

DISTRIBUTIONAL CONFLICTS IN URBAN STREET REGULATION IN BRAZIL

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As in many areas of social policy in Brazil, there is a marked contrast between the urban policy directives established in the 1988 Federal Constitution and the legacy of car-centered policies adopted in the mid-20th century. The car-centered model has shown an incredible ability to self-reproduce over time. It has prevented more democratic, inclusive and sustainable transportation models from spreading and developing in accordance with the Federal Constitution and federal legislation that, in theory, should guide the implementation of urban policy at the local level. This ability has been supported and legitimized by law operators and enforcers, who play a conservative role, protecting and even deepening an individualistic mobility model and imposing barriers and delays in measures adopted to revert it.

Recent examples of this dynamic can be identified in São Paulo, Brazil's largest metropolis. In 2009, under conservative governments at both the state and local level, the main avenue of the city, Marginal Tietê, began to be expanded. This project eliminated a very large, rare and important green area; it cost over US\$500 million (75% more than originally planned); and soon proved incapable of alleviating the traffic problems in the region. Despite the project's clear contradiction with constitutional and statutory urban policy standards, no public accountability institution showed interest in questioning it in administrative or judicial fora. On the other hand, between 2015 and 2016, under a progressive local government, many policies that strictly followed federal urban legislation were subject to judicial controversy. At least three of those controversies are very symptomatic of the changes being pursued and resisted: 1) the reduction of the speed limit in highways with high accident rates, which caused thousands of casualties every year (illustrated in Figure 1); 2) the construction of bike lanes and paths on some important streets; and 3) the prohibition of car traffic on the city's most iconic road (the Paulista Avenue) during Sundays to promote culture and leisure activities.

The Law and Public Policy (LPP) approach, developed by authors like Maria Paula Dallari Bucci and Diogo R. Coutinho, offers valuable principles and methodological tools to study

these conflicts. LPP focuses on critically comprehending law in action and the way it shapes executive policy-making, including the conception, implementation and functioning of institutional arrangements, the operation of which depends on legal frameworks and solutions. The law establishes objectives, but also offers instruments to reach them; assigns responsibilities to agents, on the one hand, and, on the other, organizes forms of institutional coordination, procedures for agents' interaction and channels for social participation. The LPP approach helps envision the links between the political and legal elements of public policies, always being concerned with a prospective view of social problems ^[1].

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MP abre inquérito e OAB diz que vai à Justiça contra velocidade na Marginal

Promotoria quer que CET envie estudo sobre acidentes na Tietê e Pinheiros. Velocidade máxima caiu de 90 km/h para 70 km/h nas pistas expressas.

Luciana Bonadio e Isabela Leite
Do G1 São Paulo



Figure 1. News piece noting that, in 2015, the Brazilian Public Prosecutor's Office sued the São Paulo Mayor's Office for reducing the speed limit on the Marginal do Tietê and Marginal Pinheiros highways. Source: G1.



Family	Type	Subtype	Examples
1) Decisions concerning the primary uses of urban streets (mobility)	1.a) Streets division between mobility modals	N/A	Sidewalks width; bike paths' installation; BRT's construction
	1.b) Applicable rules to each part/modal	N/A	Speed limit; periodic bus lanes; car restriction system; toll fees
	1.c) Rules and infrastructure to modals interaction and parts integration	N/A	Crosswalk installation; traffic light time; rules on garage ramps
2) Decisions concerning the secondary uses of urban streets (other uses)	2.a) Permanent secondary uses	N/A	Newsstands permission; pole lights; tree-planting; parklets implementation
	2.b) Temporary secondary uses	2.b.i) Periodic uses	Street market authorization; streets free use for leisure on weekends
		2.b.ii) Ad hoc uses	Authorization for street parties, demonstrations, and sports and culinary events

Table 1. Typology of decisions concerning urban street uses. Source: author's elaboration.

Based on this approach and in-depth studies of conflicts over urban street regulation in São Paulo, I developed an original typology of the local government's decisions concerning the uses of urban streets (Table 1). Breaking down and systematically organizing the public options regarding streets regulation are important steps to the necessary demystification and politization of streets planning and management.

The typology is based on two big families of decisions. The first one, (1) decisions concerning the primary uses of urban streets (circulation), comprises three types of decisions: (1.a) the division of the circulation space between each mobility modal; (1.b) the definition of the rules applicable to each modal or part; and (1.c) the definition of the rules and the creation of the infrastructure needed for the interaction of the modals and the integration of the spaces. The second family comprises two different types: (2.a) decisions concerning permanent secondary uses, like the permission for installation of newsstands or small squares and parklets; and (2.b.) decisions concerning temporary secondary uses, which is divided into two subtypes – (2.b.i) decisions concerning periodic secondary uses, like permission and organization of street markets or the liberation of specific streets for leisure activities and free use on weekends, and (2.b.ii) decisions concerning ad hoc secondary uses, like the authorization for street parties and shows.

Urban streets are the main public good in cities and one of the most strategic assets to local governments. Urban streets are the public space par excellence: their functions, scale and capillarity made them an irreplaceable physical support for the exercise of citizenship. They are relevant not to one, but to several kinds of public policies. Beyond urban mobility, they are directly involved in policies regarding infrastructure, health, culture, environment, energy, economy, education, human rights and others. Hence, they are essential to numerous urban functions, and their regulation should reflect it, harmonizing different uses and values.

The typology above is useful for policy-makers, city officials/planners, legal professionals and citizens to fully understand and interpret the legal framework applicable to urban streets management according to its social purpose, international guidelines and scientific evidence historically accumulated. Considering the contemporary urbanistic laws on urban mobility, the general legal framework applicable to public goods, and the social function of property applied to urban streets^[2], one can infer solid parameters that should be observed in each type of decision presented above.

Much can be done to increase the quality of streets regulation and management in Brazil. Diagnosing the roots and the consequences of the car-centered mobility model under the LPP approach and building an analytical framework to assess public decisions on street uses are important steps in this direction.

Notes

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^[1] Dallari Bucci, Maria Paula, Law and Public Policy in Brazil and the United States: A North-South Dialogue (April 27, 2022). Available at SSRN: <https://ssrn.com/abstract=4095414> or <http://dx.doi.org/10.2139/ssrn.4095414>

^[2] In Brazil, the social purpose of property is a constitutional tenet that shapes both public and private property regulations.

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