



## O DIREITO À CIDADE EM XEQUE: AS REINTEGRAÇÕES DE POSSE DURANTE A PANDEMIA DE COVID-19

*The Right to the City in Check: The Repossessions During the Covid-19 Pandemic*

### **Juan Arturo Castañeda Ayarza**

Pontifícia Universidade Católica de Campinas, Campinas, SP, Brasil

Lattes: <http://lattes.cnpq.br/2451877011069845> ORCID: <https://orcid.org/0000-0002-4023-2223>

E-mail: [juan.arturo@puc-campinas.edu.br](mailto:juan.arturo@puc-campinas.edu.br)

### **Davi de Pinho Spilleir**

Pontifícia Universidade Católica de Campinas, Campinas, SP, Brasil

Lattes: <http://lattes.cnpq.br/3127311912548168> ORCID: <https://orcid.org/0000-0003-2582-0489>

E-mail: [d\\_spilleir@hotmail.com](mailto:d_spilleir@hotmail.com)

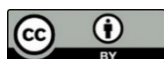
### **Daniel Macedo de Favere**

Pontifícia Universidade Católica de Campinas, Campinas, SP, Brasil

Lattes: <http://lattes.cnpq.br/0987350862811512> ORCID: <https://orcid.org/0000-0001-8582-3839>

E-mail: [danielfavereinv@gmail.com](mailto:danielfavereinv@gmail.com)

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Juan Arturo Castañeda Ayarza, Davi de Pinho Spilleir, Daniel Macedo de Favere

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## RESUMO

O presente artigo analisa, sob as óticas sociológica e jurídica, as recorrentes reintegrações de posse ocorridas no Estado de São Paulo no período da pandemia de Covid-19, que resultaram em uma denúncia ao Conselho de Direitos Humanos da ONU por estas ações. Ao considerar a constituição do espaço urbano, bem como sua construção histórico-material e os diversos conflitos sociais originários do capital, investiga-se se o direito à cidade está sendo assegurado nas ações de reintegração, conforme as bases jurídicas instituídas no âmbito constitucional, estadual e municipal. Utilizaram-se dados secundários, coletados em bases bibliográficas e documentais, em especial o LabCidade e jornais independentes, haja vista não haver documentos públicos sobre o tema. Identificou-se o descaso por parte do Estado nas ações de reintegração, pois, além das violentas atuações policiais, ínfima assistência social foi oferecida para assegurar os direitos fundamentais dos moradores e combater vazios, além de contribuir com o aumento das condições desfavoráveis para o controle da pandemia.

**PALAVRAS-CHAVE:** Reintegração de posse; Direito à cidade; COVID-19; Saúde Pública.

## ABSTRACT

From a sociological and legal point of view, this article analyzes the recurrent repossessions in the State of São Paulo, Brazil, during the Covid-19 pandemic period, which resulted in a complaint to the UN Human Rights Council. When considering the constitution of the urban space and its historical-material construction and the various social conflicts originating in the capital, it is investigated whether the right to life is ensured in the reintegration actions, according to the legal bases instituted in the constitutional, State and Municipal scope. Secondary data were used, collected on bibliographic and documentary bases, especially LabCidade and independent newspapers since there are no public documents on the subject. Evidence shows that the state government has constantly disregarded the reintegration actions. Were observed minor social assistance to ensure the resident's fundamental rights, the fight against empty buildings worsened conditions for controlling the pandemic and the persistent violent police actions.

**KEYWORDS:** Repossession; Right to the City; COVID-19; Public Health;



## INTRODUCTION

It was the advent of industrialization that gave strength to the urbanization process. It started very timidly in the early decades of the twentieth century, especially during the governments of Getúlio Vargas (1930 - 1945 and 1950 - 1954) and Juscelino Kubitschek (1956 - 1961), the urbanization took place. This process was motivated by the import substitution strategy, which favored industrial development and the creation of productive platforms in the cities, which promoted an increase in the rural exodus. The IBGE (Brazilian Institute of Geography and Statistics) historical series (2010) does not allow another conclusion: today, urbanization is an epidemic phenomenon in the entire Brazilian territory, imposing contours and changing socioeconomic relations. In the last census, it was pointed out that in 2010 the urban population represented 84.36%.

However, despite being a phenomenon that directly affects all people, it consolidates itself differently to the various sections of the population. Opportunities, public facilities, and infrastructures do not develop equally since the city reflects societal disparities. An organism is constantly modified by the dialectics between space and social relations. The urban space is a locus for class conflicts.

This inequality in the occupation of space and the signification of the place is not a recent phenomenon. Engels ([1845] 2010) reported in his book "*The condition of the working class in England*" that housing conditions were deplorable in London's working-class neighborhoods when compared with the neighborhoods in which the industrialists lived. The working-class neighborhoods already demonstrate an excluding ordering of the city, which obeys the capital logic.

Now, the situation is not much different from that described by Engels. Even though the right to the city is a social construction articulated in the provisions of the constitution and some parts of City Bylaw, there is a flagrant disrespect from the government for minimum human dignity conditions, especially for peripheral populations. People are forced to live in irregular buildings, without public services - often without basic sanitation, piped water, and adequate sewage collection.

These inequalities, as noted by Maricato (2002), show two large cities within the municipalities. The "legal city," which corresponds to urban areas, with properly regularized subdivisions and adequate public services. The "real city" includes the slums, with precarious conditions and marginalized by the government.



This same State does not comply with the laws that oblige it to ensure minimum conditions of human dignity, which, through the judiciary, ends up privileging the promotion of buildings and empty spaces and the guarantee of private property in contrast to the social function of the land. That is why many examples of repossession are found in São Paulo; Pinheirinho is the most famous. It took place in 2012 and guaranteed the ownership of a bankrupt estate belonging to the entrepreneur Naji Nahas with the support of the military police. Through a rushed legal arbitration, 1600 families became indigents (SPILLEIR, 2019).

However, the perversity of the decisions of government officials does not stop there. In June 2020, housing and human rights entities denounced the government of the State of São Paulo to the UN Human Rights Council, since during the pandemic, from March to June of 2020, the repossession actions that were carried out in the State directly affected 2000 families (FOLHA DE SÃO PAULO, 2020b).

Based on the context described, this work aims to address the repossession, highlighting the deleterious actions on the part of the State, which, through the judiciary, acts as an arm of the dominant classes to promote inequalities. In addition, it is intended to demonstrate how class struggle is incorporated in spatial arrangements and the contrast between social function and the assurance of private property. The repossessions that constitute the denunciation made to the UN Council will form a study of multiple cases.

## **DIALECTICS OF THE CONSTITUTION OF SPACE AND THE RIGHT TO THE CITY**

One does not think of cities without understanding space. However, it is unsuitable to work the space only in its raw sense, but it must stick to its constitutive historical-material and dialectical senses. The idea of Soja (1993) is supported by the idea that space is not mere data, a fact, but a socially produced space, whose ordering is the product of constant transformations and social experiences. Thus, space would be a social representation of time.

So, space encompasses its subjective analysis of spatiality. The constitution of cities is based on conflicts of interest and relations between the dominated and the dominant. The classes that constitute the city often collide in battles that reflect on the urban order and even over the symbolology created in the space itself, or as Corrêa said:

The capitalist urban space - fragmented, articulated, reflexive, social conditioning, full of symbols and fields of struggle - is a social product, the result of actions accumulated over time and generated by agents that produce and /consume space (CORRÊA, 1995, p.11).



These contradictions and clashes feed the meanings of spatiality. In this sense, manifestations make the space composition dialectical. The duality between space consumption and space production gives the city a new meaning, redesigning social relations and the ways capital expresses on the structures through production, reproduction, and accumulation. "Urban life presupposes encounters, confrontations of differences, knowledge and reciprocal recognition (including ideological and political confrontation) of ways of living, of the patterns that coexist in the City" (LEFEBVRE, 2011, p. 22).

No abstraction is necessary to understand that the logic behind urban planning is to privilege certain classes over others. Those places where the dominant classes reside are better provided with public services, while workers are relegated to peripheral neighborhoods, difficult access areas. Milton Santos (2008) describes that life on the periphery is close to an exile.

When acting to improve somewhere, the State's action is dualistic because it promotes two related events: i) real estate speculation and ii) promotion of urban empty spaces that make it impossible for the people to continue living there<sup>1</sup>.

According to Milton Santos, there is a connection between these events since

if there is speculation, there is a mercantile creation of scarcity, accentuating the problem of land and housing access. Nevertheless, the housing deficit also leads to speculation, and the two together lead the poorest population access only to the periphery (...) (SANTOS, 1993, p. 96).

The promotion of empty buildings is, unfortunately, an issue for Brazilian society. If, on the one hand, the national housing deficit reached the mark of 7.7 million housing units (ABRAINC, 2019), on the other hand, the number of vacant properties is also surprising because it exceeds 6.05 million (G1, 2018).

The excessive number of empty buildings produced in cities reflects on a racial problem, since, according to the Synthesis of Social Indicators (IBGE, 2018), the difficulties for housing conditions are also heavier on the black population: 6.1% of the white population lives in places without direct or indirect garbage collection, for the black population this number rises to 13%; 26.6% of white homes do not have sewage, for the black population 43.4%. Amid this reality, we ask: has the State been effective in guaranteeing the dignity of these people? Ultimately, right to the city for whom?

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<sup>1</sup> This violent process of social marginalization is called gentrification. Trindade (2014) explains that this movement results in the rise in local real estate values, with a change in the local social composition, and expulsion of the lower class to the peripheries.

In this scenario, social movements and occupations arise demanding land use for housing and for a social destination, not to latifundium or real-estate speculation. The social movements are the result of an imminent need for the human condition itself to inhabit. It is the result of the contrast between living and its impossibility. And the main causes are both the State omission (acting as a promoter of the interests of the ruling class) and the promotion of empty buildings.

In the classic "*The origin of the family, private property and the State*", Engels (1845) launches a thought that looks pretty appropriate about the predilections of the State and class conflicts:

Since civilization is based on exploiting one class by another, its development operates in a constant contradiction. (...) Each benefit for some is necessarily a loss for others; each degree of emancipation achieved by one class is a new element of oppression for the other (ENGELS, 1980, p. 200).

The logic that privileges the latifundium also oppresses the social. These practices constitute a structural condition of the State as a management committee for the interests of the bourgeoisie. Furthermore, if this is its praxis, then both the State and the ruling classes commit violence. We refer to the conceptualization of violence in Chauí (2018), which is much more than its personification in aggression and physical violence. It is its symbolic shroud of non-recognition of the citizenship on others. That is, from the moment when the other is not recognized as someone, but something or a thing, its humanity is removed. Violence is, therefore, a form of social relationship that allows domination, oppression, and exclusion to take place.

When it is noticed how social movements (of any nature) and those who occupy unproductive lands are treated, there is an attempt to introduce what Hegel (1992) called terror: the practice of making everyone accused guilty. It is to inflict the idea that these are bullies, invaders of the private property of others, and therefore, their human aspects and dignity must be disregarded. It does not matter if they are claiming rights. To disregard the humanity of others allows the promotion of a symbolic form of violence and justifies when military apparatus dislodges those undesirables that vilified the property of others.

Before we move to the legal provisions of land tenure, it is relevant that a hiatus is made to address a topic of enormous importance: the understanding of the city as the locus of capital production, circulation, and accumulation.

## THE CITY AS A LOCUS OF CAPITAL CIRCULATION, REPRODUCTION AND ACCUMULATION

Significant inequalities between occupations of space can be analyzed from the perspective of the existence of money in each spatiality. However, this analysis will only be adequate if we remember that the processes of capital circulation, production, reproduction, and accumulation arise through space.

One of the first typifications related to space considered by Marx are issues surrounding the circulation of goods, since a) the goods need to break the space limitations for the accomplishment of trade (exchange); b) the more incredible speed of the circulation process necessarily implies the impression of speed to the accumulation process and c) as a result, the capital rotation time is directly dependent on the circulation time.

In the second volume of *The Capital*, Marx makes some considerable arguments about the transport industry:

The more transitory a commodity is, the more immediately after its production, it must be consumed and therefore sold. The less it can distance itself from its place of production, the narrower its circulation space sphere, and more local is the nature of its outlet market. Thus, the more transitory a commodity is, the greater its physical qualities, the absolute limits of its time as a merchant, the less it can be the object of capitalist production. It can only be installed in places of high population density, or according to the shortened of distances because of the development of means of transport (...) (MARX, 2014, p. 207)

If it is true that delicacy and travel time are essential for adequate circulation, the space variable is indeed a decisive factor. The theme of space for effecting circulation and trade with foreigners will be echoed in the writings of Lafargue (2016). In *"The Right to Be Lazy"*, Lafargue affirms that the system's survival occurs, among other issues, for the creation of fictitious needs in other locations and the technical advances that allow greater mobility in the goods for the shortest time.

Marx (2014) goes beyond this categorization and concludes that the transport process, despite its non-generation of a material product, was ultimately a value generator because:

the exchange value of this beneficial effect [of transport] is determined, similar to that of all merchandise, by the value of the elements of production consumed in it plus the surplus value created by the more work of the workers employed in the industry of transport (MARX, 2014, p. 133-134)<sup>2</sup> (...)

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<sup>2</sup> Regarding the topic generations of value and transport activity, Harvey (2020) reminds us that Marx makes a distinction in nature between what he calls *"faux frais"*, which are necessary but not production costs, such as storage, accounting, functions for refrigeration, and similars, and workforce expenditure activities for the circulation of goods, money, and information, these generators of value.

Given this, the finding of the circulation process seems intuitive, present in Grundrisse:

From all that has been said, it follows that circulation appears as an essential process of capital. The production process cannot be restarted before the process of turning the goods into cash. The permanent continuity of the process, the unimpeded and fluent passing of value from one form to another, or from one part of the process to the other, appears as a fundamental condition for production founded on capital to a very different degree than in all previous forms of production (MARX, 2011a, p. 441)<sup>3</sup>.

Finally, Marx (2011a) launches a critical concept, destruction of space over time:

(...)while capital, on the one hand, must endeavor to overthrow the entire exchange site, e.g., to conquer the whole Earth as its market. On the other hand, it strives to destroy space through time, e.g., minimize travel time. The more developed the capital, the more distended, therefore, the market in which it circulates. The more it simultaneously strives for a greater spatial expansion of the market and more significant destruction of space over time (MARX, 2011a p. 445).

Harvey (2020) argues that the phrase "annulment of space by time" does not imply disregarding the space variable. On the contrary, it knows its relevance that the capitalist system itself seeks means and ways to dominate the space to respond and work for the imminent needs of capital for its circulation.

How these needs are manifested in the urban space and planning helps to understand the disparities in the city occupation and the right to the city itself. With the need for circulation and production, space becomes one of the most significant commodities and the most important *locus* for the continuity and realization of the system.

Lefebvre (2011, p. 12) is correct when classifies that "the city itself is an oeuvre" and the ordering of this oeuvre changes according to "the irreversible orientation towards money, towards commerce, towards products" and therefore, "the oeuvre is the use-value, and the product is the exchange value." He captures the understanding that the city, which is constituted dialectically by its interactions between space and circulation, and between social and capital, is substantially driven by its use-values, a rational use, and not by chance.

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<sup>3</sup> Data also highlighted by Marx in the Grundrisse is the relevance of the credit factor for making viable the geographical expansion of trade. Since, through credit, a commercially accepted system, the financing that promotes the act of circulation occurs.



This idea is reinforced by Santos (1993) when saying that capital becomes necessary to provide cities with infrastructures that assist the productive process and the internal (and external) circulation of agents and products. However, these requirements vary in form since what is required for fluidity is not the same for all capital types.

Harvey (2006) elucidates that it is through the fulfillment of these needs that capital personifies on physical structure, modifying the landscape and impressing a new purpose: to generate use-value and facilitate the accumulation process in an expandable way.

Thus, it becomes possible to understand why there are large urban conglomerates or even the reason for the predilection of some places: cumulative forces that constitute capitalism itself promote such agglomerations. Associated with this, a series of other factors, such as the absorption of people and elements from the countryside, innovations in technique, the relative independence of raw material, the pre-existence of markets, and other variables end up totalizing urban planning and, ultimately, in the emergence of centers and peripheries.

It is stressed here that this process is not accomplished without contradictions. The existence of multiple classes denotes multiple interests, needs, and different meanings for using the space.

After the hiatus in which we spoke about urban space as the space for realizing accumulation, circulation, and reproduction, let us discuss the legal frameworks that rule the land issue.

## **LEGAL DEVICES FOR THE REGULATION OF LEGAL LAND**

The matter of land regulation is not something new. Between the 1950s and 1960s, there were already social movements that sought basic reforms, such as the sanitary and educational reforms. However, the most significant influence and visibility were given to subjects related to agrarian and urban reforms in the country, given the growing urbanization in Brazil and the worsening of conditions typical of urban problems. However, the legal provisions on this matter are relatively recent (BOEIRA et al., 2009).<sup>4</sup>

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<sup>4</sup> According to Totti and Machado (2013), a great social thinker of that period was Alberto Torres, when dealing with pedagogical ruralism, synchronizing themes such as the distribution of land and education for the rural population in Brazil, in order to avoid the rural exodus - because he believed that the national wealth was in agricultural production - democratize education - since schools would concentrate in urban regions due to large industries - and combat the imminent latifundio that could be formed with the emergence of large properties.



Some years later, even though Brazil was under a military regime, a significant social movement was created in the 1980s searching for urban reform in Brazil, instituted as a National Movement for the Urban Reform (MNRU). In this sense, Boeira et al. (2009) highlight that the MNRU has differentiated itself from the others in its agendas. It has adopted a perspective focused on social justice associated with urban planning. In addition, they achieved an important milestone in the struggle for the democratization of cities and property, adding their proposals to the 1988 Constitution.

Therefore, articles 182 and 183 of the Federal Constitution (FC) result from a popular amendment promoted by the MNRU and presented to the Constituent Assembly. These articles legislate over essential issues for equitable urban development, such as the social function of urban property. However, as Souza (2010) points out, there were several significant changes to the original proposal for a popular amendment delivered by the MNRU during its incorporation by the National Congress.

The Popular Amendment initially proposed, and endorsed by more than 130,000 voters, had fundamental provisions for effecting social justice in the urban sphere, such as those referring to public transport and the application of adverse possession in public lands. Finally, there is a diluted version of urban policies aimed at democratizing the city in the FC.

Regarding the abolition of this popular amendment, points Souza (2010, p. 161):

The importance of formal plans and guarantees was exaggerated to the detriment of a broader social analysis. Popular participation, which should be the critical factor in promoting the democratization of planning and management, has been secondary (...)

In addition, it is of considerable importance to highlight what is provided in items I, II, and III, § 4 of art. 182 of the Federal Constitution:

Art. 182. According to general guidelines established by law, the urban development policy carried out by the Municipal Public Power aims to order the full development of the city's social functions and guarantee the well-being of its inhabitants.

(...)

§ 4 - It is allowed to the municipal Public Power, through a specific law for the area included in the master plan, to demand, under the terms of federal law, the owner of unused, underutilized, or unused urban land that promotes its fair use, under penalty, successively, of:

I - compulsory installment or building.

II - a tax on urban property and land that is progressive over time.

III - expropriation with payment through public debt securities issued previously approved by the Federal Senate, with a redemption term of up to ten years,

in annual, equal, and successive installments, ensuring the real value of the indemnity and the legal interest (BRASIL, 1988).

On the effects of this device, Boeira et al. (2009) point out the existing contradiction regarding the idea of the social function of property, since its effectiveness is linked to the federal law and the *Master Plan* and, in these terms, would be beneficial for the "agents responsible for real estate speculation."

A possible analysis of the situation is Marx's conception of law. As Mascaro (2014) explains, Marx synthesizes law as a necessary means for the reproduction of the production relations of the capitalist system, because unlike other economic systems in history, capitalism needs a legal apparatus to provide continuity of exploitation through, for example, employment contracts. Therefore, a reflection on the valuation of the property right in the legal structure and the land regulation would also be appropriate here.

Considering this, one may notice the prioritization and overlapping of bourgeois interests within the State itself because even if concessions are made to social causes, capital is privileged. The State legitimizes the possibility of suppressing the aspirations for social justice, as evidenced in incorporating the MNRU Popular Amendment, which has undergone several adjustments, making it much softer, much less radical.

Taking advantage of the constitutional provisions for land regulation, the theme of the social function of property is constantly in vogue. Bobbio et al. (1998) evaluate this issue by emphasizing that private property, unlikely to the protection it had in the 19th century, begins to be subjected to the idea of the property of a good, to become legitimate, should fulfill some social function.

Ferreira Filho (2009, p. 361) states that the social function of property today is not just the exclusion of the individual right of the owner over the thing. However, in his words, one must consider that the Constitution "requires the use of the thing to be conditioned to the general well-being."

This requirement can be verified in the FC through article 5, which deals with individual and collective rights and duties, items XXII and XXIII:

Art. 5 All are equal before the law, without any kind of distinction, guaranteeing Brazilians and foreigners residing in the country the inviolability of the right to life, freedom, equality, security, and property, in the following terms:

(...)

XXII - the property right is guaranteed.

XXIII - the property will serve its social function; (...) (BRASIL, 1988)

It can be observed what is provided for in the fundamental principles of the economic order, in article 170, items II and III of the FC.

Art. 170. The economic order, founded on the valorization of human work and free initiative, aims to ensure a dignified existence for all, according to the dictates of social justice, observing the following principles:  
 (...)
   
II - private property.
   
III – the social function of the property. (...) (BRASIL, 1988).

Considering not only the constitutional precepts but also appreciating the guidelines instituted in the Civil Code, it is possible to mention what is provided in § 1 of article 1,228:

Article 1,228. The owner has the power to use, enjoy and dispose of the thing and the right to recover it from the power of whoever unjustly owns or holds it.  
 § 1 The property right must be exercised under its economic and social purposes and in such a way that it is preserved, in accordance with the provisions of a special law, the flora, the fauna, the natural beauty, the ecological balance, and the historical, and artistic heritage, as well as avoiding air and water pollution.  
 (...) (BRASIL, 2002)

As for what is provided in this article, Tartuce (2018) clarifies that this is a codified form that assigns a purpose that will guide ownership and the limitation of this right, observing, among others, the social function. The usucapion is an example of how the exercise of these rules should work, making possible the change of ownership when the social function and time at a place meet some other requirements.

In general terms, the social function of a property is about directing the good so that it fulfills some collective and social purpose. Consequently, immovable properties, urban or rural, unproductive and unused, are taken as an example. On that occasion, the property can be occupied and expropriated when fulfilling specific legal requirements to claim social purposes, such as simple housing.

However, in contrast to what is ensured in Brazilian legislation, there are many repossessions in Brazil. The State sometimes does not aid citizens in vulnerable conditions to have a dignified life.

According to *Folha de São Paulo* (2020a), the violent repossession that took place in *Campo do Meio* (MG), despite the resistance of members of the Landless Workers' Movement (MST) - counted on the police's shock troop firing moral effect bombs into the air. The consequence of this action was the expulsion, in the pandemic period, of 6 families who lived in a 52-hectare injunction and did not receive housing alternative by the State.

It should be noted that the occupied area belonged to the *Companhia Agropecuária Irmãos Azevedo*, which has been bankrupt since 1990 and has failed to make payments on the labor rights of former employees who represent a large part of the families who live there.

In addition, the City of São Paulo in 2018 alone would already have at least 1,385 properties that do not fulfill their social function, with 708 being empty, 457 not being built, and 220 being underutilized (BBC, 2018).

Therefore, it is essential to point out that Brazil is a signatory of the Universal Declaration of Human Rights, in which housing and health rights are guaranteed for every human being, as expressed in Article XXV:

Every human being has the right to a standard of living capable of guaranteeing him and his family health and well-being, including food, clothing, housing, medical care and essential social services, and the right to security in case of unemployment, illness (...) or other causes of loss of livelihood in the circumstances beyond their control (UN, 2018).

Furthermore, the preservation of these rights is highlighted by emphasizing that Brazil is also following the 2030 Agenda of the United Nations (UN, 2015), which promotes objectives for sustainable development, and, among the defined goals, there is the guarantee of access safe housing.

Outside the abstraction of laws with the constitutional status that establishes the precepts for the social function of property, it is also essential to understand the way in which these prerogatives will be performed, how the process of implementing policies for the urban development of a city will work according to the necessary sustainable and social bases, as well as those of a particular location.

In this context, the City Statute (CS) stands out for the enforceable determination of the constitutional rights established in article 182 of the FC - it is understood that article 183 would already be self-executing. This legal instrument aims to institute participatory management and ecological and economic sustainability ideals to solve serious social problems, such as housing. As important characteristics of CS, as expressed by Boeira et al.:

In addition, the CS maintains the basic principles established in the FC, preserving the municipalism, the centrality of the master plan, and the emphasis on democratic management, strengthening the need for systematic and integrated planning, built from model participation of urban management in all decisions of public interest (Boeira et al., 2009, p. 702).

As for the urban policy guidelines to be developed according to the CS, article 2 will have essential means to regulate the social function of urban property. Thus, emphasis is placed on item VI of this article, which seeks preventive alternatives to recurring problems in the urban environ-

ment, such as the underutilization of the property for speculative retention and its pollution or environmental degradation (BRASIL, 2001).

Furthermore, important advances regarding land regulation were achieved with the modification of Law no. 11,977/2009, which would only establish the development of the social function of property, by Law nº. 13,465/2017, that aimed at guaranteeing individual rights towards decent housing. Including, as expressed by Spilleir (2019, p. 7), this law also enables the "integration of informal settlements into the whole of the city, breaking this vicious cycle of exclusion and not belonging to the city."

Although the CS establishes some guidelines, the Master Plan creation for all municipalities above 20 thousand inhabitants will be decided. In this way, according to the imposition of Article 39 of the CS, it will be designated the fundamental city ordering requirements, which will indicate the fulfillment of the social function of urban property (Brasil, 2001).

In Martins (2003), the legal use of the Municipal Master Plan as an instrument for planning urban development is evident, paying attention to the particularities of each city. However, there are criticisms about fulfilling the property social function concerning the master plan determinations. The implementation of the social function of property and the city proved to be impractical for thirteen years until the approval of the City Statute (in 2001). It must be considered that the CS is essential for the master plans creation.

In terms of land regulation, as evidenced, some devices understand urban social development and determine the procedural relationship to which the social function of property must be submitted. It is essential to reflect on whether the concrete cases of repossession in Brazil fulfill the legal routes of urban policies or just privileging the latifundium and real estate speculation.

## **REPOSESSIONS IN THE STATE OF SÃO PAULO DURING THE PANDEMIC: CONTRAVENTION OF HUMAN RIGHTS AND SYSTEMIC PERVERSITY**

The year 2020 will be remembered by history as the year of the greatest pandemic in recent times. The Sars-CoV-2 virus, a type of coronavirus that causes Covid-19, imposed sensitive changes in people's lives due to its easy transmission through droplets in the nose or mouth of the infected person (Ministry of Health, 2020b). For this reason, in several parts of the world, social isolation measures and mobility restrictions have been adopted to ensure the minor proliferation of the virus.



Even though in most people the symptoms are like flu, in many cases and especially in the so-called risk groups (elderly, people with respiratory and cardiac comorbidities), Covid-19 has high hospitalization rates that since the beginning of the pandemic and puts considerable pressure on the health system (MINISTRY OF HEALTH, 2020a). The search for a vaccine, to be produced, tested, and made possible in record time, has become a new cold war, a technological race to demonstrate the country with greater research sophistication and which will, therefore, stop the hegemony of having blindfolded and fought such a disease. Studies on the topic only increase. Based on Google Scholar data, only in 2020, 1820 documents were published on the topic since the pandemic beginning.

Until the writing of this work, the world was headed for the 27 million contaminated and 900 thousand dead. The American continent had more than half of the cases worldwide (14 million), with the United States of America and Brazil alone comprising 10.3 million (6.1 million and 4.2 million, respectively). Of the 4 million Brazilian cases, only the State of São Paulo had 850 thousand cases and 32 thousand deaths (WHO, 2020).

In addition to having the side effect of demonstrating how important public health and the Unified Health System (SUS) are for facing a health crisis, the pandemic has served to highlight the weaknesses and disparities inherent in the capitalist system. After all, the wealth of Brazilian billionaires increased by 34 billion dollars during the 2020 pandemic year (UOL, 2020a), while most Brazilians had to bitter substantial wage reductions, impoverishment, and the need to agglomerate to obtain only 600 reais of aid<sup>4</sup>.

Oxfam's reports have been blunt in pointing out such inequalities. For example, the feasibility of practice social isolation can be seen as a privilege, given that 6% of the population lives in slums, with precarious housing conditions, and the street population has increased by 50% between 2015-2019 (OXFAM, 2020d). Oxfam also shows how the pandemic gives rise to the long-gestated project to exterminate indigenous and traditional populations. Stand out, low sanitary conditions, the inexistence of drinking water, without primary care to prevent the proliferation of the Covid-19, and absence of medical and transport infrastructures. All this caused the lethality rate of the disease among these peoples to be more than double the rest of the country (11.9% against 4.9%) (OXFAM, 2020b)<sup>4</sup>.

Their reports also do not shy away from criticizing the weird situations to which workers are subjected, especially the rural ones who, despite supplying the whole country, have barely anything to eat due to the maximum exploitation from the agribusiness (OXFAM, 2020a).



A few more notable points in this pandemic are the issue of race and gender as imperatives. As the report from the State of São Paulo (2020) shows, the deaths of black people (55%) are much higher than that of white people (38%). Also, there is clear-cut involving schooling, because, of the totality of people who contracted the coronavirus and had no studies, 71% died, against 59% of those who had only elementary education, 35% of those who had high school, and 23% of those who had higher education. Geography also seems to be a significant factor; municipalities with a lower HDI were twice as likely to die as those with a high one.

The gender cut and its intersection with the issue of race is significant. Black women suffer from multiple forms of violence and vulnerability, especially evident during the pandemic period. The data from Geledés - Black Women's Institute (2020) is terrifying. The first violence is economic: if structurally, women are already more subject to informality, lower wages, and subject to multiple hours, black women are the most affected, given that 70% of them are informal and in positions, if high volatility, such as domestic work and, more susceptible to economic changes.

The second significant violence is physical: the number of domestic aggressions jumped considering the same period of 2019. The channel Notícias Pretas (2020), for example, reports that in Bahia, during May and June, the cases of femicide jumped 150% when compared to 2019. It is convenient to account for a third primary form of violence (among so many others) that encompasses women, which is the increase in unpaid work. The care functions jump significantly during the crisis when they must stay at home and are practically driven to perform unpaid reproduction activities.

However, such data on the black population is not exclusive to the pandemic. In a country where racism is a structural factor and leaves the black population with worse opportunities, worse places, and worse conditions for development, many of the conditions that are subject to survival are worse. Their housing conditions are often less adequate, and even the State's view is insufficient. Disparity kills. Oxfam (2020c) and Fiocruz (2020) describe the need for these confrontations that consider the cutouts of race and gender.

It is during the greatest pandemic of modern times, in which the dead and the need for better sanitary conditions abound, that new data released highlight another kind of violation of Human Rights: a high number of repossessions, directly affected at least 2 thousand families (FOLHA DE SP, 2020b). The USP city laboratory (LabCidade) (2020c) emphasizes that reintegration was more significant in 2020 than in 2019.

LabCidade argues that "instead of guaranteeing the minimum conditions for individuals to protect themselves from the virus, what we have seen is an intensification of land conflicts in the face of a health emergency scenario" (LABCIDADE, 2020c, s/n). This fact was reported to the UN. The



rapporteur, Balakrishnan Rajagopal, recommended the immediate suspension of such repossession actions and recalled that the removal of people from their homes directly violates the human rights agenda. The rapporteur points out that, even though Brazil is a signatory, the government's *modus operandi* seems to privilege the possession of owned by large companies, in opposition to the health and safety of the most vulnerable (UN, 2020).

Before discussing the violent repossession processes, a small methodological note is relevant about obtaining such data.

There is a great scarcity of public and relevant data on repossession, being the task of compiling data entirely under the responsibility of entities, academics, or civilians. We have tried to find information in *Google Scholar* and *Scielo* platforms by using the words "repossession" and "São Paulo," but the cases displayed were all concerning old situations, such as the Pinheirinho.

Therefore, the chosen database was LabCidade - Public Space and Right to the City Laboratory, a research and extension space managed by USP students and researchers under the coordination of Professors Raquel Rolnik and Paula Santoro, and Professor Euler Sandeville. This group periodically publishes updated data on the right to the City and Study of the Landscape.

In LabCidade we could finally find updated information regarding the repossessions. A panoramic map shows where they occurred, dates, and the number of people affected in each act. However, even for LabCidade, carrying out the mapping of repossession is a project that counts with society's help; it means the map is collaborative. Only in this way is the capillarity of the data adequately achieved. Thus, considering the scope of the data collected and made available by LabCidade, a significant number of its publications were selected to embody this article.

With the list of cases from LabCidade, we could then perform a more direct search in blogs and local newspapers using the name of the repossession place. The *explanation-building* method was used to present and analyze the cases, making inferences based on the frequency of evidence and its respective causes.

Taken the proper methodological notes and informing about the scarcity of information, it must be mentioned that in consonance to the public power that does not generate relevant data on repossessions, the few portraits in the great press vehicles end up rendering enormous disservice. They deliberately underreport abusive rental prices, vacancy processes, and the promotion of financial speculation and hide social movements' struggles and histories. They portray those who fight for the right to exist in the urban locus as invaders and serve as important allies to the conception that private property is more relevant than human dignity even when it does not fulfill its social function.

**Table 1 - List of reposessions in the State of São Paulo during the Covid-19 pandemic**

Reference	Removal	City	Justification	Typology	Property	Families Removed
Vianas Street	02/Apr/2020	São Bernardo do Campo	Repossession	Land	Empty	66
Descalvado Street	14/Apr/2020	Ribeirão Preto	Repossession	Land	Private	20
Osório Housing	03/Mai/2020	São Paulo	Repossession	Edification	Public	250
Taquaral Occupation	07/Mai/2020	Piracicaba	Repossession	Land	Private	50
Barata Ribeiro	15/Mai/2020	São Paulo	Repossession	Edification	Private	50
Campo Novo Sul	03/Jun/2020	São Paulo	Repossession	Land	Public	10
São Pedro Village	09/Jun/2020	São Bernardo do Campo	Repossession	Land	Public	11
Roseira II	16/Jun/2020	São Paulo	Repossession	Land	Private	900

Source: LabCidade (2020a). **Collective mapping RMSP.**

Table 1 reveals some characteristics regarding the repossession processes in the State of São Paulo in 2020. Such processes are not restricted to private properties, occurring in equal proportion in public areas. It is noted that there is no uniformity in the sizes of occupations, sometimes diverging between small and few families, sometimes between large locations, with hundreds of families.

It is also symptomatic to see that even on empty land, repossession orders occur. The prevalence of the actions also seems to have a geographical centrality: the City of São Paulo, extending to São Bernardo do Campo. The interior, at least during the Covid-19 pandemic, had only two repossession actions.

A common denominator unites São Bernardo do Campo's actions negatively: they were carried out without legal consent. Both the repossession of *Rua das Vianas* and *Vila São Pedro* were carried out without a court order. Would this be a typical way of acting in this city hall?

The *Jornalistas Livres* channel (2020b) reports that after the houses demolition in Vila São Pedro (without a court order, not even allowing occupiers to remove their belongings), the MTST (Homeless Workers Movement) and MLB (Movement of Fight in Neighborhoods, Villages, and Slums) protested, blocking the main avenue of *Vila São Pedro*, called *Avenida Dom Pedro de Alcântara*. As

soon as the freedom of movement was questioned in that location, military police and civil guard appeared.

They pledged to arrange a time for the movements to talk that same day with the mayor and the current secretary of housing, however when the movements arrived at the place scheduled for the meeting, they were not received, on the contrary, the gates of public buildings were closed with padlocks. Occupiers were left without a home, without protest, and the possibility of debate with the government ceased. In addition, no kind of social rent or assistance was made to the residents, reinforcing the idea that they were abandoned.

The Ribeirão Preto case, similarly to the others, presents legal differences. On April 14, residents were awakened by the noise of backhoes. The structures and some masonries were brought down. Without judicial documentation, the repossession occurred, removing 20 of the 60 houses. The answers given by the local government are contrasting; it justifies this fractional number saying only the houses that were not made of masonry were demolished and informs that all the repossessions have been suspended.

In addition to the residents contesting the version that masonry houses were not demolished, both answers given by the local government are contrasting. Plus, residents report that requests to accredit residents for housing programs were ignored. Concluding, to worsen the precarious situation, public power gave up sending food aid after the event (JORNALISTAS LIVRES, 2020b).

In Piracicaba, the Taquaral Community repossession was classified by the State Council for the Defense of the Rights of the Human Person (Condepe) as "inhuman" and "illegal." It counted on the excessive use of force by the police, with gas pumps, pepper gas, and support from helicopters to control the occupants (REDE BRASIL ATUAL, 2020). Spilleir (2020) describes the case: it was a land without any social function, totally idle for more than four decades, and that in January 2020 started to house 50 families that, even though in precarious conditions, set their place as a home.

A co-owner of the land initiated the process of pleading for reintegration. This person has been part of the family that owns that land for over a century (without giving a destination other than the latifundium). The magistrate who judged the action thought that being co-owner was sufficient and guaranteed repossession in the middle of a pandemic stating that those people would be safer from the pandemic if living outside.

Now, this statement sounds curious, how would families be safer unsheltered than inside? How can the judiciary judge something pro real estate speculation? The disaster becomes even more remarkable when it is known that the city hall had already informed before the action that it would not give a destination to the people of the occupation (G1, 2020a). Furthermore, people were not

assisted. Removed by the action of more than eighty police officers, some managed to take shelter in churches, others stayed on the streets of the neighborhood, and some moved to other occupations without having other perspectives.

The cases carried out in São Paulo have great temporal proximity, on average separated by fifteen days between each act, and truculent.

The Osório Housing Complex, located on the east side of São Paulo, is a popular real estate venture announced in 2018, and it is already prompt to move in yet remains empty (LabCidade, 2020a). On a Saturday night, approximately 1000 people carried out the occupation of its facilities. On the following day, public power sent the Municipal Civil Guard and, later, the battalions of the Military Police to remove the occupiers. There was a confrontation, gas of moral effect was used, and the occupants were expelled. (FOLHA DE SÃO PAULO, 2020d). It is not registered that any type of assistance has been provided to the removed population.

The second repossession in São Paulo during the pandemic was in the Bela Vista neighborhood, downtown. As LabCidade (2020e) reports, some tenements long-abandoned were occupied by approximately 50 families. It turns out that those real estate ventures belonged to the incorporated company Vitacon, which made repeated legal inroads to remove those people who now inhabited the tenements.

Capital makes its way to get what it wants. Vitacon's owners found an innovative way to reclaim the properties despite the legal impediment to carrying out repossession. Angelo and Boselli (2020) describe that Vitacon negotiated with some residents and offered the amount of R\$ 1,000.00 (one thousand reais) and travel expenses to another location for them to empty the space. Some accepted.

On the day of the action, those residents who agreed to leave received what was promised. Those who refused to leave, Vitacon ordered its workers to put down the tenements. As several people were not in their homes at the time of reintegration, many had their belongings destroyed.

The civil police were also present in operation. However, as LabCity (2020e) recalled, this branch of the police has no prerogative to act in such cases. The lawyers of the occupants were not informed of the action, which violates the OAB Statute. Besides the fact that the case judge was only informed of the events after the event (Angelo and Boselli, 2020).

The repossession of the *Campo Novo Sul* occupation is the one where the information is scarce. This slum located in Vila Andrade is in constant dispute between private and public land. It is known that partial removals occur with a particular frequency, when not criminal fires, as described

by G1 (2019). Regarding the action that took place in March, it was not possible to find reports. It is possible to say it existed because of denunciations made from partners of the Removals Observatory (LABCIDADE, 2020a).

Finally, the most recent and the highest proportion repossession in São Paulo registered so far during the pandemic period displaced more than 900 families who lived on a land called *Sítio Roseira* (neighborhood Roseira II), in Guaianazes, at the eastern end of the city. As stated by a resident interviewed by *Folha de São Paulo* (2020c), when she asked the officers about the place where the residents of the occupation would be relocated, the answer was that they should "return from where they came." It is also noted that no assistance from the State was offered to the residents of Roseira II, leaving them homeless during a pandemic.

LabCidade (2020c) points out that the request for repossession was issued on an urgent basis in a judicial duty, thus determining the performance of police action to remove these families from the occupation, which also conflicts with the prevention recommendations to covid-19, given that the precarious conditions and social exposure of the residents were highly aggravated.

As we were able to verify, the repossessions were carried out with several violations of Human Rights, with public neglect that resulted in the promotion or emptiness, or of speculation. The final analysis shows that all the Master Plans from São Paulo, Piracicaba, Ribeirão Preto, and São Bernardo do Campo prohibited this type of privilege.

Piracicaba's Master Plan, for example, its Articles 5 and 7, foresee that the land will serve the social function. Underutilization, idleness, and non-use of land and buildings are nullified. In this same Master Plan, in its art. 13, it delegates to the power of the Municipal Executive the promotion of land regularization of the informal core constituted, in order that the given social function becomes effective (PIRACICABA, 2019).

Similarly, Ribeirão Preto's *Master Plan* foresees as one of the document's objectives in its Art. 3. both the development of the city's social functions and urban property and the universalization of the right to the City (RIBEIRÃO PRETO, 2018). In the same Art. 3, the means to achieve these goals are made explicit:

(...) § 1 - For the purposes of applying this law, the city's social function is the right of all citizens to have access to housing, urban mobility and public transport, basic sanitation, electricity, lighting, public health, education, security, culture, leisure, recreation and preservation, protection, and recovery of the city's environmental, landscape, architectural and cultural heritage (...).

§ 2 - The social function of the city will be guaranteed:

(...)

IV - for public control over the use and occupation of city space.

V - for the priority in the elaboration and execution of programs, plans, and projects for groups of people who are at risk, vulnerable and unfavorable situations.

(...)

§ 3 - The social function of the property will be fulfilled when the exercise of the right inherent to it is subject to collective interests. (RIBEIRÃO PRETO, 2018)

In São Bernardo do Campo, a city where people are removed without legal consent, the Master Plan presents three notorious passages for defending the act of occupying and defending the social function of property:

Art. 6º The social function of the city corresponds to the right to the city as a diffuse right of the inhabitants of São Bernardo do Campo and its components, according to item I, article 2 of the City Statute:

I - the right to decent housing.

II - the right to environmental sanitation.

III - the right to urban infrastructure.

(...)

Art. 7º The urban real estate property will fulfill its social function when respecting the social functions of the city, and it is used to:

I – housing.

(...)

Art. 17. To achieve the objectives and implementation of the Housing Policy, the following guidelines and strategies will be observed:

I - ensure, in the formulation and implementation of intervention projects, the adoption of the concept of housing as a habitat, which involves access to infrastructure and public services, promoting the insertion of housing settlements in the Legal City, in a sustainable manner.

(...)

VIII - encourage the use of empty and underutilized properties for housing in the popular market; (SÃO BERNARDO DO CAMPO, 2011)

São Paulo's Master Plan, in addition to mentioning that the document is based on the City Statute and the Federal Constitution, addresses the issue of empty buildings and social function in the following terms:

Art. 293. The priority actions in housing are: (...)

II - execute the Urbanization and Regularization Program for Precarious Settlements.

(...)

XI - produce housing units of social interest in empty or underutilized areas and recover empty or underutilized buildings, for the low- and middle-income population, under the terms of this law, in the central regions of the city and the centralities endowed with infrastructure (SÃO PAULO, 2014)

Property often surpasses other rights. When it can decide in favor of social justice, the judiciary promotes empty buildings and, in some cases, uses the police to guarantee the so-called order.

The reaction to acts of repossession led to a widespread outcry, the "Zero Repossession: for life in the countryside and the city," headed by homeless, landless, members of more than 40 housing movements, people on the streets, and informal workers. It is a social outcry for the most fundamental human rights, yet vilified (JORNALISTAS LIVRES, 2020b).

A careful look at the repossessions dates could induce the impression that the requests made by the Public Ministry of São Paulo (MPSP) and the Public Prosecutor's Office of Housing and Urbanism, which demanded that city halls suspend reintegration actions during the pandemic period, were accepted (UOL, 2020b). However, requests for quick repossession are still in effect.

In Campinas, as shown by *Brasil de Fato* (2020), the Nelson Mandela Occupation, which houses 108 families, is in danger of being repossessed at any time. The repossession should have happened in 2018 but was postponed one year, with the agreement of the city government that in the meantime, it would carry out the construction of 200 house units. After two years, the units have not even started being constructed, and catastrophe is imminent.

Another repossession action that runs at full speed is the Occupation Viva Jardim Julieta, in the district of Vila Medeiros, in the north of São Paulo. The area is a subdivision abandoned by the public-private partnership of COHAB; a project abandoned two years ago, where 400 families live. The occupants have already been informed that they must leave the place, to which they call for removals to be suspended (LABCIDADE, 2020b).

Marx (2011b) was correct: all the significant facts and all the great characters in world history are staged, (...) the first time as a tragedy, the second as farce (MARX, 2011b: 25). The question is: how long will we keep repeating farces and start going to fighting the housing issues?

## FINAL CONSIDERATIONS

In times of pandemic, social problems in countries became more evident, the need for care, attention, and respect for the rights of the most vulnerable communities became urgent. The measures taken by the State in a public health crisis, such as that caused by the covid-19 pandemic, should focus on ensuring human rights (Huffstetler et al., 2021). Rubio (2020) stated that these rights are indivisible and interdependent; that is, all rights must be integrated to enjoy them fully. In this sense, reinforcing the same author, decisions, and actions related to the pandemic management must be formulated based on respect, dignity, rights, and human values.





Thus, in this research, three major themes were presented that surround the issue of urban spatial planning and, more specifically, the repossession of possession. At first, we tried to demonstrate how the city, in addition to its physical aspect, is also produced daily, always, by a robust abstract notion. That is, the city is composed of interpersonal relationships that directly interfere in the space.

The second central area explored by this work was that the city itself is not a passive agent, just a product. The city is an active agent of transformation. Its relevance is given in many ways by its values of use, which vary from one location to another, including the stage of the circulation, accumulation, production, and reproduction processes.

The third major highlight focused on the entire legal system and the regulatory framework that deals with property, with essential emphasis on the City Statute, the Master Plan, and constitutional prerogatives. As well as the theme of the social function of the land, that is, the land is not enough to exist for speculation, it is necessary that somehow through it, there is some productive function and promotion of well-being.

When we finally analyzed the cases of repossession that occurred in the State of São Paulo during the pandemic, we noticed that the force of the Law scales tends to lean towards the capital side and not towards that of the social function or that of human dignity.

Some of the written sentences presented contradictory, perhaps dubious, justifications; Others did not even have sentences, but in all of them, it was noticeable the disregard for the destination of those removed families. In addition, another violent way of removing people from occupations is the practice of fires, which regularly affect slums, occupations, and other housing forms that are not of interest to the capital. Moreover, to make matters worse, police brutality served to intimidate those already deprived. An authoritarian arm that only corroborates the idea that the State is something that propagates violence.

The system shows its most inhuman face and that urban planning is closely linked to the interests of the dominant elite and the need for accumulation. It is questioned whether the right to the city is, indeed, a universal right.

If in Santos' words, "never in the history of man has there been a tyrant as hard, as relentless as this global money (...), invisible, abstract, but also despotic. It is money. They were supported by an ideological system (SANTOS, 2011, p. 17)". It is perceived that the global financial system finds its support through forms of property, and the legal system embodies a way to manifest global finance domination. However, let us not forget that, just as space and the city are variable for circulation, accumulation, reproduction, and production, these are also the locus for resistance and the



propagation of movements that demand rights and make their opinion, wills, and individualities count.

After all, where living is a privilege, occupying, more than a necessity, is a right (ensured by law, indeed).

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**Sobre os autores:****Juan Arturo Castañeda Ayarza**

Professor no Centro de Economia e Administração, Pontifícia Universidade Católica de Campinas  
Pontifícia Universidade Católica de Campinas, Campinas, SP, Brasil

Lattes: <http://lattes.cnpq.br/2451877011069845> ORCID: <https://orcid.org/0000-0002-4023-2223>

E-mail: [juan.arturo@puc-campinas.edu.br](mailto:juan.arturo@puc-campinas.edu.br)

**Davi de Pinho Spilleir**

Pontifícia Universidade Católica de Campinas, Campinas, SP, Brasil

Lattes: <http://lattes.cnpq.br/3127311912548168> ORCID: <https://orcid.org/0000-0003-2582-0489>

E-mail: [d\\_spilleir@hotmail.com](mailto:d_spilleir@hotmail.com)

**Daniel Macedo de Favere**

Pontifícia Universidade Católica de Campinas, Campinas, SP, Brasil

Lattes: <http://lattes.cnpq.br/0987350862811512> ORCID: <https://orcid.org/0000-0001-8582-3839>

E-mail: [danielfavereinv@gmail.com](mailto:danielfavereinv@gmail.com)

**Os autores contribuíram igualmente para a redação do artigo.**