section 1), the study is organized in two parts. Section 2 identifies that from Aristotle's emphasis on collective interests to John Locke's defense of property as a natural right. The shift towards recognizing the social function of property gained prominence in the 20th century, notably marked by Léon Duguit's assertion that property is not merely a right but a social responsibility. This evolution continued globally, influencing constitutional and legal frameworks in various nations and international declarations, ultimately leading to the recognition of property as having a broader societal role, such as in Mexico, Germany, and Italy. Moving forward to the specific case of Brazil, Section 3 briefly reviews relevant land systems since colonization and presents the institutionalization of urban reform movement, the dispute for the constitutional amendment, and the 1988 constitutionalizing process of property and city social functions.

Considering the above, it is possible to conclude in Section 4 that social functions of property and city's concept has been developed by cultural, religious, intellectual, historical, and – naturally – legal frames. This is relevant to understand the role of Law to promote urban resilience by transformative measures against urban inequalities, such as private or public vacant land while happens the violation of human rights and collective interests, including housing or soil to grow food.

2. THE SOCIALIZATION OF THE FUNCTION OF PRIVATE PROPERTY: INTERNATIONAL PRECEDENTS

The right to property is a long-standing institution, with records of recognition of private property dating back to Ancient Greece. During this period, Aristotle argued that private property should serve collective interests through education and laws punishing behaviours contrary to justice and the common good (MOTA, 2009, p. 16).

In ancient Roman law, a delineation of the right to property occurred, influencing Western law, with a minimum content: the absolute right to use, enjoy, dispose, and claim the property, where the outward display of ownership strongly indicated its existence (RODRIGUES, 2011, p. 90). Consequently, the owner could link the property to their own interests exclusively, regardless of social or collective demands. Similarly, restrictions on private interests (due to neighbourly rights) and public interests (such as access to roads and water sources) existed in ancient Roman law, as seen in the Twelve Tables (items VI and VII) and the Lex Julia, for instance (MALUF, 2010, p. 20).

In the Middle Ages, there was a shift in property paradigms established in Roman law. There was a subordination of lands corresponding to the status of individuals: (i) noble property was the fief, land granted to a vassal by a great lord; (ii) peasant possessions consisted of concessions or assignments of land made by lords to non-nobles; (iii) serf lands were granted to serfs by lords (*ibid*., p. 23).

During the Renaissance (14th to 17th centuries), advocates for the end of private property, such as Thomas More and Tommaso Campanella, emerged. In the Early Modern period (16th and 17th centuries), John Locke defended property, along with life and liberty, as a natural right inherent to every person from birth and inalienable, to be preserved by governments.

The 18th century Enlightenment intellectual and philosophical movement introduced ideals of equality and freedom among all human beings, giving rise to fundamental rights, "associated with the idea of a founding right, a right that stands above any law and, therefore, constitutes an irrevocable norm by any other legal provision in force in the system" (2008, p. 49).

In the Contemporary Age, the 1789 Declaration of the Rights of Man and of the Citizen reinforced the absolute and exclusivist nature of property in Roman law, incorporating it into fundamental rights. This led to a significant flexibility in property rights, with a new model of means for its loss based on interests beyond individual ones and the fundamental requirement of public necessity, playing a significant role in recognizing rights beyond individual ones and giving rise to the institution of expropriation (with notable differences from expropriation, as it involves compensation) for public necessity and utility. However, the principles of the Declaration were formal and general, not always reflected the reality (FORNEROLLI, 2014, p. 60).

In 1804, the Napoleonic Code came into effect, a significant element of Roman and French inspiration that influenced law beyond its own jurisdiction (France), reaching even Brazilian law. With this legal document, property rights were categorized as a branch of law (civil) and the main real rights were enumerated: usufruct, use, surface, servitude, and emphyteusis. It's worth noting that, according to Eugênio Facchini (2013, p. 71), this Code abandoned medieval concepts of divided and encumbered property, returning to the Roman conception of undivided and tendentially absolute property. Regarding property transfer, however, it departed from the Roman model, adopting the Germanic concept that domain transfer occurs consensually, through the contract itself.

The Napoleonic Code influenced property law in the West by adhering to and propagating the principles of the French Revolution (1789), in which the liberal bourgeoisie, aiming to destroy the old privileges of the clergy and nobility, emerged victorious. It eliminated frequent exemptions and other tax benefits given by kings to feudal lords (SOUZA, 2004, p. 39). Regarding property, there was an "obsessive pursuit of protection of individual property" (*ibid*., 2004), which became accessible to anyone and treated equally. It was considered a sacred right because of the liberation of French lands from the old feudal lords. With semantic evolution, the social function of property entered the legal realm, and the constitutional treatment of the social function of property was established, bringing attention to the issue from religious and city production-connected individuals.

While the foundation for studying the social functions of property was previously religious (St. Thomas Aquinas, among others) and philosophical (Montesquieu, Rousseau, and Locke, for example), Auguste Comte's positivism in 1851 paved the way for the legal inauguration of the subject, led by the thoughts of **Léon Duguit**.

In "Les Transformations générales du Droit privé depuis le Code Napoléon," Duguit (1921) assumes that every individual has a role to play in society, a certain task to perform, regardless of their status (rich or poor, rulers or governed, etc.). This realistic and socialist conception advocates the transformation of previous legal documents, such as the Napoleonic Code and the Declaration of the Rights of Man and of the Citizen. The new legislations in Europe and America were undergoing a transformation, especially in the concept of freedom, evolving from the power to do anything, including nothing, to a movement of socialization, where individuals have no power to remain inactive and contribute nothing, leaving the legitimate power of intervention to the rulers. In this perspective, the justice of property rights exists in the limitation imposed by the social role it must fulfill (DUGUIT, 2009, p. 42). This influence is explicitly mentioned in the legal reality of Brazil in the Proceedings of the National Constituent Assembly of 1933/1934.

Moreover, regarding the **religious influence** in medieval Christian thought, Thomistic thinking stands out regarding the approach to property. St. Thomas Aquinas (1225-1274) drew on Greek philosophy, considering that human nature acts with a purpose, namely the good of others. Thus, the interest of the community becomes the higher end. According to Thomism, property is grounded in natural law, guiding virtuous acts, prohibiting vicious acts, allowing indifferent acts, and punishing acts contrary to the proper management and disposal of things, as private character does not eliminate common use (AQUINO, 2005, p. 158). In the same space, public and private, individual and common interests coexist, with social, cultural, and ideological connotations that make it unique and not to be treated as a commodity (COULANGES, 1987).

Centuries later, following the logic of the Catholic Church, it can be summarized that property was viewed with a social bias, as humans are considered in the image and likeness of God, deserving equal treatment in the exercise of natural rights.

In the papal encyclical "Rerum Novarum," Pope Leo XIII defended the thesis that "private and personal property is, for man, a natural right" (1891). In "Quadragesimo Anno," by Pius XI (1931), following previous semantics and Thomistic thoughts, in opposition to both capitalism and socialism, there was a reaffirmation of property as a natural right and the need for the State to moderate for the common good. In "Mater et Magistra" (1961), by Pope John XXIII, the socialization became a highlighted point of the time, with repeated mentions of property as an intrinsic part of a social function. In 1963, again by John XXIII, in the encyclical "Pacem in Terris," it was stated that the social function was inherent in private property, echoing "Mater et Magistra."

The Pastoral Constitution "Gaudium et Spes" (1965) from the Second Vatican Council defined property as having a "social nature, founded on the law of the common destination of goods." Focused on the development of peoples, "Populorum Progressio" (1967), also authored by Paul VI like "Gaudium et Spes," exposed the egalitarian nature of land, not solely belonging to the rich and not being an unconditional and absolute right. Quoting the Letter to the Social Week of Brest, in "L'homme et la révolution urbaine" (1965, p. 8-9), "the right to property should never be exercised to the detriment of the common good, according to the traditional doctrine of the Fathers of the Church and the great theologians." In case of conflict "between private and acquired rights and the primary community requirements," it is the responsibility of public authorities to "resolve it, with the active participation of individuals and social groups."

The Christian social doctrine, also known as social Catholicism, was reinforced in the II and III Conferences of the Latin American Episcopate in 1968 and 1979, respectively, convened by Paul VI and John Paul II due to concerns about the region's development. In these conferences, the Thomistic teachings and various encyclicals were revisited. In Brazil, in 1982, the National

Conference of Bishops of Brazil (CNBB) criticized the accumulation of urban land for the purpose of real estate profits in the document "Urban Soil and Pastoral Action" and proposed combating the idleness of urban land and conditioning urban property to its social function.

In 1991, Pope John Paul II's encyclical "Centesimus Annus," in article 31, declared the universal character of the land, without privileges for anyone. In summary, the social doctrine of the church did not see property as untouchable and absolute. It is seen as an important tool for a fair social-democratic policy when accessible to all equitably, and it is responsible for affirming that property has a role to play, "from which arises the duty of owners not to keep their possessions idle and to allocate them to productive activity, also entrusting them to those who have the desire and ability to make them produce" (FORNEROLLI, 2014, p. 72).

In addition to Duguit's position and religious influences, the **Athens Charters** are crucial pilar to understand the social functions of property and the city**.** The Athens Charter of 1933, a manifesto resulting from the analysis of thirty-three cities across four continents, was influenced by the modernist architect Charles-Edouard Jeanneret-Gris, also known as Le Corbusier. The Charter is associated with Rationalist Urbanism, which presupposes the "obligation of regional and intra-urban planning, the submission of private urban landownership to collective interests, industrialization of components, standardization of constructions, and concentrated building," all while being environmentally suitable (ABIKO, *et al.*, 1995, p. 43).

A significant contribution of the Charter was its analysis of the different functions that develop in the modern city, considering it as a unique whole: "Item 77. The city assumes essential functions such as housing, work, leisure, circulation, all aiming for quality of life. All these functions are primarily linked to the land use, thus giving urban property special prominence." (LE CORBUSIER, 1933). The document influenced Western architecture and urbanism, initially in the United States. In Brazil, from the 1950s onward, its influence was reflected in the works of Lucio Costa (Brasília's Pilot Plan) and Oscar Niemeyer, as well as in massive housing complexes on urban peripheries (BRANDÃO, 2014, p. 262).

Towards the end of the 20th century, the European Council of Town Planners in 1998 proposed a New Athens Charter, analyzing the contemporary city, its functions, and making propositions for the future. The document was revised in 2003 in Lisbon, Portugal, now titled "Constitutional Charter of Athens 2003 - The Vision of Cities for the 21st Century by the European Council of Urbanists." The New Athens Charter 2003 incorporates updated concepts of the city's functions in the contemporary context, such as inclusion, diversity, sustainability, competitive production, information and communication technology, accessibility, cultural and historical preservation,

among others. Considering this, Garcias and Bernardi (2008, p. 10) summarize the social functions of the city as (Table 01):

Table 01 - The social functions of the city

URBAN FUNCTIONS	CITIZENSHIP FUNCTIONS	MANAGEMENT FUNCTIONS
Housing	Education	Provision of Services
Work	Health	Planning
Leisure	Safety	Preservation of Cultural and Natural Heritage
Mobility	Protection	Urban Sustainability

Source: GARCIAS; BERNARDINI, 2008, p. 10.

This is a non-exhaustively list urbanistic functions as those presented by Le Corbusier in 1933, updating the concept of "circulation" to "mobility" and "cultivate the body and spirit" to "leisure." Citizenship functions encompass the social rights present in the Federal Constitution of the Republic of Brazil of 1988 (Art. 6, among others), without excluding those mentioned in urbanistic functions. Finally, public management functions represent basic practices that should be noted by the government with social participation.

The **social constitutionalism** has also a key role to develop the social functions of property and the city. As part of the process of shaping the Social State, the initiation of a new phase of constitutionalizing the use of property for the common good took place in Mexico in 1917 and in Germany in 1919. Similar developments occurred later in other countries such as Italy (1948), Spain (1978), and Chile (1981).

The Mexican Constitution of 1917 emerged after a revolutionary framework, motivated by social and economic injustices that underpinned the country's economic growth and dictatorial political stability. This revolutionary context facilitated the constitutional protection of a significant political and legal transformation, including social rights, exemplified in constitutional articles 25 and 27 (BONAVIDES, 2017, p. 63). The 1917 Constitution goes beyond the social function of property by encompassing the "socialization of property" itself. This implies intervention in favor of "public and social interest," even allowing the specification of eminent domain and useful domain, while diminishing the exclusivity attribute of property rights in relation to the State (JELINEK, 2006, p.14).

Amidst the chaotic aftermath of World War I (1914-1918), the Weimar Constitution of 1919 marked the beginning of the republic in Germany, influencing the constitutions enacted in Europe

between the two World Wars from 1914 to 1939. Article 14 of the Weimar Constitution explicitly outlines the social function of property.

This social dimensions of the property's functions were further developed in the Constitution of the Italian Republic in 1948. This constitution not only transferred property from a right of personality to economic provisions but also delegated the regulation of property rights to legislation.

In 1948, contributing to the functional thinking of property, a new Universal Declaration of Human Rights was promulgated. It expressly mentioned the collective nature of property in Article 17, stating that "everyone has the right to own property, individually and collectively" and that "no one shall be arbitrarily deprived of their property." However, **the mere constitutional expression of the social functions of property, without accompanying legislative and legal mechanisms that guide such social exercise, including elaborations, specifics, and penalties, renders the principle hollow and reflects a flaw in the system** (COMPARATO, 1986, p. 81-82).

Given the **last decades developments** in the social functions of the city and property, in the 2000s, there was an assessment of the social functions of the city through the European Charter of the Safeguarding of Human Rights in the City (2000), focusing on the right to the city and sustainable, healthy urban planning. Later, the Global Charter for the Right to the City (2006) was launched featuring significant insights into the social function of the city and urban property. The charter advocates, in section 2.4, for the prevalence of collective social and cultural interests over individual property rights and speculative interests. It also emphasizes socially fair and environmentally balanced use of urban space and land, ensuring safety and gender equity. This is based on the belief that everyone has the right to participate in urban property within democratic, socially just, and environmentally sustainable parameters.

Moreover, the charter stands out for proposing a social function of the city (section 2.1), ensuring inhabitants the full enjoyment of resources offered by the city. This results in the obligation to undertake projects and investments for the benefit of the entire urban community, adhering to principles of distributive equity, economic complementarity, cultural respect, and ecological sustainability to ensure collective well-being in harmony with nature for present and future generations. Additionally, the document addresses the enactment of appropriate legislation and the establishment of "mechanisms and sanctions aimed at ensuring the full use of urban land and public and private properties that are undeveloped, unused, underutilized, or unoccupied" (section 2.3).

Finally, the charter deserves attention for addressing the inhibition of social surplus value. It aligns with the Vancouver Declaration (1976), originating from the United Nations Habitat I Conference, which recognizes land as an essential element in urban (and rural) development. It advocates for public control over the use and possession of land due to limited supply, through

appropriate legislative measures. In this context, the increase in land value resulting from public decisions and investments should benefit society as a whole. In other words, it opposes social surplus value and advocates the primacy of public interest.

At the United Nations Conference on Environment and Development (ECO-1992), the "Treaty for Fair, Democratic, and Sustainable Cities" was drafted. At the Habitat II Conference in Istanbul (1996), the right to adequate housing was established as a human right. The Declaration of Quito - New Urban Agenda (Habitat III) (2016) promoted sustainable development related to the social function of property. This declaration also outlined commitments to the social function, encouraging the local use of basic infrastructure for goods and services - aligning with the Brundtland Report published by the World Commission on Sustainable Development in London, 1987. The report, in Chapter 10:4 (Housing and services for the poor), mentioned support for new housing in both new and existing areas with infrastructure and services.

3. THE SOCIAL FUNCTIONS OF PROPERTY AND CITY IN BRAZIL

The social functions involve the owner's duty to use the property to serve social purposes, seeking a balance between individual property rights and social rights, as governed by law and with a direct and indirect impact on the social functions of the city (FORNEROLLI, 2014, p. 160-162). As in the international sphere, social functions in Brazil have undergone several transformations. This process is detailed in the following subsections.

3.1. FROM COLONIZATION TO PRE-CONSTITUTION OF 1988 CONTEXT

During colonization, the communal and subsistence perspective on indigenous land in Brazil shifted to the "sesmarias" system (1534-1822), based on the Portuguese concept of "communalia." This involved the division of medieval communal lands into "sesmos," distributed by the Portuguese Crown for colonization within a set timeframe. Failure to comply led to the land's reassignment to another interested person (DINIZ, 2005).

To sustain Portuguese power in Brazil while addressing financial and personnel constraints without burdening the Crown, Dom João III instituted the hereditary captaincy administrative system. Under this model, extensive land remained Portuguese property, and the donatory, appointed by the Crown, had immediate usufruct. Donataries had specified rights and duties, such as creating villages, distributing land, acting as administrative and judicial authorities, and enslaving indigenous people, all funded independently. Despite being allocated 20% of their captaincy,

donataries were obligated to distribute the remaining 80% as "sesmarias," initially to Christians, relinquishing their rights. This "sesmaria" system, intended for cultivation by "sesmeiros," often resulted in illegal land leasing to farmers and the emergence of squatters. This posed challenges in controlling obligations and bypassing demarcations. To address this issue, the Alvará of 1795 was enacted, aiming to maintain Crown authority in granting vacant lands. However, it was suspended a year later, underscoring the historical conflict over Brazilian territory (*ibid*., 2005).

With Brazil's independence in 1822, the legal concession of "sesmarias" (and their respective obligations) was suspended, favoring squatters. The Imperial Charter of 1824, Brazil's first constitution after independence, in its Article 179, XXII, guaranteed "the right to property in its fullness," except in cases of expropriation. It did not address issues inherited from "sesmarias" and vacant lands. This stance continued in the 1891 Republican Constitution, Article 72, item XVII. During this period, the Land Law of 1850 (Law No. 601, September 18, 1850) played a crucial regulatory role in private property, especially rural property.

The 1916 Civil Code followed a similar framework, ensuring the owner's right to use, enjoy, and dispose of their property. It emphasized registration as the element constituting property rights in Brazil, aligning with liberal concepts.

The 1934 Constitution, in Article 113, item XVII, brought innovations by stating that the right to property "cannot be exercised against social or collective interest, as determined by law." It allowed expropriation for public necessity or utility, with prior and just compensation. It also separated the property rights of the surface from the subsoil (Articles 118 and 119). While there was no explicit mention of the "social function of property," influences from the Mexican (1917) and German (1919) constitutions, subordinating property to social and collective interests, were evident. However, in practice, there was no effectiveness as the regulation was never enacted by complementary law.

Subsequently, the 1937 Brazilian Constitution, Article 122, item XIV, reaffirmed the right to property, but unlike previous charters, it did not explicitly mention or repeat the subordination of property to social and collective interests, passing the duty of regulation to ordinary legislation. To regulate Article 180 of the 1937 Constitution, Decree-Law No. 25, dated November 30, 1937, organized the protection of the national historical and artistic heritage, including the institution of "Tombamento" as a relevant mechanism.

In the 1946 Constitution, Article 141, §16, added social interest to the existing justifications for expropriation: necessity and public utility. Similarly, Article 147 stated that "property use shall be conditioned on social well-being." This implicitly reintroduced the social function into Brazilian legal framework, recognizing the supraindividual nature of property. At the infraconstitutional

level, Law No. 4,132/1962 defined cases of expropriation for social interest and the procedure for its application. The Land Statute, Law No. 4,504/1964, reinforced the social function attributed to property in Brazil.

The 1967 Constitution, Article 150, §22, promulgated during the military dictatorship, maintained individual property rights and the same requisites for requisition and expropriation as the 1946 Constitution, now explicitly defining the social function of property as a principle of economic order (Article 157, item III). This was seen as a "factor of legal security and, consequently, social stability," equating the social character of state and collective property. It aligned with the Fundamental Law of the Federal Republic of Germany (1949) and the Constitution of Italy (1948).

3.2. THE URBAN REFORM MOVEMENT, CONSTITUTIONAL AMENDMENT AND THE 1988 BRAZILIAN FEDERAL CONSTITUTION

Following significant events such as the abolition of slavery (1888), the economic crisis (1929), internal migration, and the arrival of war refugees, the concentration in Brazilian urban centres increased progressively, reaching its peak between the late 1950s and the 1970s. Aligned with the international division of labor and geopolitical globalization, the industrialization process in Brazil, starting in the 20th century, turned cities into hubs for production and technological development. This transformation accelerated migration from rural areas to major urban centers, especially between 1940 and 1991, when Brazil's urban landscape grew from 31.2% to 75% of the total national population (SAULE JUNIOR; UZZO, 2012, p. 259).

During this "developmentalist" period, significant investments were made in basic infrastructure such as energy, communication, and transportation, fuelling rural exodus. This influx brought to urban centres the historical development model centred on large estates and the concentration of political and economic structures in the hands of local and regional elites. However, the rapid urbanization was not effectively managed by municipalities lacking financial, human, and legal resources to control the situation. These municipalities also faced pressure from private real estate interests influencing investment directions. As a result, there was a surplus of land, deprivation of citizenship, particularly evident in slums, tenements, and peripheral settlements lacking access to essential urban services like housing, sanitation, sewage treatment, public transportation, and social infrastructure (health, education, and recreation). Many of these settlements occupied environmentally vulnerable areas. The subsequent decades saw an explosion of violence, with inequality becoming the hallmark of most cities (*ibid.*, 2012).

Within this scenario, since the 1950s, Brazilian urban legislation has seen significant involvement from the Brazilian Institute of Architects (IAB). In the 1970s, the legislative debate on urban planning gained support from renowned jurists such as Geraldo Ataliba, Fábio Fannuci, and Hely Lopes Meirelles, as well as entities like the Brazilian Institute of Municipal Administration (IBAM). This collaboration aimed to implement legal mechanisms to combat social surplus value through the extrafiscality of Property Tax (FLOETER, 2007, p. 97).

In 1976, the National Urban Development Council proposed a draft urban development law to empower local authorities to organize the improvement of quality of life in cities. The legislation aimed to address issues like incompatible land use, unbalanced urban growth, the execution of the social function of urban property, and property appreciation resulting from public investments. The proposed law included various directives (art. 2), such as:

> - Adequacy of urban property to its social function, ensuring access to urban property and housing, fair distribution of benefits and burdens arising from urbanization, and correction of distortions in the appreciation of urban property.
> - Control of land use to prevent inappropriate use, proximity of incompatible or inconvenient uses, and urban land idleness.
> - Adequacy of public investments to urban development goals, especially regarding the road system, transportation, housing, and sanitation.
> - Adequacy of fiscal and financial policies to urban development goals.
> - Recovery of public investments leading to the appreciation of urban real estate.
> - Protection, preservation, and recovery of historical, artistic, archaeological, and landscape heritage.

The proposed law also outlined instruments for urban development to fulfill these objectives, including Urban and Territorial Property Tax (IPTU), progressive and regressive, and Compulsory Land Division, Construction, and Use (PEUC). However, the draft bill (No. 775/1983) was never voted on by the National Congress and was officially withdrawn in 1995.

With the democratization process, associations of residents were reorganized in the South, Southeast, and parts of the Northeast of Brazil. In 1985, a national association, the National Urban Reform Movement (MNRU), was established. It aimed to propose urban reform legislation to regulate the constitutional chapter on "Urban Policy" during the 1987-1988 National Constituent Assembly. The MNRU worked through the National Forum for Urban Reform, which operated from 1987 onwards, involving grassroots movements, residents' associations, non-governmental organizations, and unions.

Based on the pillars of democratizing city management through citizen participation, the diverse composition and practical experience allowed the formulation of urban reform as a new social ethic. It condemned the city as a source of profit for a few at the expense of the poverty of many, challenging traditional political and urban planning practices (JUNIOR; UZZO, 2012, p. 260-261). In this sense, the Urban Reform aimed to transform the excluding reality of Brazilian cities by guaranteeing the right to the city. This involves democratic and participatory city management, the fulfillment of the city's social function, and ensuring social justice and dignified conditions for all city inhabitants. It also involves subordinating property to its social function (LEFEBVRE, 1968; HARVEY, 2013).

The proposed constitutional amendment received 200,000 signatures and aimed to integrate the social function of property into public law, surpassing its traditional confinement to civil law. The changes included the separation of property rights and the right to build, with the latter having the nature of a public concession. It also affirmed and established municipal autonomy and expanded democratic city management through plebiscites, referendums, popular initiatives, public consultations, councils, conferences, forums, public hearings, and participation in the elaboration of the Master Plan (JUNIOR; UZZO, 2012, p. 268).

In **1988**, the current Constitution inaugurated the Democratic Rule of Law, with a focus on the dignity of the human person (Art. 1, III). Among its fundamental objectives is the construction of a free, just, and solidarity-based society (Art. 3, I), the eradication of poverty and marginalization (Art. 3, III), and the promotion of well-being for all without prejudice (Art. 3, IV). Property rights are guaranteed (Art. 5, XXII), accompanied by the duty to fulfil its **social function** (Art. 5, XXIII).

More than that, as an influence by the National Urban Reform Movement, the 1988 Constitution introduced an exclusive chapter on "Urban Policy" (Art. 182 and 183) under the title "Economic and Financial Order." It also innovatively categorized different demarcations for urban (Art. 182 and following) and rural property (Art. 184 and onwards). The Constitution prescribes criteria for meeting the social function of property in Article 186, conditioning individual property to non-individual interests. The Constitution emphasizes that urban property fulfills its social function when aligned with the Municipal Master Plan (Art. 182, § 2). If the property owner fails to give a social destination to their property, the Constitution mandates the application of Article 182, §4, which allows for the expropriation of undeveloped, underutilized, or unused urban property if it doesn't comply with the Municipal Master Plan. Thus, constitutional sanctions do not depend on the discretion of administrators; the state has a duty to enforce them (SANTOS; OLIVEIRA, 2016, p. 123).

Consequently, property rights have both active and passive dimensions, with purposes, rights, duties, obligations, and burdens. It imposes on the owner, or whoever controls the property, the duty to exercise it for the benefit of others and not merely refrain from using it to the detriment of others (GRAU, 2001, p. 275). Notably, the social function of property holds the same importance as free competition (Art. 170, III and IV). Despite the constitutional definition of the state as a normative and regulatory agent in economic activity, exercising functions of supervision, incentive, and planning (Art. 174), it is determinative for the public sector and indicative for the private sector.

Given the above, most Brazilian legal scholars converge in interpreting the social functions of property not just as a limitation on property rights but as an integral part of it. In essence, the social functions are considered more than restricting elements, they are a fundamental requirement.

In this context, various properties exist within society (public and private). While public properties are geared towards social interests, both individual and collective interests coexist in private properties, serving the owner and society, respectively. These interests are internally limited by each other, requiring a balance for the fulfillment of the social functions of property. Additionally, they face external limitations imposed by laws and public authorities (Federal Constitution, Master Plan, Civil Code, City Statute, Tax Code, expropriation, obligation to parcel, build, and use, property tax collection, etc.), all related to fulfilling the social functions. Furthermore, they are subject to external limitations from other properties (neighbourhood rights, respect for the individual rights of other property owners, etc.).

Therefore, each private property has guaranteed rights, such as the right to use, enjoy, dispose, and reclaim, while also carrying duties when exercising these rights. These duties include balanced use for the benefit of society, contributing to housing, employment, income generation, culture, art, historical preservation, recreation, social assistance, and more. On the contrary, when there is a supremacy or totality of individual interests and rights, as is the case with the abandonment of a property for private capture of social surplus value, it leads to an imbalance of interests and, consequently, a failure to fulfill the social functions. This justifies public intervention in property rights to restore the ideal system linked to the State's duty of territorial planning and organization of the city.

Indeed, the State encompasses the territory as its material element, with the government serving as the formal element to execute, legislate, and adjudicate social well-being for the population. In the context of a Democratic and Social Rule of Law, the State plays a more interventionist role in society than in a Liberal State. This includes the role of organizing the territory, specifying permitted and prohibited uses, and ensuring compatible and sustainable occupations when allowed.

This intervention aims to efficiently realize fundamental social rights and, consequently, mitigate negative aspects of urban issues (SILVA, 2012, p. 40-41).

In the legislative domain, according to Norberto Bobbio's Legal Norm Theory (2001), a primary norm stipulates a right, empowering the State to establish punitive administrative and/or preventive, repressive, and didactic legal sanctions for the violation of this right. Additionally, the State can impose compensatory, assurance, and incentivizing sanctions for behaviors that preserve the primary norm. However, due to constitutional provisions and principles (subsidiarity, where public policy should be developed and implemented by the entity closest to the population directly involved; where damages are felt, and decisions are made), the concrete task falls more explicitly on the municipal administrative sphere.[2] Thus, municipalities are responsible for determining uses related to fulfilling the social or environmental function in a given space, considering the specificities of the ordered territory. They are also designated as competent entities to use the extrafiscal nature of the property tax (IPTU) and apply fiscal benefits from municipal taxes. Other approaches are using the collection of vacant land (2002 Civil Code) (JARDIM et al., 2020) and the Urban Land Regularization (REURB) (Law Nº 13,465/2017). They aim to correct distortions, exclusions, and inequalities to achieve ideal social justice, related to social stability, collective well-being, and, in urban planning matters, access to services and the equal distribution of the burdens and benefits of urbanization (SILVA, 2012, p. 41) following the City Statute (Law Nº 10,257/2001).

4. CONCLUSIONS

This paper explored the global and domestic foundations and influences shaping the constitutionalizing process of property and city social functions in Brazil. The research revealed that these concept have been developed by cultural, religious, intellectual, historical, and legal frames.

On the international level, it is important to mention the León Duguit’s concept of social functions, the religious influences such as the ones expressed by the Pope's encyclicals), the urbanism and international organizations charters and reports (Athens Charters, United Nations

[2] In the Brazilian state, the 1988 Federal Constitution establishes a federal form of government, a perpetual and indissoluble union of States, Municipalities, and the Federal District (Article 1). These entities are autonomous but not sovereign (sovereignty is reserved for the Federation as a whole). Within their respective territories, these entities govern for the benefit of the population, ensuring fundamental rights and duties. These rights, classified by Paulo Bonavides (2008, p. 562-593), include civil and political rights (first generation), social, economic, and cultural rights (second generation), universal rights such as development and the environment (third generation), rights to democracy, information, and pluralism (fourth generation), and the right to peace (fifth generation).

Habitat conferences, Right to the City related charters), and social constitutionalism (Mexico, Germany, Italy, Chile).

Regarding the national scenario, there is a highlight to the National Urban Reform Movement as case of democratic and participatory citizenship and right to the city in Brazil. Following the 1988 constitutional sense of social functions there is a comprehensive legal framework for urban development. This represents a progressive legal landscape (City Statute, Civil Code, Urban Land Regularization).

Nonetheless, continued efforts (including by research) are needed because the advancement of neoliberalism and the strategic planning model for cities that prioritizes the city as a commodity and partnerships between the state and the private sector in land value appreciation. Consequently, various urban planning instruments introduced by the legal system to operationalize the social functions of property and the city are not yet being effectively implemented to minimize socio-spatial inequalities (ROCHA; DINIZ; JARDIM, 2022).

Given the above, the social functions require not only social pressure and participation, but also investigating and exposing the role of Law because it is a crucial approach to correct distortions, exclusions, and inequalities to achieve in the Brazilian cities the ideal social justice, collective well-being and sustainable development.

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Sobre o autor:

Felipe Jardim
Bachelor of Laws at the Catholic University of Pernambuco (Unicap, 2015); Master in Urban Development (PPGDU, UFPE, 2018); Doctor in Law at the State University of Rio de Janeiro (UERJ, 2024) and in Sociology at the Friedrich-Schiller Universität Jena (FSU – Germany, 2024); researcher at Observatório PE/Núcleo Recife (Observatório das Metrópoles) and at the Interdisciplinary Community of Action, Research and Learning (CIAPA/UFPE).
State University of Rio de Janeiro (UERJ) and Friedrich-Schiller Universität Jena (FSU – Germany)
Lattes: http://lattes.cnpq.br/5339482051252227 ORCID: https://orcid.org/0000-0001-7364-3662
E-mail: felipejardim@outlook.com

Danielle de Melo Rocha
Architect-urban planner (UFPE, 1990), with specialization in Cartography Applied to Geoprocessing (UFPE, 1994); master in Geography (UFPE, 2000); Doctor in Geography, Planning and Urbanism (Université Paris 3, Sorbonne Nouvelle, 2010); professor at the Department of Architecture and Urbanism (DAUUFPE) and the Postgraduate Program in Urban Development (PPG-MDU/UFPE); researcher at the Observatório PE/Núcleo Recife (Observatório das Metrópoles); coordinator of the Interdisciplinary Community of Action, Research and Learning (CIAPA/UFPE). Representative of UFPE in the participatory bodies of Recife, Concidade and the PREZEIS Forum.
Department of Architecture and Urbanism at the Federal University of Pernambuco (DAU/UFPE) and the Postgraduate Program in Urban Development at UFPE (PPGDU/UFPE). Brazil.
Lattes: http://lattes.cnpq.br/5339482051252227 ORCID: https://orcid.org/0000-0002-7323-0187
E-mail: danielle.melorocha@ufpe.br

Maria Angela de Almeida Souza
Architect-urban planner (UFPE, 1970); master in Urban Development (PPGDU, 1991); Doctor in History (UFPE, 2002); retired professor and permanent professor of the Postgraduate Program in Urban Development at UFPE (PPGDU); researcher of the Observatório PE/Núcleo Recife (Observatório das Metrópoles).
Postgraduate Program in Urban Development at Federal University of Pernambuco (PPGDU/UFPE). Brazil.
Lattes: http://lattes.cnpq.br/8276915082480930 ORCID: https://orcid.org/0000-0002-8808-1479
E-mail: souza.mariaangela@gmail.com