
F L O O R

FINANCIAL ASSISTANCE, LAND POLICY, AND GLOBAL SOCIAL RIGHTS

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The Social Function of Property, Land Rights and Social Welfare in Brazil

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Abstract

Land rights have been a major source of political conflict in Brazil. Although most of that conflict has involved the rural sector, in recent decades urban land rights have also entered the political debate. This paper explores the issue of land rights in Brazil by focusing on the central notion that has underpinned efforts to restructure such rights: the so-called social function of property. It examines the meaning and origins of this concept, the evolution of its embodiment in Brazilian law, the extent to which it has actually been put into practice, and the criticisms that have arisen regarding those efforts. It concludes that, despite the modest results of efforts to implement the social function of property, this concept continues to be a valuable tool for pursuing social equity in Brazil.

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Introduction

Land rights, and especially rural land rights, have been a key source of political conflict in Brazil since at least the early 1960s, when popular mobilization for agrarian reform panicked conservatives and contributed to the 1964 military coup d'état. In the late 1970s and early 1980s land-related disputes in the Amazon basin, set in motion by the military regime's frontier development policies, left hundreds dead and helped turn much of the powerful Catholic Church against the regime. Agrarian reform continued to be a major bone of political contention following the return to civilian rule in 1985. President José Sarney's ambitious plan to grant land to more than a million families provoked a land-owner counteroffensive that largely neutralized the program. Despite this defeat, demands for land redistribution returned to center stage in the second half of the 1990s when President Fernando Henrique Cardoso, facing a grassroots movement of unprecedented scope and organization, implemented the most extensive agrarian reform in Brazil's history, seizing more than 3,500 private estates.

Although the rural sector has clearly dominated disputes over land in Brazil, urban land rights have emerged as a significant issue in recent decades, largely as a consequence of the progressive promises of the 1988 democratic constitution, as well as a landmark piece of legislation called the City Statute, passed by the Brazilian Congress in 2001, which seeks to promote more rational and equitable use of land in urban areas.

The victory of the leftist Workers' Party (PT) in the 2002 presidential election created expectations that both rural and urban land issues would gain new prominence, given the party's traditional commitment to redistributing property. The reality of the PT's three terms in office, however, has been more complex. Land rights reform has been prioritized at certain times and in certain ways, but the primary focus of the government's attention has clearly been on other policy areas, including cash transfers to the poor. Nevertheless, there continue to be pressures from civil society to address the highly unequal distribution of landed property.

This paper explores the issue of land rights in Brazil by focusing on the central notion that has underpinned efforts to restructure such rights in both the rural and urban contexts: the so-called social function of property. It examines the meaning and origins of this concept, the evolution of its embodiment in Brazilian law, the extent to which it has actually been put into practice, and the criticisms that have arisen regarding those efforts. It concludes that, despite the modest results it has yielded so far, the social function principle continues to be an important instrument for promoting popular welfare in Brazil.

There are many other scholarly works on land rights reform in Brazil, some of which are cited below. However, they almost invariably focus exclusively on either the rural sector or the cities.¹ This study innovates by emphasizing the social function of land as a general principle and comparing how it has been codified and implemented in these two very different contexts.

¹ The major exceptions are certain legal analyses of the social function, such as Cunha (2011) and Dávila (2011), but such works do not explore issues of implementation.

Meaning and Origins

The social function of property is the notion that the right of private ownership includes an obligation to use property in ways that contribute to the collective or common good (Van Banning 2001; Foster and Bonilla 2011). Owners are obligated to refrain from using their property in ways that harm others. In addition, and more controversially, ownership may involve positive obligations, such as the requirement that arable farmland be cultivated for the provision of foods and other goods of benefit to society. The social function concept does not, it should be underscored, imply a rejection of private property (Dávila 2011). Rather, it stems from the belief that the inevitable interdependence of individuals, even in a capitalist society, requires that certain limits be placed on private ownership.

Although the idea of a social function of property has diverse roots, scholars of Latin America usually trace its origins mainly to the writings Léon Duguit, a legal scholar at the University of Bordeaux in France during the late 19th and early 20th centuries (Mirow 2010, 2011).² Duguit's body of work, including a well-known series of lectures delivered in Buenos Aires, Argentina in 1911, emphasized the role of law as an instrument for promoting social solidarity and the collective good. His argument that ownership of landed property had an inherent social function, which was increasingly reflected in the legal codes of the time, was part of a broader contemporary critique of an absolute right to property.

Despite its European roots, this concept seems to have had a greater impact on Latin America than on the developed world. Some European constitutions make reference to a social function of property, but the positive obligations associated with this concept are usually not clearly articulated. The purpose seems mainly to protect the public from actively harmful uses of property. In Latin America, in contrast, the social function has been associated mainly with the positive responsibility to cultivate arable farmland, rather than leaving it abandoned or holding it exclusively for political or speculative purposes.

This association is, of course, no accident. Marked inequality in the distribution of rural land is one of the most distinctive characteristics of Latin America, dating back to at least the late 19th century and perhaps the colonial period.³ The typical regional contrast between huge and often lightly cultivated estates, on the one hand, and a vast population of landless or land-poor peasants, on the other, made the politicization of land rights almost inevitable. The struggle over whether or not to break up large landholdings was a central political theme during most of the 20th century, beginning with the Mexican Revolution of 1910-1920, which laid the groundwork for the first major Latin American land redistribution program, in the 1930s. All of the subsequent social revolutions in the region, including those of Bolivia, Cuba and Nicaragua, would feature substantial agrarian reforms.

The social function concept diffused widely in the region because it fit, in one way or another, with rising demands to break up large rural estates (Ankersen and Ruppert

² Cunha (2011) maintains that early 20th century Italian jurists Pietro Cogliolo and Enrico Cimballi were more influential in shaping the Brazilian understanding of this concept. However, he does not provide evidence to document this claim and other analyses underscore the impact of Duguit's work (Azevêdo 2008; Dávila 2011).

³ Latin America's marked inequality in landholding has traditionally been viewed as a product of colonial rule, but recent analyses have argued that it emerged mainly during the period of liberalizing reforms and export-oriented economic growth during the late 19th and early 20th centuries (Prados de la Escosura 2007; Williamson 2009).

2006). As articulated by Duguit, the concept was about ensuring that natural resources be fully utilized; it was not conceived of as a tool for redistribution (Mirow 2011). However, it could potentially be utilized by those whose aim was to promote equity by redistributing large estates to the landless. In practice, the diffusion of the social function in Latin America has been propelled by a mixture of economic and distributive motives, with the latter arguably gaining greater prominence with the intensification of class conflict after about mid-century.⁴ By the end of World War II several countries, including Chile, Cuba, Colombia, Ecuador and Paraguay, had adopted constitutional provisions or statutes that referred to the social function.⁵ Over the next few decades most of Latin America would follow suit (Ankersen and Ruppert 2006).

Legal Evolution in Brazil

Brazil tentatively joined this trend toward incorporating the social function of property in its legal structures with the 1934 constitution, which asserted that the right to property “cannot be exercised against the social or collective interest.” A new constitution adopted in 1946 moved more clearly in this direction, stating that, “The use of property will be conditional on social welfare. The law can, in observation of the provisions in Article 141, section 16, promote the just distribution of property with equal opportunity for all.”⁶ The referenced section allows the expropriation of property based on, among other things, “social interest,” provided that the state compensates the owner in cash. Although the 1946 Constitution did not use the expression “social function” the debate that led up to its approval makes clear that the drafters drew on this concept in formulating these provisions (Bernardes 2003, p. 4).

Compared to later Brazilian constitutions, the 1934 and 1946 constitutions were not crafted during a period of strong popular pressure for land redistribution in the countryside. However, this period brought the increased political assertion of urban groups and the initiation, under President Getúlio Vargas, of an import-substitution industrialization program. The progress of the latter was threatened, according to some intellectuals and politicians, by the unequal distribution and underutilization of farmland, which raised food prices (and thus labor costs) and limited the size of the domestic consumer market (Linhares and Teixeira da Silva, 1999, pp. 103-107). The inclusion of the social function principle in the constitution, although not done in a way that would easily permit a major agrarian reform (due to landowner political influence), reflected at least in part these developmentalist concerns.

The 1960s brought some important innovations in the incorporation of the social function principle into Brazilian law (Cehelsky 1979; Dávila 2011). A constitutional amendment approved in 1964 facilitated the implementation of agrarian reform by allowing the state to compensate expropriated landowners in bonds, rather than cash, thus making

⁴ Mirow’s (2011) study of the social function in Chile illustrates how the principle was originally promoted by middle class moderates, in large part to promote economic development, but eventually utilized by more leftist forces bent on redistribution.

⁵ Mexico’s 1917 constitution had provisions with similar implications, but based on a somewhat different notion, that ultimate ownership of all land was vested in the nation as a whole.

⁶ An intervening constitution, crafted in 1937, at the outset of the authoritarian *Estado Novo* regime, omitted any provision that could be easily interpreted in social function terms.

reform more financially viable. The amendment also transferred an existing tax on rural land from the municipal to the federal level, with the goal of using it to stimulate farm production by taxing unproductive land at a higher rate. A law called the Land Statute was approved, also in 1964, which explicitly asserted the “social function” of rural land and created the legal basis for a potentially extensive agrarian reform. Finally, a new constitution formulated three years later became the first Brazilian constitution to refer explicitly to the social function.

Ironically, these reforms were advanced by a conservative military regime that had been established in 1964 in part to smash left-wing efforts to bring about radical land redistribution. The early leadership of the regime apparently felt that the best way to quell the agrarian unrest that had arisen since the early 1960s was to implement a major but non-revolutionary reform under military control. Although the regime ultimately failed to muster the political will to implement such a reform, the Land Statute and accompanying constitutional changes further legitimized demands for land redistribution and provided part of the political backdrop for the resurgence of the land question during Brazil’s extended transition to democracy in the late 1970s and early 1980s (Fernandes 2000; Ondetti 2008a).

Brazil’s current constitution was ratified in 1988, less than three years after the return to civilian rule.⁷ It is often considered to be highly progressive because it incorporates an extensive set of social rights pertaining to education, health, social security and other areas. However, with regard to land rights, it is a somewhat ambivalent and even contradictory document.

Like its predecessor, the 1988 document explicitly asserts that private property has a social function and it authorizes the federal government to expropriate large properties that do not fulfill that function, compensating the owner in bonds for the land and in cash for any improvements made to the land.⁸ With regard to rural properties, fulfillment of the social function involves meeting three requirements: 1) that the land in question be exploited economically in a “rational and adequate” manner; 2) that activities realized on the land comply with the labor code; 3) that the natural resources on the property be exploited in a way that preserves the natural environment. In addition, the 1988 text reaffirms the idea of using the rate structure of the rural land tax to “discourage the maintenance of unproductive property.”

At the same time, however, the constitution states flatly that “productive” property cannot be expropriated. For many analysts this provision essentially nullifies the labor and environmental aspects of the social function, since it implies that productive farmland cannot be seized no matter what environmental or labor-related infractions the owner may be guilty of. Although agrarian reform activists have sought to pressure authorities to implement these elements of the social function of land, in practice the ban on expropriating productive land has prevailed (Mészáros 2013).

The 1988 document includes, for the first time in a Brazilian constitution, an explicit discussion of what fulfillment of the social function entails in the urban context. It empowers authorities to take punitive action against owners of urban land that has not been

⁷ The military transferred control of the federal executive to a civilian president elected by the Congress in March 1985. The legislature had continued to function (albeit under important restrictions) during all but two years of the regime.

⁸ Small and medium-sized properties are exempt from expropriation.

built upon or is un- or underutilized, and it lists three policy instruments they may use for this purpose: compulsory subdivision or construction, increased property taxation, and expropriation with compensation in government bonds. In contrast to the rural sector, where the power to enforce the social function is a federal monopoly, in the cities this authority belongs to municipal governments. Each municipality with more than 20,000 inhabitants must define the manner in which it will enforce the social function of property in a land use master plan, or Plano Diretor, approved by the municipal legislature. Thus, although the 1988 provides seemingly robust tools for enforcing the social function in urban areas, it makes the actual use of those tools dependent on local conditions in the more than 5,500 municipalities across Brazil.

This ambivalent combination of provisions reflects the stalemate that emerged during the 1987-1988 Constituent Assembly (Martínez-Lara 1995; Carvalho et al 2009). Brazil's democratic transition was accompanied and propelled forward by a widespread grassroots mobilization in support of democratization and social reform. This "rebirth of civil society" put pressure on the delegates to provide channels of popular participation and to satisfy at least some of the many social demands, including the demand for land rights reform. However, the early victories of progressive forces provoked strong resistance from conservatives. While the latter were unable to roll back the essentially progressive orientation of the constitution, they did secure important victories, most notably the ban on expropriating productive farmland. Similarly, urban progressives were forced to accept the formula by which enforcement of the social function would be subject to municipal master plans, despite recognizing that it represented a conservative strategy to "make this principle merely rhetorical" (Fernandes 2007, p. 180).

Implementation of the constitutional provisions regarding the social function of property required complementary legislation providing more specific guidelines. This process was delayed with regard to both the rural and urban sectors, but the delay was much greater in the latter case. The Brazilian Congress passed an agrarian reform law in 1993, but it was only in 2001, after more than a dozen years of debate, that it approved the City Statute, a broad-based urban policy bill that, among other elements, includes a more extensive discussion of the tools available to municipal governments to enforce the social function (Fernandes 2007; Rolnik 2013). It also specifies a deadline of 2006 for approving municipal master plans and extends the obligation to devise a master plan to new categories of municipalities, including those that are part of a metropolitan region, regardless of their size.

Implementation

As the foregoing discussion indicates, the social function of property is firmly established in Brazilian law, at least at the federal level. However, laws do not implement themselves. Effective implementation requires political leaders determined to create the appropriate bureaucratic structures and commit the necessary fiscal resources, among other tasks. These challenges are particularly great when the constitutional provisions in question threaten the interests of powerful groups like large landowners and real estate investors. The present section thus explores the extent to which the social function provisions of the constitution have actually been put into practice.

Rural Sector

For decades the constitutional passages regarding the social function of rural property had little practical effect. It was not until the 1960s, when the left-leaning João Goulart proposed a series of “basic reforms” affecting property, voting and labor rights, that a Brazilian president even put forward a serious proposal for agrarian reform (Camargo 1986). Goulart’s plan, moreover, bogged down in Congress and the president himself was removed from office in April 1964 by the military. Rather surprisingly, the military regime itself initially seemed committed to implementing a substantial redistribution of rural property based on the social function principle. Its motivation was undoubtedly provided in large part by the rural unrest that had erupted in several regions of the country, especially the desperately poor Northeast, during the early years of the decade.⁹

Nevertheless, as mentioned earlier, the military regime was unable to muster the political will to actually implement the planned reform in a vigorous manner. Some expropriations took place, but they were largely responses to specific conflicts and occurred mainly in the Amazon basin of northern Brazil, where even the land that is privately held tends to be less valuable and worked less intensively than in more settled regions of the southern half of the country.

Rather than expropriation, the military’s main answer to the land question was the colonization of public land in the Amazon. Roughly 100,000 families were settled in official projects and others followed without a specific promise of land, but with the hope that the regime’s ambitious Amazon development initiatives would redound to their benefit.¹⁰ Many of the latter, often from the Northeast, ended up squatting on public or unused private land. They competed for land with farmers and land grabbers from more developed regions, also attracted to the region by official promises. The conflicts that arose between these groups soon turned parts of the Amazon into a Brazilian version of the Wild West, featuring gunslingers, shootouts and a mounting body count (Martins 1981; Oliveira 2001). It was partly as a result of this carnage, the victims of which were mainly poor peasants (as well as local clergy who defended them) that the normally conservative Catholic Church became an open critic of military rule.

By the time the military handed power back to civilians in 1985, agrarian reform had reemerged as a major national issue, but the first two presidential terms of the democratic period produced far more promises than actual land redistribution. José Sarney (1985-1989) pledged to settle 1.4 million landless and land-poor families, but backed down in the face of pressure from enraged landlords and ultimately granted land to fewer than 90,000. His successor, Fernando Collor (1990-1992), promised to settle 500,000 families but managed to distribute land to less than 40,000 before being forced to resign under the threat of impeachment. Collor was replaced by his vice president, Itamar Franco (1993-1994), who vowed to accelerate agrarian reform but settled fewer than 22,000 families during his two years in office (Ondetti 2008a, p. 48).

Through the end of 1994, as Table 1 indicates, the Brazilian state in its entire history had expropriated a total of about 1,300 properties with an area of 15 million hectares, with most of this activity concentrated in the Amazon region.

⁹ In addition, it was probably influenced by the Cuban Revolution of 1959, since peasants played a significant role in the rebels’ victory.

¹⁰ Exact data on Amazon colonization are not available but one study estimates that between 70,000 and 159,000 families received land (Ozório de Almeida 1992, p. 92).

President	Properties Expropriated	Hectares Expropriated
All pre-1995 presidents	1,296	15,573,008
Cardoso (1995-2002)	3,536	10,277,380
Da Silva (2003-2010)	1,987	4,273,984
Rousseff (2011-2013)	186	342,053
Total	7005	30,466,875

Table 1: Rural Land Expropriations through 2013

Source: Institute for Colonization and Agrarian Reform

It was only in the 1990s, and specifically during the two-term presidency of Fernando Henrique Cardoso (1995-2002) of the Party of Brazilian Social Democracy (PSDB) that the state started to make more intensive use of the constitutional provisions allowing it to expropriate land based on the social function principle. Cardoso expropriated almost three times as many rural properties as all his predecessors combined. In terms of area expropriated, his progress relative to the past is less striking, mainly because his expropriations were somewhat less concentrated in the northern part of the country, where land tends to be relatively unproductive and inexpensive. Expropriation continued at a substantial, but significantly slower pace under Pres. Luiz Inácio Lula da Silva (2003-2010) of the Workers' Party, or PT. It then slowed to a crawl under Da Silva's successor, Dilma Rousseff, also of the PT, who was recently elected to a second term. The data for Rousseff do not include 2014, but there is no doubt that she has expropriated farmland at a much slower pace than Da Silva or, especially, Cardoso.

Expropriation, it should be noted, is not the only source of land used by the federal land reform agency, the Institute for Colonization and Agrarian Reform, or INCRA. In some cases, INCRA has tapped land that is already in the public sector in one way or another. This practice appears to have increased recently, as the PT governments have created reserves dedicated to small-scale extractive activities (e.g., rubber tapping) that do not destroy the forest, or to sustainable forestry (Le Tourneau and Bursztyn 2010) and labeled them agrarian reform settlements. Most of the beneficiaries are people who already lived on the land, albeit without legal title. In other cases the INCRA has simply purchased private land.

The reasons behind the intensification of land redistribution since the mid-1990s include the shift to somewhat less conservative and more urban-based governing coalitions after the fall of Fernando Collor, as well as the emergence of an impressively well-organized grassroots movement for agrarian reform anchored by the Movement of Landless Rural Workers (MST), which initially arose in southern Brazil in the 1980s but gradually became an actor of national scope (Fernandes 2000; Wolford and Wright 2003; Ondetti 2008a). That the centrist Cardoso ended up expropriating more land than the at least nominally leftist PT presidents that followed him is somewhat surprising. The reasons for this outcome are too complex to be adequately analyzed here, but have to do with the dynamics of public opinion regarding agrarian reform, the political strategies of individual presidents, and economic factors, especially the availability and cost of farmland to expropriate (Ondetti 2008b).

The reform efforts of the last two decades have significantly increased the reform sector in the Brazilian countryside. As of the end of 2013, the Brazilian state had expropriated

a total of 7,005 rural properties with a surface area of 30,466,875 hectares. Using data from the 2006 agricultural census, which is the most recent one, the latter figure represents 9.2% of the land in farms in Brazil. All, or virtually all, of these expropriations have been based on productivity. For the reasons discussed above, the constitutional provisions regarding the labor and the environment aspects of the social function have been virtually a dead letter. As can be seen in Table 2, official records indicate that more than 950,000 families have been granted land by the federal government. However, because some families have left the land they were awarded, and because there may have been some padding of figures over the years, the actual number of settler families today is undoubtedly smaller (Pacheco 2009). One study based on the 2006 farm census put it at slightly below 600,000, which represented close to 12% of all agricultural establishments at time (Marques, Del Grossi and França 2012).

<i>Families Settled According to INCRA Records through 4/2014</i>	<i>Settler Families Estimated using 2006 Farm Census</i>	<i>Settlers as % of Total Farms based on 2006 Farm Census</i>
956,543	597,926	11.6%

Table 2: Families Settled by the Federal Government

Source: Institute for Colonization and Agrarian Reform; Instituto Brasileiro de Geografia e Estatística; Marques, Del Grossi and França (2012)

While these efforts have brought about a substantial rearrangement of land rights in some areas of the country¹¹ and have helped to counteract certain market trends, including the rapid expansion of soybean and sugarcane cultivation, that probably tend to favor increased land concentration, they do not add up to a major reform at the national level (Reydon 2014). In fact, the Gini coefficient for land inequality in Brazil remained essentially unchanged between the 1995/1996 and 2006 farm censuses, a period during which the bulk of land reform activity occurred.¹² Furthermore, there is broad agreement that the rural land tax has had little effect, mainly because of ineffective enforcement (Reydon 2014, p. 750). As of 2010, it generated an insignificant 0.01% of GDP in revenues (Afonso et al 2013, p. 62).¹³

Urban Sector

If the impact of the social function provision on land rights in the countryside has been relatively modest, it appears to be largely, although not entirely, non-existent in Brazil's cities. Based on the available evidence, it seems that only a few cities have actually begun to use the instruments outlined in the constitution to enforce the social function in urban areas.

Until the approval of the City Statute in 2001 barely a third of the municipalities required to have a master plan actually had one (Junior and Montandon 2011a, p. 30). How-

¹¹ These include, for example, the southeastern portion of the Amazon state of Pará and the coastal sugarcane zone of the Northeast.

¹² Specifically the coefficient was 0.856 in 1995/1996 and 0.854 in 2006.

¹³ To put that in perspective, Brazil's total tax revenues were 34.2% of GDP in the same year.

ever, this process accelerated after the law was passed, in part because of the creation in 2003 (under the newly installed PT government) of a federal Ministry of the Cities, whose purpose is, in part, to aid municipalities in the elaboration and implementation of these plans. Today, roughly 90% of municipalities with populations over 20,000 have master plans (Notícias Terra 2014). These plans generally incorporate the social function-related policy tools referred to in the constitution and fleshed out in the City Statute (Junior and Montandon 2011a). However, the fact that these tools are included in the master plans does not mean that authorities are actually utilizing them.

Unfortunately, the data needed to accurately measure such activities are lacking. In contrast to the rural sector, where data on land expropriations are compiled and reported by the INCRA, for the urban sector there is no centralized source of information on land expropriations or other actions that would reflect implementation of the social function principle. Nevertheless, in recent years a number of studies have appeared that provide some insight into this issue. These works suggest that effective enforcement of the social function principle has been much more the exception than the rule.

Probably the broadest study undertaken thus far, covering more than 500 municipalities across Brazil, examines only the content of the master plans and not their implementation, but its findings are nevertheless instructive (Junior and Montandon 2011b). Although the study examines the content of the master plans in general, one chapter is dedicated specifically to land issues (Oliveira and Biasotto 2011). The latter argues that, in the vast majority of cases, the master plans outline the policy tools for enforcing the social function of property far too vaguely to allow effective implementation, at least without substantial complementary legislation, whose approval is often delayed. Referring to the core policy instruments outlined in the constitution for enforcing the social function of urban land (compulsory construction or subdivision, progressive taxation and expropriation), it argues that

...although the instruments have been incorporated in almost all of the plans analyzed, they were rarely regulated in a way that would make them immediately applicable following the approval of the master plan. In addition, it is not unusual that the regulation of the instruments empties them of their power to induce urban development or to democratize access to well-located urban land (Oliveira and Biasotto 2011, p. 79).

The authors conclude with the somber observation that, with few exceptions, the constitutionally-mandated master plans “have advanced little or not at all in promoting access to urban land” (Oliveira and Biasotto 2011, p. 94).

Some other scholarly works examine more directly the extent to which these tools have been put into practice. An ongoing study of more than 100 municipalities in several states has found that only eight have applied the provisions in the constitution and City Statute that allow authorities to compel landowners to subdivide or build on underutilized properties.¹⁴ Furthermore, only one of the municipalities under study (the city of São Paulo) is actually using its power to apply a punitive property tax rate to underutilized urban land.

In-depth studies of a number of medium-sized cities have yielded similar findings. An examination of Niteroi in the state of Rio de Janeiro found that “the de facto implementa-

¹⁴ The study is being coordinated by Rosana Denaldi of the Universidade Federal do ABC in São Paulo state. Interim results were reported in *Rede Brasil Atual* (2014).

tion” of the City Statute “is far from its original intent” (Friendly 2013, p. 167).¹⁵ Although municipal authorities adopted a master plan that observes the requirements of the Land Statute, none of the instruments listed in the 1988 constitution for enforcing the social function of land appear to be in actual use. Similarly, a study of three municipalities in the state of São Paulo found that generally speaking local authorities had either not incorporated these tools into their master plans or, much more commonly, had failed to pass the regular legislation needed to implement them (Goulart, Terci and Otero 2013). The power to expropriate land not fulfilling its social function is not discussed in any of these studies, which suggests that it may have been left out of the respective master plans entirely.

The major exception to the rule of non-enforcement of the social function of urban land is São Paulo, where the current PT government has recently put in place the legislation needed to implement compulsory construction or subdivision, punitive property taxation and expropriation, and has begun the process of identifying underutilized properties (Prefeitura de São Paulo 2014). As Brazil’s largest city, São Paulo is an important case, but it is virtually alone among the country’s major cities and it is only beginning to deal with this issue now, thirteen years after the approval of the City Statute.

That the social function of land has been enforced even less vigorously in the urban sector than the rural would seem to be due, at least in part, to the fact that the constitution awards the power of enforcement to local authorities. Municipal governments generally lack the financial and human resources needed to put into practice the policy tools that are legally at their disposal (Friendly 2013, p. 171). These tools require substantial bureaucratic capacity dedicated to measuring the utilization of land, determining and applying the appropriate sanctions, and fighting off the judicial challenges that would probably arise from affected landowners.

In addition, municipal governments lack sufficient political autonomy from the local business interests that would be negatively affected by enforcement of the social function (Goulart, Terci and Otero 2013, p. 197). The contrast with agrarian reform is instructive. To be sure, landowner pressure has played an important role in limiting the expropriation of rural land. However, it is difficult for an individual landowner to have sufficient influence over federal authorities to block an expropriation. Thus, thousands of land expropriations have occurred over the years. At the municipal level, however, big real estate developers may well have close personal contacts with the mayor and city council members. In fact, they or their family members may be municipal officials themselves. In such a context it is unlikely that authorities will make use of the more coercive instruments legally available to them.¹⁶

¹⁵ On the case of Niteroi, see also Friendly (2014).

¹⁶ Ideational factors may also limit the application of the social function principle in urban areas. Although the 1988 constitution extended this principle to urban land, there is room to doubt whether it has as much cultural resonance in the cities as in the countryside. Part of its appeal as applied to the rural sector arguably stems from the fact that the value of farmland derives to a substantial extent from natural attributes, especially the fertility of the soil. Such “God-given” qualities are more readily seen as part of the collective patrimony of society than those that endow urban land with its value, including its location within the city environment and the buildings that have been constructed upon it.

Criticisms of the Social Function in Practice

Despite its relatively moderate scale, the redistribution of property rights in Brazil has often occasioned heated debate. While the social function principle is generally not attacked at a theoretical level, criticisms of the attempts that the Brazilian state has made to put that principle into practice are frequent and sometimes virulent. This section discusses and evaluates what are perhaps the three most prominent of these criticisms: that enforcement of the social function of land hinders economic development by undermining the security of property rights; that it encourages overexploitation of natural resources, particularly in the form of deforestation in the Amazon region; and that it is less cost efficient than other approaches to fighting poverty and enhancing social equity. These criticisms have been leveled mainly against agrarian reform, simply because the social function principle has not been applied energetically in urban areas. However, some of the issues raised in this section, particularly with regard to economic growth and property rights security, are potentially also be relevant in the urban context.

Economic Development

The first criticism has probably been the most frequent over the years but it is also the least convincing. Brazilian landowners and their organizations have often argued that expropriations depress private investment in agriculture by instilling fear in rural property owners, or would-be owners, that they could end up losing their land to the state, as well as by motivating landless workers to invade properties in the hope of pushing the INCRA to seize them.¹⁷ However, there is little evidence that this is actually a significant problem.

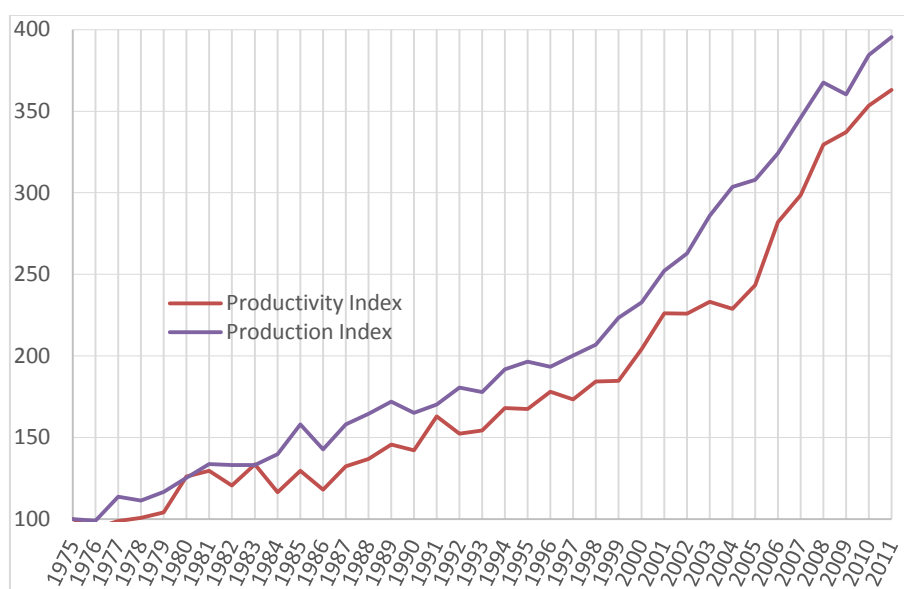


Figure 1: Evolution of Output and Total Factor Productivity in Brazilian Agriculture, 1975-2011

Source: Gasques et al, op cit.

¹⁷ For a recent example, see Agrolink (2013), which quotes a speech by prominent landowner advocate Kátia Abreu.

In fact, the intensification of land expropriations under the Cardoso and Da Silva governments was accompanied by strong growth in agricultural production and productivity, as Figure 1 suggests. Brazil was one of the world's top performing agricultural producers during this period, consolidating its position as a key player in global farm markets (Gasques et al 2012; Buainain et al 2013). Today it is one of the leading exporters of several major commodities, including soybeans, beef, coffee, sugarcane and ethanol. Even during Cardoso's first term in office, when expropriation activity was at its peak and the exchange rate was unfavorable to farm exports, agriculture performed solidly. At the very least, one must admit that agrarian reform does not seem to have significantly impeded the growth of the Brazilian farm sector.

In this sense, the Brazilian experience is quite consistent with the findings of the well-known analyses of agrarian reform in Latin America by Alain De Janvry and Merilee Grindle (Janvry 1981, Grindle 1985). Albeit with different emphases, both of these works ultimately argue that the central legacy of non-revolutionary agrarian reforms in the region has been to strengthen large-scale capitalist agriculture, at least in part by forcing landowners to invest in their holdings or face the possibility of expropriation.

Of course, an agrarian reform program that expropriated highly productive properties or offered no compensation for expropriated landowners, even those with valid titles, might well undercut farm production. However, the legal framework in which agrarian reform functions in Brazil, combined with the relatively democratic character of the state, effectively avoids these risks and renders land redistribution compatible with capitalist development.

Deforestation

The argument that the implementation of the social function in the rural sector encourages deforestation must be taken more seriously. In recent decades some scholars have argued that agrarian reform accelerates the destruction of the Amazon forest, thus contributing to global warming and other problems (Alston et al 2000; Fearnside 2005; Brandão and Souza 2006; Le Tourneau and Bursztyn 2010; Aldrich et al 2012). There are two different, but not mutually exclusive, versions of the argument. The first emphasizes that agrarian reform settlers tend to deforest at a higher rate than the large landowners they replace. The second suggests that fear of expropriation leads those who control large expanses of land to deforest more than they otherwise would in order to demonstrate productive use and thus prevent expropriation. Each of these arguments is discussed in turn below.

Although several studies have endorsed the first argument (which is inscribed within a larger debate about how farm size affects the proclivity to deforest) there is currently no scholarly consensus on this question. A number of studies find that the extent of deforestation tends to be greater in agrarian reform settlements than in the surrounding area, whether that be the Amazon as a whole or some sub-region (Brandão and Souza 2006; Barreto et al 2012; Calandino et al 2012). However, Calandino et al also find that when forest protection areas established by the state are removed from the comparison, the rate of deforestation is actually somewhat *lower* within settlements than outside of them. This finding suggests that settlers do not, on average, deforest more than private landowners. Pacheco (2009) argues that the extent of deforestation in settlement areas depends on preexisting land use patterns. In some settings, especially those dominated by medium and large-scale cattle and soybean operations, agrarian reform can actually slow

forest destruction. Moreover, virtually all of the studies acknowledge that only a modest proportion (roughly 10-15%) of the total deforestation that has occurred in this region lies in settlement areas and that a significant (but undetermined) amount of that destruction occurred before the settlements were established.

The argument that fear of expropriation promotes defensive deforestation by large landholders is intuitively convincing and supported by some empirical evidence (Araujo et al 2008; Aldrich et al 2012). However, it must be qualified in certain important ways. First, if the legal restrictions on deforesting private land were effectively enforced, this issue would be of limited significance, since those restrictions are stringent.¹⁸ In fact, enforcement (though it has improved recently) has been notoriously weak and deforestation often far exceeds the legal maximum.¹⁹ Given that agrarian reform has a significant social purpose, it makes more sense to address the problem of deforestation through vigorous application of the Forest Code than by failing to apply the social function. The latter approach essentially shifts the costs of forest preservation from landholders to the landless.

Second, the studies cited above only show that properties threatened by expropriation experienced accelerated deforestation within a limited time period. Given that the value of land lies largely in its agriculture potential, and that the activities realized by large Amazon landholders generally require forest clearing, it is likely that over a longer period much of that land would be cleared anyway, absent stringent enforcement of the Forest Code. Thus, by pursuing implementation of the social function the state in most cases does not condemn to destruction what would otherwise have remained virgin forest in perpetuity. On the other hand, it does help to ensure that the benefits of deforestation are distributed more broadly.

Critics of agrarian reform in the Amazon rightly point out that a disproportionate amount of INCRA's activity is concentrated in this region. Though it possesses only about 15% of Brazil's rural population, the North (which roughly coincides with the Amazon basin) is home to 26.7% of the country's settlers and 43.4% of the land in settlements (Marques, Del Grossi and França 2012, p. 94). This pattern is due purely to the economic and political ease of obtaining land in the North. More settled regions generally have superior soils and infrastructure, as well as more landless families. Nevertheless, this imbalance is not a good reason to suspend or greatly restrict the redistribution of large unproductive landholdings in the Amazon. Such an approach would likely do little to save the forest in the long term and it would sacrifice an important opportunity to promote greater equity in the region.

Cost-Effectiveness

The third criticism, that the redistribution of property rights is less cost efficient than other approaches to fighting poverty and enhancing social equity, is perhaps the most damaging, especially given the recent successes of targeted social assistance programs like *Programa Bolsa Família*, which gives conditional, monthly cash transfers to poor families,

¹⁸ Passed in 1965, the federal Forest Code required that Amazon landowners retain 50% of their property's forest cover. This minimum was raised to 80% in 1996. A new Forest Code approved in 2012 maintains this figure, while making some pro-landowner concessions in other areas.

¹⁹ For example, Aldrich et al (2012, p. 119) found that in the region they studied in the state of Pará in 2003 the average large landholding had only 23% of its area in forest, compared to a legal requirement of 80%.

and *Benefício de Prestação Continuada*, which provides non-contributory pensions to the elderly and disabled poor. These programs, especially *Bolsa Família*, have been lauded for reducing poverty and inequality at a relatively low cost (Sátyro and Soares 2009; Neri and Campello 2013).

The per-beneficiary costs of agrarian reform are indeed rather high. A study undertaken by the Ministry of Agrarian Development in 2004-2005 estimated the average cost of settling a family in Brazil at about R\$31,000. This was the equivalent of US\$10,000-US\$14,000, or more than double Brazil's per capita GDP at the time.²⁰ An article in the *Folha de São Paulo*, one of the country's leading newspapers, noted that this amount was enough to provide a family with three children access to *Programa Bolsa Família* for 27 years (*Folha de São Paulo* 2007). The cost varied by region, rising as high as R\$58,000 to settle a family on expropriated land in the highly developed Southeast region. Given the generally rising price of farmland in the last decade, these costs may well be even higher today (*O Estado de São Paulo* 2013).

While these data suggest exorbitant spending on land redistribution, it must be kept in mind that the total cost of agrarian reform has averaged only about 0.4% of federal spending since 1990 (see Figure 2 below) and, even during its peak under President Cardoso, never exceeded 0.8%. In contrast, social assistance policies, of which *Bolsa Família* and *Benefício de Prestação Continuada* are the most important, currently account for close to 4% of federal spending (*O Globo* 2014).²¹ In the 2014 federal budget, for example, spending on agrarian reform was allotted less than 8% of the resources dedicated to social assistance (Ministério de Planejamento 2013).

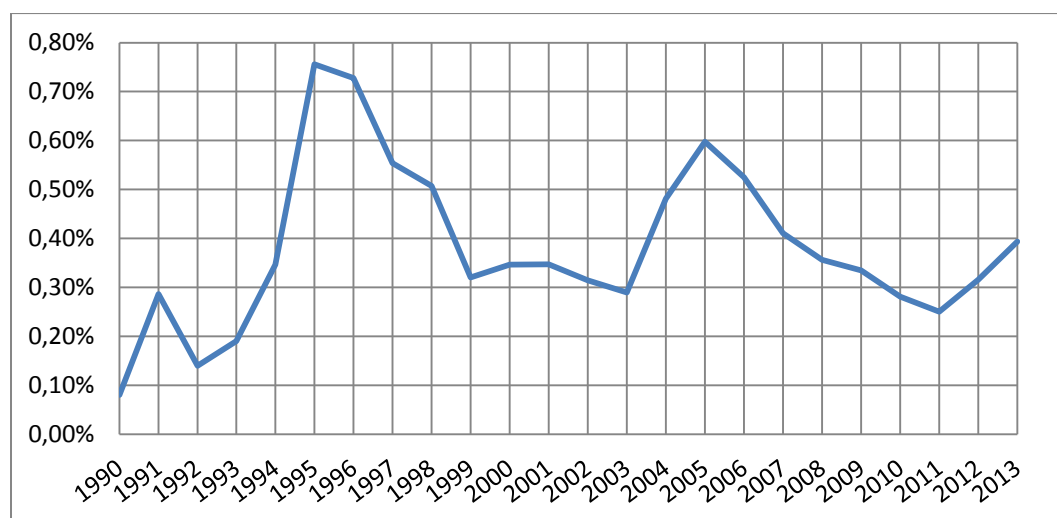


Figure 2: Spending on Agrarian Reform as a % of Total Federal Spending, 1990-2013

Source: Gasques and Bastos (2014), p. 870.

The relatively low aggregate cost of agrarian reform is due largely to the fact that this policy has never been implemented on a massive scale. The INCRA has tended to settle only

²⁰ This estimate includes the cost of servicing the debt incurred through the issuance of agrarian reform bonds. The exchange rate data come from <http://www.oanda.com/currency/historical-rates/>.

²¹ Spending on contributory social security, which mainly benefits people in the middle and upper reaches of the income distribution, is vastly greater, consuming more than 22% of federal outlays.

families who participate in the grassroots struggle organized by the MST and other landless groups, rather than settling all of those who meet certain technical criteria (Fernandes 2000; Ondetti 2008a). In recent years, as the pace of settlement has slowed, families have often had to wait several years to be settled, and many have no doubt abandoned their quest. This approach to redistributing land has ambivalent effects. On the one hand, it makes it virtually impossible to prioritize candidates with substantial agricultural knowledge, which tends to detract from the economic success of settlements. On the other hand, from a redistributive perspective, it has the virtue of limiting the beneficiaries, even without significant efforts at means testing, mainly to those who are truly needy, since others are not desperate enough to subject themselves to the rigors of the struggle.

In comparing the cost efficiency of spending on agrarian reform and social assistance, it must also be kept in mind that these are qualitatively different approaches to addressing poverty and inequality. While social assistance programs are one-time disbursements of cash, agrarian reform transfers control over durable assets (mainly land, but also a house and certain types of infrastructure) that can provide income, housing and other benefits to a family indefinitely. The benefits of agrarian reform, in fact, can transcend generations. Thus, it is quite plausible that the positive impact of settlement on a family may last longer than the 27 years of *Bolsa Família* payments highlighted by the *Folha de São Paulo*. To be sure, as critics often emphasize, a good many settlers eventually abandon or sell their lots, but the available evidence suggests that the large majority (roughly 70%) do not.²² Moreover, many of these abandonments are related to infrastructure deficits (e.g., lack of electric power and adequate roads) that can be remedied through increased public investment.

In other words, the high initial costs of agrarian reform do not necessarily mean that it is a less cost efficient way to promote social welfare in the rural sector than social assistance programs. If the program is implemented poorly, by passing out unviable land and failing to endow settlements with basic infrastructure, then it will fail and the money invested will be in large part wasted. However, the same can be said of social assistance programs, whose impact can be undermined by faulty means testing, clientelism in the selection of beneficiaries, and non-enforcement of the conditions nominally attached to conditional cash transfer programs like *Bolsa Família*. Ultimately the efficiency of agrarian reform is heavily dependent on the degree of political will with which it is implemented.

Conclusion

This paper has examined the trajectory of the social function of property in Brazil with regard to both its embodiment in law and its implementation. It has also reviewed some of the criticisms leveled against attempts to put this notion into practice. As has been shown, the social function is well established in Brazilian law, but the provisions in question are not without ambiguities and contradictions. Partly as a result, implementation has been patchy and has not yet provoked profound change in the structure of land rights, especially in urban areas. Those attempts that have occurred, moreover, have faced withering criticisms, although the validity of those arguments is open to question.

²² A number of studies have sought to measure the rate of settlement abandonment, generally finding that between a fifth and a third of settlers give up their lots (Aleixo 2007). Sales of agrarian reform plots are usually illegal but they occur nevertheless.

Today, there is clearly considerable skepticism in Brazil regarding land rights reform. President Rousseff, despite belonging to the historically pro-agrarian reform PT, has not made rural land redistribution a priority. Moreover, this policy has few vocal defenders among prominent political figures and numerous critics in the news media and academia.²³ Though steadfast in their struggle, MST leaders have admitted that the current political conjuncture is rather bleak (Carvalho and Faria 2014). With regard to the urban context, there is a growing recognition, at least among scholars, that the promises of the widely-lauded City Statute have gone largely unfulfilled, and that the obstacles to progress in this direction are imposing.

In face of these problems, one could perhaps argue that policymakers and advocates of social equity in Brazil should deemphasize land rights and focus instead on other, seemingly more tractable policy areas, such as targeted social assistance and subsidized housing, both of which have advanced considerably during the years of PT governance. The general idea would be to push Brazil further in the direction of a developed country welfare state, in which the structure of property ownership is essentially taken for granted and inequality is attenuated through cash transfers and free public services.

Doing so, however, would probably be a mistake. In Brazil, the distribution of physical assets, especially landed property, is much more inequitable than in most developed countries. The distribution of rural land, for example, is among the most skewed in the world. The country's profound income inequality reflects, in part, the effects of these deep underlying inequalities in the distribution of land (World Bank 2003). Land ownership confers numerous economic advantages, including opportunities for earning income from production, resource extraction and rents; collateral for obtaining credit; and protection against the corrosive effects of inflation on income. Although the data needed to assess the effects of land ownership on intergenerational social mobility are lacking, it probably contributes significantly to the persistence of elite families across several generations.

For the most part, conventional social policy tools only attack the symptoms of asset inequality; they do not deal with the disease itself. A generalized attack on the structure of landownership contradicts the logic of capitalism and would likely undermine economic growth, and provoke political instability. Nevertheless, as discussed earlier, the evidence regarding agrarian reform in Brazil and elsewhere suggests that selective property rights redistribution guided by the social function principle need not impede investment and growth and may actually even promote them by creating additional incentives for using land productively. The flip side of the coin, of course, is that such an approach can only aspire to chip away incrementally at land inequality. However, this is certainly better than doing nothing at all.

²³ Academics have generally been more supportive of agrarian reform than the news media, but even in the academic realm there are outspoken skeptics of rural land redistribution. For a recent example see Buanain et al (2013), which argues that spending on agrarian reform in contemporary Brazil "has no reasonable justification" (p. 1175).

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