URBAN AND ENVIRONMENTAL MANAGEMENT CHALLENGES CONSIDERING TRANSFORMATIONS IN PROPERTY LAW IN BRAZIL

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Introduction

In Brazil, there are different types of property rights. Among them, the Civil Code of 1916 recognized literary, scientific and artistic types, as well as those linked to real estate property rights. Throughout the twentieth century, there was a transformation concerning the treatment received by all of them, however land and property ownership encountered greater resistance, notably due to the traditional individualist and inviolable view attributed to this type of patrimony. Nevertheless, despite the staying power of paradigms stemming from liberal legalism, substantive transformations can be identified in the concepts that are based on the right to property (FERNANDES, 2004, 2008a, b, 2010; SILVA, 2011).

In order to analyse changes in the notions of law that have governed urban, territorial and environmental management policies, normative and constitutional apparatus was used as the guiding principle, as it initiated a discussion led by changes in the contents of the legal repertoire revealing contexts, contradictions and trends over time.

Considering the structural role in relation to other Brazilian laws, the view on the series of the Brazilian constitution from the first Republican Constitution of 1891 up to the most recent one of 1988, witnessed important transformations throughout the period. In addition to new understandings regarding the right to property, the same transformative conditions can be found in legislation that governs urban and environmental policy.

Situations can be identified in these topics that range from an individual right, full and absolute, going through a relativization process associated with the notions of public or collective interest, to the most recent concepts found in the Federal Constitution of 1988 in relation to the social right to housing; to rights arising from the principle of the social function of the city and of property, as well as to the ecologically balanced environment and common use of the people.

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This paper discusses these transformations, bringing to light some of the key elements of these relations, which are often ambiguous and contradictory. Different legitimacies, competing or overlapping, can be produced when developing arguments based on different legal fields. The understanding of this simultaneity is an important factor to be considered in approaches concerning disputes and conflicts of use and appropriation of public, private, collective or environmentally protected spaces.

The aim of this article is to problematize the question based on the analysis of a normative repertoire comprising all Republican Federal Constitutions, as well as the urban and environmental legislation considered relevant for the objectives in discussion. Thus, this article seeks to identify and discuss transformations brought about in the approaches of the right of ownership, especially regarding aspects applicable to territorial and environmental management.

Property rights in territorial and land issues

In the Brazilian context of a largely agrarian economy, although there have already been incipient questions, private individual ownership has maintained its hegemony, strongly linked to Civil Law. These fundaments were clearly stated both in the constitutional approaches of 1891 and 1937 and in the first Federal Decrees of the 1930s, issued for the purchase and sale of lots paid in installments. Decree-Law 58 of 10/12/1937 and Decree 3.079 of 15/09/1938, based on interpersonal relations and civil law, were devoid of public interest and urban aspects connotations.

The legal texts referred to the property maintained in "fullness" or to the "assured" property right, using the purchase and sale agreements registered in Real Estate Registry Offices (crucial institutions for the mediation and legitimization of these operations) as a support to the guarantee of business.

The Decree of 1937 attributed similar treatment to properties of "rural land or urban land". This isonomy of urban/rural treatment reflects the inexistence of concerns regarding the control of cities sprawling towards the countryside. The lack of a national regulation, which would surpass typical procedures of commercial transactions for purchasing and selling lots, created a regulatory gap for urban and land aspects of land subdivision. This lack, which appeared exactly in a period when there was accelerated urban sprawl, resulted in a few legal regulations from a municipal perspective, usually circumscribed to larger urban centres.

In the context of the collective debate, this gap sensitized representatives from technical and administrative areas, motivated by the fight against clandestinity and by ensuring donations of public areas in new real estate developments.

When researching the seminal conditions of legislation regarding land subdivision in Brazil, Leonelli (2010) observes that, despite the validity of the Decrees for regulating these enterprises, in the 1930s, from the 1940s onwards, the demand for a federal law that regulated the matter, was already clearly recognised.

In March 1931, at the first Housing Congress sponsored by the São Paulo Institute of Engineering, it was already argued that opening roads was the exclusive attribution

of municipalities, linking the provision of infrastructure to the public interest. From the perspective of avoiding disorderly urban sprawl, and based on legal grounds, it was already alleged that "property came about conditioned by the public interest and defended the application of restrictions on property rights" (LEONELLI, 2010, 65).

If, at first, the critical perception of the correlation between public interest and private property came about circumscribed to the technical and administrative means linked to urban policy, it also expanded to the normative sphere later. Within the scope of constitutional frameworks, incorporating the notion of "public interest", "public utility", "social interest" and "population welfare" can be identified from the Federal Constitution of 1934 and subsequent versions.

It is worth noting that in the field of law, the reconfiguration of the sense of public interest incorporated mechanisms to establish consensus to deal with disputes in public administration. Invoking public interest, as an instrument of conflict resolution, has made room for interaction and dialogue.

Conceptually, the literature on legal matters highlights the diversified character of the public interest, as the basis of consensual practices considering various collective interests. The understanding of the supremacy of public interest in relation to other interests of society is part of the gradual incorporation of Administrative Law in urban management practices (MEIRELLES, 2007; SILVA, 2012).

According to Meirelles (2007), legally, the understanding of social interest and public utility is conditioned to a convenience based on the best use of the property, in the perspective of the best benefit of a given community deserving public support.

However, within the framework of practices, the assimilation of these understandings did not take place at a fast pace. The first demands for formalization of the land subdivision, followed by compulsory licensing with municipal governments, were the object of much resistance on the part of the entrepreneurs.

However, regulations have now included civil, urban, administrative and penal standards, in the expectation of corresponding to growing urbanization. In the federal legislation of land subdivision in the 1960s (Decree 271 of 28/02/1967), urban control was already manifested through some incipient mechanisms to control clandestinity, land irregularity, providing infrastructure and the constitution of public areas (LEONELLI, 2010; SILVA, 2011).

Although surrounded by much controversy, in the late 1970s, Federal Law 6.766 of 19/12/1979 brought advances in reorganizing previous legal apparatus, incorporating more urgent urban and land issues, after a few decades of intensive urban sprawl. Still in force, its clauses have been updated, mainly through Federal Law 9785 of 29/01/1999.

In spite of having contributed to the regulation of urban aspects, for decades it continued legislating the formal city, without considering legal devices that provided answers to the relevant expansion of the housing and land informality in the urban environment.

Federal Law 9785/1999 tried to bridge this gap, incorporating some legal devices related to low-cost housing. Despite the effort made, given the magnitude and complexity of land tenure informality in the country, such inclusions have proved to be insufficient (LEONELLI, 2010; MARTINS, 2006).

Considering the gradual rise of urban law, collective social rights, the right to the city, the right to housing and the right to property have emerged, creating conditions for incorporating the constitutional principle of the social function of the city and of property in 1988. Dallari (2007) argues that the concept of social function was already the object of study in treaties published before the First World War, based on the basal concept that "property entails obligations." It also alleges that innovation brought about by the 1988 Constitution resides in the institution of a "parameter for gauging its understanding [...] the set of measures to be adopted or actions to be undertaken, contained in the master plan" (DALLARI , 2007, p.25).

The Federal Constitution of 1967 linked this principle to economic issues, as set out in Art. 157, however, the 1988 version extended its meaning to land and urban policy relations, applicable to every property and city (BRASIL, 1988).

It is worth mentioning that, despite the advances in many social rights established in the 1988 Constitution, such as the right to education, health, work, leisure, security, among others in Art. 6, the right to housing was incorporated only through Constitutional Amendment No. 26 of February 14, 2000, by the initiative of the National Forum for Urban Reform. International references have pointed out this late incorporation, as the right to housing has been recognized by the General Assembly of the United Nations since 10/12/1948 when the Universal Declaration of Human Rights was adopted (SILVA, 2011).

Among the different types, the right of ownership concentrates, in a more ingrained way, on Brazilian sociocultural values, as an expression of affirming unquestionable autonomy and security. However, creating this expectation, as a horizon to be socially universalized, within the scope of housing policy, has been questioned. Such allegations emphasize the substantial differences between the right to housing and the right to property (FERNANDES, 2008 a, b, MARCUSE, 2008).

In Brazil, the right to property has been hailed as an achievement in terms of setting up public housing access programs. However, there is no consensus as to its effectiveness as a policy of social interest. Its conception as a policy of obtaining titles and individual records is not defended with the same intensity as the right to housing, the right to the city or collective rights. The critique of prioritization in obtaining property titling shows the significant difference between the policies arising from these two types of rights, insofar as they have different purposes.

In cases of land regularization, there are risks of the use-value to be supplanted by the exchange value, stimulating the irregular commercialization of newly acquired property, perpetuating informality in new occupations. Marcuse (2008) alleges that among the benefits of property rights and the ills of illegality, there are alternatives to securing possession, without affecting social cohesion in consolidated communities and without incurring the misconception of the formulation of rights of use as if they were property rights. These considerations have sparked off important questions related to the debate on housing policy, mainly for the clear priority in offering programs aimed at titling and acquiring property, heightening social expectations based on this model.

Even Bill 3057/2000, which is still pending in the National Congress, and which has been designated as the successor to the 1979 law, maintains approaches based on

housing property law, although it also includes land tenure, urban planning and environmental issues.

Known as the "Territorial Responsibility Law", it seeks to incorporate and tackle more in-depth questions of the most popular sectors, related to the right to housing, land regularization, the social function of the city and property. On the other hand, it also includes new and controversial forms of land subdivision, as in the case of urban condominiums (gated communities) or closed housing developments, housing models resulting from real estate market pressures. In this sense, as a Bill, it has assimilated the demands of different social strata, both from segments affected by housing movements and from the business sectors involved in the legitimization of condominium projects with access control (SILVA, 2011; SILVA et al, 2015).

In relation to previous legislation, one of the innovative aspects of this Bill is the emphasis given to land regularization processes, with a view to overcoming the informal nature of urban settlements. The great dilemma of the conflict arising from informal settlements and environmental preservation was addressed for the first time in legislation aimed at land subdivision. However, although it is fundamental for updating the legal repertoire of support for urban/environmental policies, its process has not yet been prioritized in decision-making centres of the congressional sphere.

Property rights considering socio-environmental issues

As in real estate issues, in land and property matters, from the point of view of the natural environment and exploitation of natural resources, property rights have also undergone transformations that have given greater importance to public interests, collective interests and especially diffuse interests.

Volatility in the concept of diffuse interest or entitlement has often been applied to environmental issues. According to GASTALDI (2014), in view of their indeterminacy of the subjects involved, situations of uncertainties are linked to conjunctural, generic, accidental or changeable factors, unlike the conditions of collective rights, although both are transindividual.

Historically, among the first legislations of the 1930s, the Forest Code (Decree 23.793 of 23/01/1934) already emphasized the public dimension, but from a nationalist point of view. It claimed that the forests within the national territory are "a good of common interest to all the inhabitants of the country". Even if in an incipient, pragmatic and utilitarian way, it established limitations to the right to property, depending on the type of forest or exploration to be practiced. A literal interpretation could consider that Brazilian forests would not be privately owned, however, despite the legal text, private property remained strong in terms of its autonomy. Although these forestry devices did not guarantee the desired preservation, they were of fundamental importance for the formation of the first national parks (DRUMMOND, 1997; SILVA, 2011).

In this same period, the Water Code (Decree 24.643 of 07/10/1934) and the Hunting Code (Decree-Law 5.894 of 10/20/1943) were also submitted to the view of national natural heritage, from the strategic and utilitarian point of view, however, they maintained

the prevalence of autonomy within private property. In the case of water, there was a legal ambiguity, because the Decree guaranteed border owners the preference for water bodies, but, on the other hand, it also guaranteed access to all, due to the principle of service to "the first necessities of life" or the "superior public interest". In addition to the privileges of border owners, using water for economic activities was valued and prioritized, especially for commercial navigation and hydroelectric power generation, reinforcing conceptions based on the exploration of water as an abundant resource.

In the 1930s and 1940s, the utilitarian approach to water also rebounded in relation to fauna, despite the creation of the first reserves and refuges that began to be foreseen in the Hunting Code of 1943. This Decree-Law oscillated between protection and the exploitation of fauna, since hunting was still a usual practice as a commercial and sporting activity. In addition to the autonomy for exercising such activities in private territories, the classification of useful, ornamental, harmful animals also prevailed, facilitating the legitimization of destroying wild fauna. While some were endowed with the use and commercialization potential, others could be annihilated by alleging loss and hindering the good performance of agrarian activities.

The strength of private property, prioritization of economic activities and the utilitarian character of natural resources remained in the legislation of the 1960s, although some conceptual references began to undergo transformations as a result of the transformative agenda of grassroots reforms that emerged in the early years 1960. Even with the limitations arising from the military regime, after 1964, forest policy expanded its regulation to other forms of permanent preservation vegetation, in addition to forestry. Hunting gradually became an unpractised activity failing to report to the Hunting Code, radically and qualitatively changing its approach, making room for a Law to Protect Wildlife, Federal Law 5.197 dated 03/01/1967 (SILVA, 2011).

In the same period, however, from the point of view of basic sanitation, the National Sanitation Policy, Federal Law 5.318 of 09/26/1967, regulated the provision of these services as part of a political and institutional reordering of the State. The model based on state-owned and mixed-economy enterprises, as executive entities of services, made it difficult to interact between sectoral and territorial policies, reducing possibilities for integration with environmental policies. At the institutional level, the National Sanitation Council prioritized technical, administrative and economic efficiency to ensure the return on investments made. In this equation there was no room for the unsolvable sectors of society, in such a way that the perspective of universalizing access was even considered (SILVA, 1999; SILVA, 2011).

Four decades later, the enactment of Federal Law 11.445 of 05/01/2007, which provides National Guidelines for Basic Sanitation, was fundamental to revert, at least at the level of the legal apparatus, the exclusionary logic of solvable demand, establishing as one of its fundamental principles the opposite: universal access to basic sanitation.

In a seminal way, the first steps towards a more democratized appropriation in the use of environmental patrimony elements were followed as from 1981, with the enactment of Federal Law 6.938 of 08/31/1981, which established the National Environmental Policy Act. Its developments in state and municipal legislations, as well as in a new generation

of sectoral and complementary norms, have contributed to the consolidation of an environmental right that has a different rationality from previous periods. The turnaround occurred in conceptual terms of interpreting the environmental patrimony, with reflexes in participation systems, after the constitution of SISNAMA (National Environment System), as well as the institution of mechanisms of preservation, conservation, recovery, prevention and control of environmental assets.

In addition, the change in the forms of democratization of access to environmental patrimony also contributed to the relativization in the right to private property. The concept of an environment as a "public patrimony of collective use" has led to many consequences, driven by the increased perception that involves benefits and burdens of the ways of appropriating this environmental patrimony. On the one hand, the rights to enjoy environmental goods and, on the other, the duty not to provoke and the right not to suffer diffuse effects due to environmental impacts and damages, requiring the imposition of limits to inviolability and the free disposition of private property.

In the same perspective, Federal Law 9.433 of 08/01/1997, which established the National Water Resources Policy (PNRH in Portuguese), defined water as a limited good with economic value, which should be a "public domain" and a priority for human consumption and animal welfare. A little more than six decades separate the conception that considered the typology of "particular waters", as established in the Water Code of 1934, reflecting a period in whose scope of considerations did not foresee the risk of scarcity or loss of water quality.

Currently, in the same way that the use control was implemented, through granting priorities, the law began to recommend its universalization. Another means of relativizing the supremacy of conventional private property was the democratic nature of the Watershed Committees, with representatives from different sectors of civil society such as Non-Governmental Organisations (NGOs) defending diffuse and collective rights and indigenous or traditional communities, in cases of involvement of their lands.

However, in spite of the unequivocal achievements of the water resources policy, since 1997, contradictory relations remain, both in the field of socio-environmental conflicts and in the juridical-institutional sphere that affects the planning units of different scales. In the first case, the expansion of control brings a contradiction fueled by two distinct logics: on the one hand, the environmental impacts caused by irregular settlements and, on the other hand, the social risk faced by geotechnical weaknesses or precarious infrastructure. As a backdrop to the conflicts arising from this dubiousness, the challenge of reconciling two constitutional rights: on the one hand, the right to housing and, on the other, the right to an ecologically balanced environment (ROCCO, 2002; MARTINS, 2006; SILVA, 2011).

In the second case, water resources management affects different scales, involving both the planning unit delimited by the municipal territory, and that delimited by hydrographic basins. The dynamics of land use and occupation, usually based on the instruments and resources of urban policy provided by the municipal master plans, are not always integrated into the Basin Plans from the activities of the Watershed Committees, deliberative instances in water management (SCHULT et al, 2009; SILVA; TEIXEIRA, 2012).

> Due to the fact they are segmented, such territorialities are delimited by criteria established according to inconsistent logic between each other, insofar as the effects of environmental problems go beyond political and administrative boundaries leading to consequences that are not always predictable. These contexts reinforce the need to design operational and institutional mechanisms that induce the production of interactions [...] favoring a territorial management that incorporates environmental policy constraints and, vice versa, environmental management that incorporates elements of urban and territorial policy (SILVA, TEIXEIRA, 2012, p. 11).

Other authors argue that despite the "concomitances", there remain gaps in the procedures and instruments that ensure a more articulated relationship in territorial and environmental policy practices (SCHULT et al., 2009, p.2.) Although there are contradictions in socio-environmental conflicts, difficulties in dealing with different scales of action, institutional limitations to apply many of the legal provisions already in force, the transformation of private property rights, over the last eight decades, points to their relativization considering new paradigms that have extrapolated the individual sphere.

Types of conflicts in the generations of law

Underlying the types of rights, conditions can be identified that lead to different interpretations. One of them refers to the clash between two antagonistic paradigms: on the one hand, the liberal legalism of the Civil Code and its unfolding, on the other, the principle of the social function of property and the public interest. According to Fernandes (2006, 2008b), in order for the side that imposes limits on the inviolable right of private property to prevail, it would be necessary to overcome the traditional legal-urbanistic order based on the "civilist-privatist" or "patrimonialist" view of property.

Another ambiguous situation stems from divergences between Urban Law and Environmental Law. The very notion of complementarity between diffuse and collective law does not always occur linearly, insofar as the notion of diffuse law applies more directly to Environmental Law, since it does not include the delimitations of certain collectivities. On the other hand, Urbanistic Law is more associated to the notion of collective law, which makes it possible to identify the subjects or groups involved more explicitly.

Differentials in the field of Rights are also reflected in the tense relations found in the duality in management of the built environment and the natural environment, arising from their distinct genesis, due to the specificity of their disciplinary fields, their research objects and areas of operation.

The simultaneity of legitimacy conditions makes it difficult to resolve conflicts as interpretations are made which are incompatible with each other, although based on arguments considering legal protection. These uncertain factors have brought challenges to the fields of urban and environmental management, thus identifying the types of rights found in each context can contribute to the equation of the issues involved.

According to Lima (2003), in 1979 the term "generations of human rights" was

used for the first time. The use of the term was intended to support, metaphorically, a supposed evolution in the scale of rights from the main motto of the French Revolution (liberty, equality and fraternity). However, the author emphasizes that one generation cannot exclude the other, i.e., the different types of law overlap or complement one another. The expression has been criticized for conveying a false impression of gradual replacement from one generation to another. Lima (2003) states that there is no accumulation process of different spheres of law, but a succession in which all are enforced.

Based on these understandings, the pertinence of the contribution of these interpretations in the present discussion is observed. The occurrence of different types of rights, applicable to the same case and, therefore concomitant reinforce contradictions in different areas of disputes within the scope of territorial and environmental policies and their consequences of a practical and reflective nature.

In this sense, Bobbio (2004) produced an exercise in exploring the types of law from a chronological logic that outlined some processes of acquisition of new rights that were, historically, added to struggles and social achievements. The author begins his proposal of classification with the individual right, consolidated at the end of the eighteenth century with the French Revolution, as part of the first generation, considering the conquest of individual liberties and formal equality before the law.

In the second generation, it places the collective rights that emerged in the central countries in response to the social and economic needs arising from industrial society, in which State intervention was necessary to ensure the material conditions of social welfare. In the third generation of rights, it identifies diffuse rights, basically related to environmental problems, arising from the exploitation of the physical base of the planet, enhanced by the increasing availability of technological resources. In this dimension there is a process of depersonalization of the rights of the first and second generations, in that their members are not restricted to the field of individual rights and may not fit into the collective. Thus, three main relationships of potential conflict that are dualities of confrontation and have recurred in planning and territorial and environmental management practices are identified. Table 1 shows how to systematize some of these types of conflict.

Table 1 – TYPES OF CONFRONTATION AND GENERATIONS OF RIGHTS

Right to Private Individual Property (1st Generation) X Right to Housing and the Social Function of Property (2nd Generation)
Right to Housing and the Social Function of Property (2nd Generation) X Ecologically Balanced Environmental Right (3rd Generation)
Right to Private Individual Property (1st Generation) X Ecologically Balanced Environmental Right (3rd Generation)

Source: SILVA (2011).

The conflict configured in the first type of confrontation shows different forms in opposing private property and the social function of property. Among them, the recurrent conflicts related to the collective occupations of private, empty or abandoned properties, promoted within the scope of social housing movements, occurring in peripheral areas as well as in buildings located in central metropolitan areas.

Generally, the second type is the same type of social deficiency, however the territorial object in dispute may involve environmentally protected areas or areas of social and environmental risk, with different causes and consequences. Among them, housing and land use informality sprawl in public water supply areas or in areas where there is a risk of soil or water contamination, as well as areas of flood risk or landslides. Removal and resettlement actions have been more frequent in situations that confine the effectiveness of imminent risks to the residents. However, when there is a lack of this evidence, these disputes are often made even more complex by contrasting two rights recognized by the Federal Constitution of 1988: the social right to housing and the right to the environmentally balanced environment.

From an environmental perspective, references to future generations and to nature itself have recurred in documents and academic productions as the new subjects of law that have emerged from constructing environmental citizenship processes (SILVA-SÁNCHEZ, 2000). However, contrary to such an abstract perspective of future and nature, Boaventura de Souza Santos defends a new rationality based on the pressing social and collective demands of the contemporary world (SANTOS, 2003: 3, 4). In these two views, the disputes between two priorities that pose challenges to procedures and actions of urban and environmental management are opposed.

The conflict of the third type may involve private economic interests and environmental protection, either by the appropriation or exploitation of natural resources, or by the impacts arising from implementing certain projects. These disputes are usually addressed through environmental licensing processes and studies and reports that are diagnostics and establish compensation, recovery, control or mitigation measures.

These relations of conflict show that, although these types of rights were in different periods, based on socially conquered transformations, all of them preserve their legitimacy and remain active within urban and environmental policies.

This analytical construction, linked to a historically determined temporal scale, in which the dimension of the law extends to new subjects of tutelage, contributes to the discussion of the right to property and other rights present in urban and environmental management, key elements of public policies cities applicable in cities, metropolitan areas and environmentally protected areas.

Final considerations

In matters involving territorial and environmental management, land and real estate policies have a central role, therefore, their equation involves identifying the types of conflicts and the subjects of law involved in the issues that are presented. Linked to the social, political, economic and environmental dynamics, the different types of rights

often appear concomitantly and competitively, increasing the complexity of the integrated treatment of interfaces that permeate territorial and environmental issues.

In environmental policy conflicts that often involve diffuse rights, the inconsistency of identification makes the objective determination of causal origins and involved subjects more complex, subverting the rationality that underpins private law and sometimes also collective law. Intangibility of diffuse rights is reflected in the frequent dissociation between the urban and environmental legal order, since the latter usually relies on an abstract, naturalized and landless environment, making it difficult to cope with socio--environmental conflicts.

Identifying and discussing the conflicts and contradictions underlying the types of private, collective or diffuse law, unfolding in the constitutional rights to housing and the ecologically balanced environment, among others, provide possibilities to construct socioenvironmental convergences in conflicts resulting from the production, appropriation , use and occupation of the territory.

The recognition of the different legitimacies embedded in generations of rights, coupled with the scale of prioritization of the subjects involved, as well as the integrated and articulated approaches of the different planning units, are essential elements to shape territorial and environmental policies, in addition to the rhetorical plan.

The equations of these variables found in the different fields of law, involving private property and challenging urban and environmental issues can contribute to the constitution of validating elements applicable to the different activities, practices and reflections, which congregate the field of action of planning and environmental urban management.

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URBAN AND ENVIRONMENTAL MANAGEMENT CHALLENGES CONSIDERING TRANSFORMATIONS IN PROPERTY LAW IN BRAZIL

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Abstract: Hegemony of private property in Brazil is undergoing transformations which have made its absolute nature relative. Both in the urban and environmental fields, notions arising from reflections and practices, and mirrored in a number of legal frameworks, have brought new ideas to debate, as well as land and environmental management practices. The contributions made by the National Environmental Policy Act of 1981, the Federal Constitution of 1988, the City Statute of 2001, among other normative regulations, have led to different consequences, including in the field of private individual rights, collective rights and diffuse rights. Based on the guiding principle behind legislation, we attempt to discuss the conflicts and contradictions found in different types of property rights and their close ties with land ownership and home ownership, affecting the universe of reflections and practices of planning, as well as land and environmental management.

***Keywords*:** property rights, urban law, environmental law, urban management, environmental management.

***Resumo*:** A hegemonia da propriedade privada no Brasil vem passando por transformações que têm relativizado seu caráter absoluto. Tanto pelo campo urbanístico, como ambiental, noções decorrentes das reflexões e práticas, espelhadas em um conjunto de marcos legais, têm trazido novos elementos para o debate que permeia a gestão territorial e ambiental. As contribuições trazidas pela Lei da Política Nacional do Meio Ambiente de 1981, pela Constituição Federal de 1988, pelo Estatuto da Cidade de 2001, dentre outros regramentos normativos, produziram diferentes decorrências, inclusive no campo do direito individual privado, do direito coletivo e do direito difuso. A partir do fio condutor da legislação, busca-se discutir os conflitos e contradições presentes em diferentes modalidades do direito de propriedade e seus estreitos vínculos com a propriedade fundiária e imobiliária, com efeitos no universo das reflexões e das práticas do planejamento e da gestão territorial e ambiental.

***Palavras-chave*:** direito de propriedade, direito urbanístico, direito ambiental, gestão urbana, gestão ambiental.

Resumen: La hegemonía de la propiedad privada en Brasil ha sido objeto de transformaciones que han relativizado su carácter absoluto. En el campo urbanístico como en el ambiental, nociones resultantes de reflexiones y prácticas, espejadas en marcos legales, han aportado nuevos elementos al debate sobre la gestión territorial y ambiental. Las contribuciones de la Ley de la Política de Medio Ambiente (1981), de la Constitución Federal (1988) y del Estatuto de la Ciudad (2001), entre otros reglamentos normativos, han generado diferentes consecuencias, incluso en el campo del derecho individual privado, del derecho colectivo y del derecho difuso. A partir del hilo conductor de la legislación, se ha buscado discutir los conflictos y las contradicciones presentes en diferentes formas del derecho de propiedad y sus estrechos enlaces con la propiedad inmobiliaria, con efectos en el universo de las reflexiones y de las prácticas de planeamiento y gestión territorial y ambiental.

***Palabra clave*:** derechos de propiedad, derecho urbanístico, derecho ambiental, gestión urbana, gestión ambiental.