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Recodification of the Latin American City: Emerging Urban Legislation in the Pandemic Era

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Abstract

In recent years, urban policies have been transformed in response to the pandemic. The new normality has translated into a new urbanity, in the broadest sense of the word; that is, into new rules that shape daily life and the production of urban space itself. However, in Latin America, most of these measures have been contingent on the emergency, as they have not been translated into structural or long-term policies.

This research focuses on the changes experienced in urban legislation as of 2020. Period where national governments had to simultaneously confront health problems and pre-existing urban dysfunctionalities. This is a descriptive study outlining the landscape of emerging urban policies. It focuses on visible changes at the Latin American level,

The results reveal that many Latin American countries have changed their urban policies during the pandemic, including a growing interest in social housing. Among the issues addressed are land regulation, the right to the city, the management of public spaces, informal settlements, etc. In conclusion, the pandemic was the scene of a change of course based on new urban policies. These policies improve the management of our cities and make it possible to build more sustainable and equitable spaces.

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Keywords

Pandemic, urban codes, informality, housing, Latin America

1. Introduction

The pandemic has been an exclusively health problem capable of conditioning the actions of governments, both globally and locally. The threat of an unknown virus led the WHO to declare it a global problem on March 11, 2020. Since then, most nations have implemented measures to reduce contagion, inaugurating a state of sanitary emergency. This is an eminently legal phenomenon, the consequence of an explicit rule that limits individual rights to safeguard the common welfare. In other words, the pandemic has legal consequences that deserve to be analyzed.

Cities were the scene of the restrictive measures, as they were the hardest hit areas due to large agglomerations, among other factors. Consequently, urban space also had to be regulated, as it was the main means of contagion. During the initial stage, social distancing and confinement were the most important measures in the context of an urban state of emergency. Public spaces became spaces of militarized control. It should be noted that this situation was produced by national regulations, which were adapted to the evolution of the pandemic itself. This created a scenario of legal uncertainty that had to be corrected on the fly, adapting the measures to the characteristics of the territory and the cities.

Governments recovered the principle of authority and their capacity to manage urban activities from the demand side. That is, from the content of cities: people. Many Latin American countries experienced for the first time the rigor of norms, since life itself depended on them. Cities became docile spaces, in contrast to the traditional evasion of the law or culture of informality. However, this situation was reversed as restrictions became more flexible and citizens returned to occupy the streets with a certain degree of normality. Consequently, the city was once again ungovernable.

The pandemic has revealed the unsustainability of cities, accentuating numerous urban problems. It has questioned the way we occupy and produce space, as well as the role of norms in these processes. Governments have been concerned not only with the health system, but also with the city as a structured and structuring physical space. In other words, there is a new interest in reformulating urban policies and implementing new measures to correct pre-existing problems. For a new normality is also a new urbanity; that is, new codes that adapt to emerging demands. In Latin America, this implies strengthening existing legislative frameworks. Given that the region is characterized by lax regulations, which is the cause of the phenomenon of urbanization without development.

2. Theoretical framework

Cities are as old as humanity itself; they are physical spaces that reproduce social structures. Likewise, the strategies for regulating space are just as old; living in a community implies adopting certain norms that maintain harmonious coexistence. Urban order is the result of the institutionalization of powers. It was born with the establishment of the first empires, which tried to contain the anarchy of common spaces, in essence plethoric. Since the laws of Hammurabi, the codes regulated the way of making a city, that is to say, its material foundations. Therefore, this is the differentiating factor of the urban: the control of space (Talen, 2009).

The history of urban planning is complex, as it varies from country to country. However, towards the end of the 19th century, this discipline acquired a new dimension, hand in hand with new tools such as zoning. This fact characterized modern or industrial capitalist urbanism (Shertzer et al., 2022). The popular overflow in the cities demanded new measures to contain it and thus return governability to the cities. Land and building laws emerged as ad hoc solutions to this problem; a legal framework to manage the physical space of cities. In Latin America, one of the first experiences was in Buenos Aires (1910), where zoning was implemented based on criteria of historical protection, aesthetics, building sanitation and use restrictions. This gave rise to a regulation that detailed the possible ways of making a city, giving identity to the Argentine capital (Tella, 1996). Similar cases occurred in Peru (1946), Colombia (1949), Chile (1951), among other countries. Consolidating urban planning in a modern version, which focused on the control of land, uses and building. It also prioritizes the relationship between city and architecture, translated into parameters and restrictions. Which implies a sacrifice of property rights in exchange for collective benefit (Henaio et al., 2019).

Currently, urban regulation is crucial within the market economy; it creates certainties related to the growth of cities and their economic implications such as the cost of land, housing stock, among others. On a global scale, it promotes the localization and relocation of activities that stimulate national economies. Likewise, on a small scale, it specializes the territory to create productive chains in cities. It is the theory of regulation applied from and to space itself (Leborgne & Lipietz, 1993).

In Latin America, this approach contrasts with the informality-regulation amalgam; cities have historically grown outside the law. Creating sympathies towards deregulation or spontaneous growth, which is usually associated with self-management, collectivism, etc. Building the myth of popular capitalism or urban informality that has undermined the authority of the state. However, the panorama has changed as governments have placed greater interest in the regulatory component, the means that guarantees equity in cities. The opacity of the laws is taken advantage of for private enjoyment, at the expense of the collective. It consolidates an "urbanism à la carte" that simplifies the urban to mere investment probabilities, neglecting the social impact of spaces.

The pandemic produced innovations in urban norms and codes. Cities were the scenes of the emergency. The immediate response was the control of urban activities (content), but as time went by it was necessary to reformulate many more areas of the city (continent). The first stage was characterized by contingency measures, which changed according to the progress of the contagion. That is, temporary measures such as distancing, confinement and reduction

of displacements. The need for control turned the urban space into a militarized and fear-producing environment. Consequently, governments implemented assistance programs in areas as diverse as food, housing, public services, employment, among others. These palliative measures helped the inhabitants to adapt to the new normality. In general, these actions were focused both socially and spatially, prioritizing attention to the most vulnerable groups. Among the global examples, the initiatives of the North American cities of Dallas, Chicago and New York stand out, where temporary shelters were offered to homeless people, food vouchers, renters' vouchers, tax reductions for small businesses and loans at lower interest rates (Shi et al., 2020). In Latin America, the subsidies implemented in Argentina (emergency family income), Brazil (emergency aid), Colombia (Familias en acción, Ingreso solidario, etc.) stand out. However, informality undermined the success of these actions (Blofield et al., n.d.). While it is true that these aids are useful in emergencies, they could not become permanent actions, as they represent a greater government expenditure; therefore, they are unsustainable. Moreover, they do not reverse endemic urban poverty, which has been present for decades. Inequality cannot be solved with subsidies, since it is a condition that reproduces itself atavistically (Blofield et al., n.d.; Lustig, 2020).

During the second stage (flexibilization or de-escalation), more profound and long-term measures were evidenced. Faced with the threat of a permanent pandemic, governments devised structural measures. Unprecedented urban regulations focused on a variety of issues. These sought to reconcile the new coexistence with existing urban spaces, which had been showing problems since pre-pandemic times. They are provisions to make a pandemic-proof city (Angiello, 2021), which stands out for its interest in public space. Many cities around the world have implemented temporary and permanent bicycle lanes, adapted streets to pedestrian traffic, created terraces or boulevards, with the aim of encouraging new mobility habits and revaluing local businesses. One of the most outstanding examples were the superblocs in Barcelona. This initiative was conceived in pre-pandemic times and saw the opportunity to materialize during the emergency in the face of the restrictions. The city council intervened in nearly 14 blocks, significantly increasing the number of parks and gardens. Likewise, New York implemented the "Recovery for all" Plan, which considers the creation and expansion of the cycling network, as well as permanent open streets.

On the other hand, long-term policies were also developed; principles for the reorganization of cities as a whole. For example, Mexico City considered the creation of 13 urban corridors for the development of social housing, parallel to the creation of Bus Rapid Transit (BTR) routes and Urban Cable Cars. Seeking to reorganize the city from the Transport Oriented Development (TOD). At the European level, the Regenerative Urban Design initiative was created, based on principles of innovative infrastructure, circular economy, climate neutrality (Andreucci et al., 2021); aligning the objectives of sustainable development with the post-pandemic context. On the other hand, urban centralities were questioned to the point of creating initiatives of de-urbanization and territorial balance. Such is the case of Australia, where population distribution has been debated, seeking to redirect growth towards regional cities or intermediate capitals of the country. Promoting digital mobility and the growth of local economies (Guaralda et al., 2020). In short, these examples call for a shift towards resilience, supported by new urban policies, laws and specific codes.

It should be noted that contingent and structural measures have coexisted during the pandemic; that is, they were implemented simultaneously. The complementarity between the two can be seen in the context of economic recovery and even more so in the last stage or "end of the pandemic". For in 2022, many national governments have repealed the state of emergency. The problem with the return to normality is the disinterest in urban policies or return to the status quo (Deslatte et al., 2020; Lecka et al., 2022). That is, the lack of experimentation and consequent deterioration of urban living conditions. Therefore, it is necessary to analyze the impact of the laws created during the pandemic. For these constitute the new rules of the game of the city. Despite their immateriality, the norms transcend socially and spatially. They remain for reasonable times and constitute the DNA of post-pandemic cities and territories.

The meaning of "the urban" is diffuse, as it is a term that groups multiplicity of approaches and disciplines (Azuela et al., 2016). Condition that evidenced in the emergency measures, as state interventions were framed in the urban space. Even small measures such as the use of masks implicitly acquire an urban character, since they are implemented in the city. Therefore, it is necessary to retake the integrality of the urban problem, since it is not only a matter of managing physical spaces but also flows, displacements, employment, location, among other social dimensions (Patel

& Shah, 2020). Recognize the city as a complex system where the content and form have equivalent weights. Contrasting with simplifying visions that pigeonhole the urban in the physical space.

Finally, the pandemic has motivated debates on the governance of cities. For the initial restrictions revealed the capacity of local and national governments to manage urban spaces. These interventions used force and have become examples of extreme urban order. Nevertheless, these strategies are valid as they reflect their principle of authority. However, this success brought the threat of authoritarianisms deployed on cities, now turned into biopolitical playgrounds (Lorenzini, 2020). The most evident examples of this state of exception can be found in transportation (Duarte et al., 2020) and the use of open spaces (Santamaría, 2020). Consequently, participation emerges as a crucial issue. Likewise, collective or community management stands out as an alternative for both the management of future emergencies. In short, the pandemic is an opportunity to rethink both governance and city governance. Reclaiming the role of the state and citizenship around the problems that affect the city, in order to build a suitable framework for participation, spaces of possibility for the collective construction of the city (Kosovac & Pejic, 2021; Sánchez-Cruzat, 2022).

3. Study approach

This is a descriptive qualitative research, whose object is the urban policies developed during the pandemic. It focuses on the major legislative changes manifested during this period in Latin America. It should be noted that we study the laws and regulations of higher hierarchy, which are usually approved in higher instances such as the congress, deputation, executive power, etc. Contrasting with others that arise as a response to an emergency, which are palliative and reversible. The study cannot be a comparative analysis, since the legal system and the structure of government is different in each country. Nevertheless, it is possible to outline regional trends in urban policies. Therefore, in the first stage, 11 Latin American countries were analyzed to identify the most recent reforms.

4. Results

Urban law is the set of norms that structure urban and rural land use, as well as the behavior of its inhabitants. Cities are structured from the law, as it has an instituting character on urban activities (Azuela et al., 2016; Henao et al., 2019). It provides explicit rules that produce urban space from the physical and behavioral dimensions. In Latin America, urban law is paradoxical, since the growth of its cities occurs on the margins of the law. A sort of urban irregularity or self-urbanization that expands the conflict between social processes and management of the space of everyday life from jurisprudence (Azuela et al., 2016). On the other hand, urban law studies the tensions between property rights and the general interest. Living in the city implies adopting rules that affect property and, above all, land use. For this purpose, zoning, a basic tool for urban regulation that allows a redistribution of these rights on the basis of a division of the city (Nelson, 1979), is used for the most part. This results in the fragmentation of the city and the differential income generated on the basis of norms.

The pandemic has created the demand for a renewed regulatory framework to face the unusual challenges imposed by the emergency. Its greatest discovery has been the breadth of "the urban", as it includes provisions on proximity, compatibility of uses, displacements, schedules, among other problems usually ignored by the legislation trapped in the abstract urban space. Likewise, the impact of land management on health was evidenced, since physical space transcends the wellbeing of citizens (Grant, 2022). There are currently renewing currents in urban law, which can be grouped into three trends: the right to the city, mixture of uses and soft-laws or urban agendas (Urbina-Mendoza, 2022). All of them value positively the experimentation and improvement of norms, since urban problems are uncertain and therefore the law must adapt to them. In this context, tactical urbanism experiences emerge that intervene the urban space in an immediate and reversible manner, assessing their impact and then converting them into major policies (Bolton, 2020; Lauren et al., 2021; Patel & Shah, 2020). However, they must be careful because they can build illusions of change, thus avoiding structural problems. Therefore, legislation occupies an intermediate role between experimentation, discourse and structural reflection of recent urban changes.

The panorama of urban law in Latin America is diverse. Its scope varies significantly among countries, due to a differential experience of the pandemic that clashes with the legal system. There is a consensus on the autonomy of

intermediate scales of government (regions, municipalities, city councils) in urban issues; the ability to decide directly on the administered space based on local regulations (Lecka et al., 2022; Neuman et al., 2021). Thus, the greatest experimentations were manifested at the small scale: the district, the neighborhood, the block, the house. However, the national regulatory framework proposes general rules that are adapted to the local scale. These create the conditions for the possibility of an urban space resistant to the pandemic (Figure 1).

Country	Policy/ Integral Law	Housing	Transportation and mobility	Public space and environment	Urban agriculture	Informal settlements
Argentina		Law No. 27,551 Urban rents or leases 30.06.2020			Urban Agriculture Law 6377-LCBA 03.12.2020	
Bolivia	Cities Policy 08.10.2020				DS. 4632 National Program for Urban and Periurban Agriculture 01.12.2021	
Brazil		Law 14,118/21 instituting the "Casa verde y amarilla" House Program 12.01.2021		Law 14.285/21 of Urban Permanent Preservation Areas (APP) 29.12.2021		
Chile	Law 21450: Social and Urban Integration, Land Management and Housing Plan 27.05.2022			Law 20,958 Contributions to Public Space 18.11.2020		Law 21477 Modifies the procedure regulation and extends its validity 10.08.2021
Colombia	Law 2079, 2021 Housing and Habitat 14.01.2021					Law 2044 Sanitation of Land Occupied by Illegal Human Settlements 30.07.2020
Ecuador		Organic Law on Social Interest Housing 25.03.2022		R. 012-CTUGS-2022 Classification of urban land land occupation 08.03.2022		
Mexico	Reform of Law of Human Settlement, Land Use and Urban Development 01.06.2021 28.03.2022	Program for production of inclusive, popular and workers' housing CDM 15.06.2020				
Paraguay	D. 3317/2020 Regulation of Law No. 5638-2016 Promotion Urban Development 10.02.2020	Law 6807/2021 Extends Law 3637-2009 Creating FONAVIS 22.12.2021				
Peru	Law 31313 Sustainable Urban Development 25.07.2021	National Housing and Urban Planning Policy 15.07.2021		Law 31199 Management and Protection of Public Spaces 22.05.2021		Law 31056 Informal possessions and measures for its formalization 21.10.2020
Uruguay		D. 59/022 Creation of the "Entre Todos" housing program 26.08.2022	Guide for Sustainable Urban Mobility Planning 12.09.2021			
Venezuela	Draft Organic Law on the Right to the City 20.07.2021		Law for the Promotion of Urban Cycling 11.11.2021			
LEGEND	New law or regulation Amendment					

Figure 1 Comparative of Latin American urban Laws in pandemic.

Most Latin American countries have passed comprehensive urban laws that address a wide range of issues such as housing, land use, equipment, planning, among others. This type of regulation is characterized by establishing the principles of urban planning, which are transformed into regulations that operationalize them. It is a first step that requires greater institutional measures. This is the reason for its importance and, at the same time, its fragility, since new laws run the risk of stagnating due to the delay of the regulations that complement them. This is repeated in the case of public agendas or soft-laws, declarations of principles that are not binding: for example, the Bolivian "Cities Policy". Despite this, there is evidence of urban innovation in Latin America.

Also noteworthy are the housing laws, a structural problem of cities. Most of the states modified their housing policies in pandemic; strengthening social housing programs and diversifying the acquisition modalities: purchase, social rent,

rent to own, concession, among others. Of particular note are the creation of social rental programs (Argentina and Ecuador), extension of the maximum credit term (Colombia), increased housing subsidy coverage (Paraguay) and the promotion of cooperative housing participation and management (Mexico and Chile). In general terms, these regulations emphasize the role of the state as a housing promotion agent, granting them greater licenses for the expropriation, purchase and production of land suitable for housing, which must meet minimum conditions of habitability, as well as adequate connection with the urban system.

The third issue is urban informality, which translates into informal settlements such as slums, shantytowns, shantytowns, slums and slums. Only three countries have passed specific laws related to this issue: Chile, Colombia and Peru. All of them coincide in the creation of a regime of exceptionality and the extension of the terms for the regularization of neighborhoods located on non-urban land. The basic principle is the permanence or continuous possession of the inhabitants, which must be more than 10 years; likewise, for the application of the regulations, effective occupation of the land is required, i.e., abandoned land is not regularized. In all cases, local governments are in charge of guiding the legalization process in order to guarantee safe land for vulnerable families, who usually opt for this type of tenure. It should be noted that in all cases, explicit deadlines for regularization are proposed. Once this is finalized, occupations that do not comply with the general management plans will be prohibited.

On the other hand, there is evidence of a series of unconnected laws and regulations, which in themselves do not form part of a defined movement, although they express the concerns of national governments on a variety of issues such as the protection of and contributions to public spaces (Peru and Chile), the protected areas regime (Brazil) and the soil classification methodology (Ecuador). In most cases, the topic dealt with is soil protection, in the broadest sense of the word. However, their scopes are diverse and even contradictory. For example, measures are proposed to mitigate the impact of large real estate projects on urban space, by means of onerous compensation proportional to the property tax of such developments (Chile). In this context, the creation of programs to promote urban and peri-urban agriculture is also noteworthy, in the case of Bolivia and Argentina. In both cases, the governments have created the necessary institutional framework for these projects, which involves budget allocations, promotion, training and a sectoral regulatory framework that allows land use to be granted to cooperatives and associations of urban farmers. Given that the municipalities are responsible for managing the activities of the city based on a plan of compatibility of use.

Finally, the issue of transportation and mobility is the most conspicuous absentee in this set of rules. This makes it possible to identify the limits of urban law, atavistically separated from the management of transport itself. This is explained, to a certain extent, by the sectoral or ministerial division of the states; that is, in the competencies assigned to specific institutions and the consequent lack of coordination between them. Of all the Latin American countries analyzed, only two inaugurated innovative documents related to mobility: Uruguay and Venezuela. In the first case, the Ministry of Housing, together with international cooperation, created a manual for sustainable urban mobility, detailing the process of mobility plans and suggesting urban design criteria for roads and other urban elements related to transportation. In the second case, a law was passed to promote urban cycling, which grants benefits to users of this modality such as subsidies, access to loans, preferential attention, among others. It also obliges the municipalities to maintain and expand the infrastructure of bicycle paths and complementary services. On the other hand, it should be noted that this gap in urban law contrasts with the numerous local measures implemented in the pandemic, since, as explained above, the most recurrent responses were the creation of bicycle paths and the promotion of pedestrian spaces. For the purposes of this study, published national laws were analyzed, i.e., norms of higher hierarchy that in themselves presuppose continuity over time. This strategy is also replicated in subsequent stages.

5. Conclusions

The pandemic was a propitious scenario for experimentation with regulatory measures, most of which were characterized by their temporary and palliative nature. However, this promoted the ideation of more profound and, to a certain extent, structural measures. Urban law in pandemic was the object of these changes. For most Latin American countries inaugurated new laws and reforms focused on the management of the city, a situation that reveals a growing

interest in "the urban", in the broadest sense of the word. However, the set of norms made in pandemics is disjointed and divergent, as these norms tend to be short or palliative, so that they do not end up being aligned with larger policies. In general, they focus on the housing problem and its implications, and lack regulatory measures on urban transportation.

It should be noted that the existence of new laws does not represent a solution in itself. In essence, these are enunciative documents that guide the actions of the different levels of government. However, the absence of complementary rules and regulations jeopardizes their contribution to urban development. The reengineering process of Peruvian urban law is slowed down by the slowness of the approval process of documents that materialize the principles of the new laws. For example, the delay of the regulations accompanying the DUS law or the Law of Public Spaces, with a wait of a year and a half in both cases. Contravening the guideline of not exceeding 60 calendar days. In other words, the law is the first step that should be accompanied by continuous and consistent measures over time.

The data reveal that Latin America experienced significant advances in the field of regulation. While it is true that these emerged during the pandemic, many of them stemmed from previous initiatives, including historical trends that were recently recovered. In this sense, the pandemic served as a trigger or accelerator of these processes; it maintained the tension of a new normality or social contract that requires new and better rules of the game. Therefore, innovations must be contrasted with the preceding norms, to which they are indebted. In other words, the continuity of these measures and their dependence on the trajectory or traditions of Latin American urban law must be assessed.

Finally, the structuring role of urban norms must be rescued, since they together shape our cities. The essence of urban law is to regulate property and favor the common benefit; however, these principles can be distorted to the point of falling into the realm of discretion in the face of the "ambiguity" of the rules of the game in force. In other words, they respond to disciplinary biases and even particular interests. The ideation, proposal, debate and approval are processes that are usually in the hands of political representatives. People who theoretically make decisions in favor of the majorities, but who are occasionally influenced by particular demands. This situation allows and justifies urban corruption, based on a legal system made by stealth from the citizens. Therefore, it is pertinent to strengthen citizen participation in the field of urban law; to create solid foundations for effective governance in our cities. For it is only through the search for consensus that an equitable distribution of the burdens and benefits derived from urban management can be achieved. Thus guaranteeing the construction of a more sustainable urban space, in the broadest sense of the word.

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