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Paradoxes of Urban Housing Informality in the Developing World

Jean-Louis van Gelder

This article addresses a series of paradoxes regarding informal settlements in cities in the developing world and their relation with the legal system. The first paradox regards the penalization of illegal land occupations on the one hand versus the legalization of that same practice on the other. Second, it looks at the relationship between land occupations as systematic violations of property rights, but with the goal of forming new property rights and thus paradoxically supporting private property as a substantive principle. Third, the reasoning behind the fact that the same system that denies legal access to housing for poor sectors simultaneously attempts to incorporate informal settlements in an *ad hoc* manner through legalization schemes is examined. It is shown that there is a logic to these paradoxes, which, although contradictory from standard legal perspectives, can be accommodated within a theoretical framework that distinguishes an internal normative order operating within informal settlements, from the state legal system, operative outside it. The proposed framework not only settles the paradoxes, but, this article concludes, can also guide attempts to deal with the enormous anticipated growth of informality in the developing world.

By the end of 2007, the world's urban population exceeded the number of people living in rural areas and, if predictions prove accurate, by 2030 five billion people will be accommodated in cities (UN-Habitat 2006). Nearly all of the anticipated urbanization is expected to take place in the developing world, particularly in Africa and Asia, and most of it will occur through informal ways of accessing land and housing, continuing a trend that has perhaps become the most defining characteristic of urban development in the Global South. Processes of informal settlement that tend to lack adequate infrastructure, basic amenities and public services, where residents live in substandard housing and have no legal tenure, have in fact become so common that some cities already accommodate more than half of their population in these settlements. The United Nations Human Settlements Programme estimated that

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900 million people lived in urban informality around the turn of the millennium and that this figure may reach 1.4 billion by 2020 if no concrete action is taken (UN-Habitat 2010). In this article, I argue that if this trend is to be countered, a better understanding of the sociolegal dimension in the onset and perpetuation of informality is imperative.

Informality of tenure and the spread of slums in developing countries have frequently been attributed to the incapacity of cities to accommodate the enormous influx of the poor masses from the countryside (e.g., Castells 1988; Doebele 1987; Gilbert 1994; Morse 1965; Portes 1989). Yet, while both rural-to-urban migration and poverty are undeniably important sources of informality, two developments in Latin American cities make clear that they constitute only part of the picture. For one thing, even though this region has almost completed its urban transition with urbanization levels similar to that of Western countries—of up to more than 80 percent in countries like Argentina, Brazil, and Venezuela—informality tends to persist (UN-Habitat 2006). Moreover, in several large metropolitan areas, the proportion of people living in informality is increasing relative to that of people living in formal tenure situations. In Rio de Janeiro, for example, population growth rates in informal settlements exceeded the population growth rate for the city as a whole by more than three times between 1990 and 2000 (Perlman 2004). Second, poverty trends do not necessarily parallel informality trends as informality does not automatically diminish when average incomes increase. Buenos Aires, for example, experienced slum growth rates of more than two percent per annum between 2001 and 2009, in spite of annual gross domestic product growth of more than eight percent and considerable increases in government expenditure on social housing in the same period (Cravino, Duarte, & Del Rio 2010). These figures only gain in significance when we consider that trends toward informal settlement in cities often persist despite the implementation of programs that intend to legalize informal tenure and lower legal standards for urbanization (Pamuk 2000).

Paradoxes

The incapacity of governments to come up with effective solutions to counter informality has led to the emergence of illegal cities in the developing world that are, in part, detached from the official legal order. This detachment, in turn, has led to the emergence of a number of paradoxes when informality is perceived from a standard legal perspective. One of the most salient of these paradoxes regards the penalization of illegal land occupations on the one

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hand, while simultaneously sustaining the possibility of gaining access to property using that very same strategy on the other (Azuela 1987). That is, governments confronted with illegal land occupation may evict informal occupants, but may also formalize their tenure and incorporate these settlements into the legal fabric of the city. However, the fact that one and the same action, the informal occupation of land, can either be penalized or legitimized constitutes a paradox that stands at odds with substantive law accounts.[1]

Furthermore, the recognition of squatters' claims can be perceived as strengthening the rule of law (Sjaastad & Cousins 2009), but can be equally well understood as undermining it by violating existing property rights and urban planning norms (McAuslan 2003). In their attempts to deal with the rampant spread of informal settlements, governments and development agencies have sometimes actively tried to formalize them through mass legalization schemes. Inspired by their assumed potential to generate economic growth (see De Soto 2000), different countries—for example, Peru, Thailand, Egypt, Ghana, Indonesia—have embarked on massive programs to legalize tenure through the provision of property title. In Peru, this has led to the allocation of 1.5 million freehold property titles to informal households between 1996 and 2006 (Fernandes 2011). The paradox inherent in these policies is that governments fail to protect existing property rights when they legalize the illegal, while simultaneously claiming to endorse a system based on (the protection of) private property. In doing so, they erode their legal-institutional order and provide incentives for further illegal land occupation and violations of property.

A related point of tension regards the relation between legalization policy and the legal order as a whole. The formalistic and bureaucratic legal orders of developing countries, with their costly and cumbersome registration procedures, unrealistic and outdated land use legislation, and inefficient conflict resolution mechanisms (see De Soto 2000; Fernandes 2011; Holston 1991; McAuslan 2003), tend to severely restrict legal access to housing for low-income sectors. Therefore, these legal systems directly contribute to the emergence and growth of the informal city. Yet, they simultaneously attempt to counter this growth by legalizing informal tenure. However, these attempts are generally undertaken without considering those elements of the legal system that contributed to the exclusion in the first place (Fernandes 2007). The result is a

[1] Leaving aside the possibility of adverse possession where acquisition of ownership rights to property can occur after a fixed statutory period subject to a number of conditions regulated by law.

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self-created vicious cycle in which states are perpetually confronted with the choice to either penalize or legalize the informal tenure situations, which, of course, takes us back to the first paradox.

Another paradox regards the fact that while illegal land occupations constitute a deliberate violation of property rights, they at the same time support the concept of private property. Settlements resulting from illegal land occupation, rather than being mere acts of defiance against the legal system, actually espouse a system of private property rights and generate alternative systems of such rights in the absence of official recognition. These range, as will be shown later, from rudimentary oral systems to elaborate written systems with informal title deeds and informal registration processes governed by the local community. Therefore, these settlements, in spite of their illegality, foster private property as a substantive principle (Gilbert 2002; Razzaz 1994; de Souza Santos 1977).

These issues constitute paradoxes from standard or legal centralist points of view but, I will argue, not necessarily from a perspective that can incorporate the alternative norm systems within informal settlements that have emerged in cities in the developing world. By not only considering the normative ordering within these settlements and the legal system as separate entities, but also the way they relate to each other, it is possible to both clarify the role of law in the production and persistence of informality, and to resolve the paradoxes. Doing so requires an approach that integrates legal and social perspectives as the legal and the *de facto* realities in developing countries have grown so far apart that the study of laws and regulations provides insight into a limited part of urban reality only: that of the legal city. Furthermore, doctrinal legal scholarship is unable to productively consider the issues under study because it can only perceive and deal with processes of informal settlement as *deviations* from and *violations* of law's content. Yet, under current circumstances, with cities sometimes accommodating more than half their population in illegal settlements, what is seen as deviation from an official law perspective has become the norm of the (f)actual city.

Fernandes and Varley (1998) commented that dominant legal doctrine still regards the city as no more than a bounded area comprised of demarcated plots of land in individual ownership, whereas critical urban research has largely failed to understand the legal dimension of the urban phenomenon. Few studies have sought to build a bridge between the legal and illegal cities or to establish a general analytical framework to explain the role of law in the process of urban development in developing countries (Fernandes & Varley 1998). The present article intends to provide (part of) this framework. It draws mainly, although not exclusively,

from research and experiences in Latin American cities, as most relevant sociolegal scholarship has focused on countries on this continent. The assumption is that, given current urbanization trends, Asian and African cities will potentially face even greater challenges than their Latin American counterparts have faced over the past decades. In spite of the many and significant differences between contexts and countries, at least some lessons may be drawn from the Latin American experience, if only regarding counterproductive policies.

The remainder of this article is structured as follows. In three steps, I will formulate a general framework explaining the relationship between the illegal and the legal city and the emergence of the paradoxes. This will be done by drawing from earlier sociolegal research on informal settlement that relied on notions of legal pluralism, and on legal theory, Hart's concept of law in particular. The development of a new framework is important as previous research, even though partially able to explain the paradoxes, has been unable to capture the dynamic relation between the legal and the illegal city. As Benton (1994: 225) argues, "(. . .) analyses simply assume a legal pluralist framework of the most purely structural kind: a framework of levels of law that 'stacks' the formal and informal sectors one atop the other." I will argue that settlements often actively attempt to establish their "legality" through strategies of noncompliance with, and adaptation to, the official legal system in order to ultimately enforce formal recognition by the latter, which gives rise to a dynamic and evolving relationship between the two.

In the first step of explaining the framework, the case is made for viewing illegal settlements as having their own *internal* systems of normative ordering which are related to, but separate from, the *external* state legal system. In the second step, the relationship between the two systems is presented as a bidirectional process in which informal settlements not only adapt to state law, but the state legal system is also forced to adjust to the reality that has formed on the ground. In the third step, the dynamic and evolving relationship between the internal norm system of settlements and the law of the state is further clarified in terms of settlements' ability to resist pressure from the state system through a strategy of noncompliance on the one hand, versus their capacity to adapt to it on the other.

Having explained the emergence of the paradoxes and the detachment of the illegal city from the legal city, we have not yet addressed the problem of persisting informality from the state's perspective. In the final section, the framework is used to shed light on the modest success of mass legalization programs revealing why such programs are bound to fall short of expectations if they do not

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encompass a wider range of measures. Prior to starting to draw out the framework, I will now first give a brief description of the main characteristics of informal settlements in Latin American cities to provide the yet unacquainted reader with the necessary background information to fully appreciate the remainder of this article.

Informal Settlements

Informal settlements exist in a variety of kinds, and although each kind can be designated as informal or as not entirely conforming to law, emerges outside the official planning framework, lacks servicing (initially) and is built by the occupants themselves (Gilbert 1981), many and often significant differences exist between them.

An important distinction between types of informal settlement relates to the way land is obtained, which can be either through invasion/occupation or through the informal purchase of land in subdivisions beyond the urban perimeter or land otherwise lacking the necessary requisites for registration (Gilbert 1981). How informality ultimately takes shape varies between countries, between cities within countries, and even between different areas and administrations within the same city, and critically depends on the attitude of the state. Squatting may, for instance, be strictly prohibited, while a permissive attitude toward (equally illegal) unlicensed land subdivisions is maintained or vice versa (Gilbert 1981).

Even within a specific type of informal settlement there can be disparities, both in terms of form and development. For example, a squatter settlement that comes into being as the result of a land invasion is in many ways unlike a settlement that is the result of a gradual and unplanned occupation. The planned land invasion, like the informal subdivision, has a clearly defined layout, with parceled lots and streets that are in line with the grid structure of the (formal) city and generally tries to be in conformity with planning and zoning legislation (see, e.g., Azuela 1987, 1989; De Soto 1989; Gilbert & Ward 1985; Murphy 2004; Turner 1976; Van Gelder 2009, 2010, 2013). Gradual occupations, in contrast, have no regular form and are characterized by narrow and winding alleys instead. In terms of layout, these occupations resemble the stereotypic notion of the shantytown; very densely populated and highly irregular settlements.

In all types of settlement, dwellings tend to start out as fragile structures built with precarious materials, such as cardboard and sheets of corrugated iron. Then, in a process of incremental consolidation, these are replaced by more permanent materials, such as bricks and masonry, and additional stories may be added to

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dwellings. As such, informal settlements gradually develop and consolidate over time, a process that often takes decades to complete. This can result in housing that is sometimes hard to distinguish from formal housing, although in general, informal dwellings often remain of a precarious nature.

Particularly in the early stages of settlement formation, infrastructure and public services, such as water and electricity, are lacking and residents rely on alternatives such as tapping illegally from the existing utility networks. Over time and generally after a period of intense struggle with the authorities, official services tend to enter a settlement. It is important to note at this point that the very illegality of a settlement and the possibility of gradual consolidation it offers enables low-income dwellers to access housing that would otherwise be beyond their means (Holston 1991). By reversing the sequence of formal land development from planning-servicing-building-occupation to occupation-building-servicing-planning, it allows for the allocation of the limited resources of dwellers to the consolidation of their dwellings (Baróss 1990; Gilbert 1990).

Finally, while new occupations mostly emerge on the least desirable land remote from the city center and livelihood and employment opportunities, old(er) occupations are also found in central areas. For example, one of the largest slums in the city of Buenos Aires, which dates back to the 1930s, is located next to the city's central business district and at a stone's throw from the presidential palace. Settlements, whether remote or central, are often located in areas unfit for urbanization, such as areas prone to flooding, polluted areas or against steep hill slopes as most famously evidenced by some of Rio de Janeiro's famous *favelas*.

In the next section, I describe the first step of the framework this article set out to develop, which regards the internal normative systems that operate within informal settlements.

The Normative System within the Informal Settlement

Social-Legal Research on Informal Settlements

Although legal research on housing informality is relatively rare, various early studies have addressed and elucidated the role of law within informal settlements in different Latin American cities. These studies make mention of (sometimes) well-developed norm systems that regulate the daily affairs in these settlements that have emerged in the absence of state regulation.

In one of the earliest studies, Karst (1971) examined the norms and sanctions operative within Caracas' informal *barrios*. Around the time of study, in the late 1960s, these were already common-

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place in Venezuela's capital, as they were in many other Latin American cities. The study described how *barrio juntas*, the settlements' informal administrations, replaced government institutions and dealt with dispute settlement while also functioning as a law-making body for the community living in them (Karst 1971). It details the sometimes complex systems of property rights operating in these settlements, even though the residents have no land titles. In an illustrative comment, Karst notes:

> "It can be admitted that most barrio residents have never seen a judge or a lawyer; it can even be admitted that an on-duty policeman is a rarity in most barrios (. . .) [b]ut if, in a squatter community where no one has a legal title to his parcel of land, nonetheless the residents respect one another's 'rights' to land, is it accurate to say there is no law of property? Beyond such rules of customary law (. . .) the barrios have been penetrated by much that is law in the traditional sense, law in the form of the national legal system." (1971: 559)

In another important study, de Souza Santos described the legal system of a *favela* in Rio de Janeiro, which also had its proper administration and elaborate legislative and dispute settlement arrangements (de Souza Santos 1977). He found that *favelados*, aside from using their own informal rules, inventively copied official law whenever possible and convenient. To deal with the absence of the state as a regulatory body, they had devised adaptive strategies aimed at maintaining social order in community relations. Like the case of Caracas' *barrios,* one such strategy involved the creation of an internal legality, parallel to (and sometimes conflicting with) state legality (de Souza Santos 1977). Similarly, Mangin (1967) discussed the functions and importance of neighborhood organizations in Lima's *barriadas*, established by the community in the settlements to advocate their cause toward government and defend their interests, noting that the degree of neighborhood organization can vary markedly over cities and countries and can range from rudimentary and dysfunctional to elaborate systems that provide in the division of labor, private water supply systems and markets.

These studies show, as Azuela (1991) also argued for Mexico City's *colonias* and Van Gelder (2010) for Buenos Aires' *asentamientos*, that within informal settlements social practices give rise to normative orders that decouple from the official legal order, and in a sense replace it. Official actors may have stopped enforcing the law in these noncompliant areas and dwellers attribute authority to individuals and institutions that lack an official mandate. Rules are "borrowed" from the official system, possibly conflict with it, and are recognized only by the community living in these settlements. Furthermore, as Fernandes (2002) remarks about Brazil's *favelas,*

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the patterns of illegality of these settlements have been determined by the official legal system in that, aiming at being accepted as legitimate, the unofficial rules have incorporated, and have been structured around, fundamental prevailing legal principles.

The Rule System of the Informal Settlement and the Breakdown of the State Legal System

At this point, it makes sense to describe the decoupling of the informal order from of state legal system. This breakdown of the state legal system in cities with large-scale informal settlement can be aptly illustrated through Hart's notion of law as the union of primary and secondary rules (Hart 1961). Hart argued that two minimum conditions are necessary for the existence of a stable legal system. The first is a general obedience to the system's (primary) rules that are valid according to its criteria of validity. The other is that (secondary) rules must be accepted by officials as standards for their behavior. Rules of the first type impose obligations; rules of the second type confer powers, for example, adjudication and legislation, to officials and are intended to affect the operation of primary rules (Hart 1961). In cities that accommodate a large part of their population in informal settlements, with social and normative practices within these settlements that in many ways take place outside state regulation and substitute several of its functions, it is evident that the first criterion is hard to meet. As argued earlier, the state legal system's primary rules have, in part, been replaced by alternative bodies of primary rules that originate in the practices of the communities living in the settlements.

The other criterion, regarding secondary rules, at first sight appears to be more difficult to disqualify because officials can and do claim the validity of official law for the entire city, including its noncompliant informal sectors. They can simply designate these sectors as contravening the legal order. However, such declarations fail to match the reality on the ground because the official legal system's statements of law do not correspond with its factual existence anymore. That is, statements claiming the validity of state law in the informal city can readily be made but may have few practical consequences. Because the claim regarding the validity of official law is a normative proposition of (state) law, whereas assertions regarding informal settlement with proper rule systems imply a statement of fact, the two do not *logically* conflict (Hart 1961). We can say that the statement of fact is true and can be assessed empirically, whereas the normative proposition of state law is correct with respect to state legality, but the two have become separate realities in cities with widespread informal settlement. In other words, claiming violations and deviations from official law

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have limited meaning when *de facto* the informal normative systems have, at least in part, replaced official law.

A failure to understand the disconnection between the formal norm on the one hand, and the empirical fact on the other, obscures much of our understanding of the relationship between the legal and the illegal city. The breakdown that follows from the detachment of the informal sector from the state system forms the first step in revealing the shortcomings of standard legal perspectives regarding informal settlement and explaining the emergence of the paradoxes that were discussed in the introduction. These perspectives can conclude a breakdown but are unable to account for the fact that "law" is always present in informal settlements and in various ways continues to define the relationship between these settlements and the state, in spite of their illegality.

Pluralism

The situation in developing countries with their blend of rule-systems is often captured under the nomer legal pluralism, which describes the conditions where different normative orders or norm systems exist that, even though not attached to the state, nevertheless qualify as "law" (Tamanaha 1993). The legal pluralist perspective contradicts centralist notions of law as "an exclusive, systematic and unified hierarchical ordering of normative propositions" (Griffiths 1986: 3) emanating from the state and also to include nonstate-sourced forms of law.

If conflicts between kinds of law signify different ways of ordering human groups, as Unger (1976) suggests, illegal settlements with norm systems separate from that of the state are a reflection of this. Therefore, to understand the logic under which informal settlements operate, it is essential to view them as normative systems, which are separate from, but related to, the state system. These systems have their own characteristics that may deviate from the state system, but simultaneously share several of its features. The self-referential use of legal versus illegal within informal settlements, that is the "binary code of legal communication" (see Luhmann 1985, 1989; Teubner 1991, 1997), irrespective of legal status according to official law, is one of them.

Clearly, the normative system of a settlement is different from a legal system in the way it is normally referred to.[2] The reciprocal

[2] Because the designation of informal systems as "legal" is problematic and invites confusion and controversy (Tamanaha 1993, 2001; but see Nobles & Schiff 2012), this article adheres to the terms "rule system" or "normative system" instead of "legal system" to designate systems of normative ordering within informal settlements.

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patterns and rules of conduct that crystallize over time and evolve into norms of behavior give rise to a social structure that resembles most a kind of customary law. This requires factual regularity in behavior, but also has a normative dimension: the sentiment of obligation and entitlement, or the tendency to identify established forms of conduct with the idea of a right order in society (Unger 1976). In Hart's terms, this qualifies as "primitive law" or a system of primary rules.

In some cases, as for example shown by the studies of Karst (1971) and de Souza Santos (1977), settlements create their own administrations, property registers and bodies for rule making and dispute settlement, and secondary rules also emerge. The informal systems can therefore be elaborate and sophisticated and govern different substantive areas of law. Fernandes (2002), for instance, relates about Brazil's *favelas* where sometimes complex civil and commercial codes have been developed that, besides regulating the rent and sale of plots and the subdivision of land, can also address rights of passage and the installation, functioning and transfer of commercial sites, and even deal with marital and inheritance rights and criminal justice.

Why and How Do Alternative Norm Systems in Informal Settlements Emerge?

According to Hart (1961), for a (state) legal system to function in the way it is intended to function, it needs to address some very basic needs such as food, security and shelter, to guarantee the survival of its members. Hart (1961: 193) argues that without meeting these basic needs or minimal conditions, laws and morals could not forward the minimum purpose of survival which men have in associating with each other and in the absence of this people would have no reason for obeying voluntarily rules at all. It is, therefore, important to stress the "distinctively rational connection between natural facts and the content of legal and moral rules" (Hart 1961: 193).

In other words, when a state does not provide basic protection for its subjects and elementary needs are not met, their motive for voluntarily obeying its laws disappears and the possibility of effective enforcement decreases as only coercion remains as a means for instilling compliance. In these situations, people are forced to seek alternatives to meet their needs, and they may do so in ways that are not in conformity with the law. This appears to be the case in developing countries where people, not able to gain legal access to housing, have resorted to informal alternatives to meet their housing needs. The following figures are illustrative in this respect. In 2005, 34.1 percent of the urban population in Latin America

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lived in conditions of poverty, i.e., had an income amounting to less than twice the cost of a basic food basket (ECLAC 2006). In the same year, almost one-third of the urban population on the continent, around 134 million individuals, was living in informal settlements (UN-Habitat 2006). As maps of poverty and informality tend to coincide, most urban poverty is concentrated in informal settlements where many basic needs in terms of food, education, health care, sanitation, adequate housing, etc., are not fulfilled. Following Hart's argument regarding basic needs to its logical conclusion, it becomes clear that when a state is incapable, or unwilling, to provide certain necessary conditions for protection and survival, such as enabling access to shelter and housing, for a substantial part of its population, people will devise their own strategies to do so in response. Informal settlements are a visual expression of these strategies.

Because every community or form of social organization needs rules to ensure the survival of its members, settlements never exist in a Hobbesian state of nature (Azuela 1987; McAuslan 2003). As Hume (1739, 1978) argued, human nature cannot subsist without the association of individuals and this association, in turn, can never occur if no regard is paid to the laws of equity and justice. Hence, alternative systems of normative ordering emerge in informal settlements to regulate daily life in them. This explains why and how the legal and the illegal city are governed by (partially) separate bodies of rules. Thus, when contemplating informality, it is essential to realize that deviance from the official system does not automatically translate into defiance of law and that informal dwellers are just as much rule makers as they are rule breakers.

In sum, whereas informal settlements are a result of the prevailing exclusionary legal systems in Latin American countries and elsewhere in the developing world, the informal norm systems that have emerged to replace official law have been the result of the necessity to address basic needs that the formal legal system has failed to address. Indeed, to a certain extent, the rule system of the informal settlement is better able to protect the interests of the collective than state law, which actually pose threats to the well-being of low-income sections of society. The normative systems of informal settlements are capable not only of protesting official rules and regulations, but also of providing dwellers a certain degree of relief and protection from these regulations and threats emanating from the state system (Razzaz 1994). I will return to this point later in this article after elaborating on the second step of the suggested framework, which deals with the bidirectional relation between informal settlements and the state legal system.

Settlements and the State: A Two-Way Street

In the previous section, I argued that the inability to legally access housing for large parts of the population and a failure to address certain basic needs or minimum conditions required for ensuring (voluntary) compliance with law, have led to an urban reality in which the internal normative systems of settlements have become detached from the official legal framework and have substituted various of the functions of the state legal system. Settlements, however, are never completely autonomous or "sovereign." The particular conditions that create them forcibly involve them with the city and they are compelled to acculturate strategically in order defend themselves (Mangin 1967). For example, both land invasions and informal land subdivisions may be carefully planned to avoid contravening land use legislation as much as possible. By continuing the existing grid structure of the city with streets and lot sizes that are in conformity with official standards, they attempt to keep the consequences of the property rights violation to a minimum.

Furthermore, as argued earlier, there is also an overlap between the rules of the informal settlement and those of society at large (e.g., regarding violence, family law, property, contract, etc.), both in form and in substance. As de Souza Santos (1977: 54) argues, official rules may be selectively "borrowed" in informal settlements:

> ". . . . in order to 1) guarantee the normative survival of [internal] law in a situation of legal pluralism in which the official law has the power to define normative problems but cannot solve them; 2) responds to social conditions and institutional resources of the community that differ from those in the larger society that have given rise to the official law. While the first process may require clear-cut innovation (. . .) the second tends to preserve the outline of the borrowed norms, innovating at the level of substantive or procedural technicalities."

According to McAuslan (2002a: 29), this is a widespread phenomenon as studies from around the world show that systems of normative ordering in settlements are generally modeled on the laws of the state in which official documents are copied and used, contracts have to be in writing, and dispute settlement processes are also modeled on the state system. In doing so, squatters reproduce within their settlements basic elements of the state legal system which has, in a sense, rejected them (McAuslan 2002a). However, as was already noted earlier, there is much variation between settlements and contexts in terms of the efficacy and the degree of

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sophistication of the informal systems operative within them, which seem to run the full gamut from very rudimentary to highly sophisticated.

Settlers also "use" state law by pursuing specific strategies to transform the open conflict over the land they occupy into a legal one. Human rights notions, such as the right to adequate housing which is recognized in several international human rights instruments, and often also enshrined in national constitutions, are used to form the counterclaims to a landowners' property right. Even though not adequate to win the land dispute in court, tapping into official law does open up the road for a legal solution to the conflict (Van Gelder 2010). As de Souza Santos (1995) in his study of squatter's in Recife, Brazil notes, while squatters are perpetrators from a civil law perspective, they can present themselves as "victims" from a natural law or international law perspective.

Besides invoking human rights principles to emphasize the legitimacy of an occupation, the direct and strategic invocation of civil law to substantiate claims to land is another, potentially complementary, approach to legitimize it. For example, when faced with claims contesting the legality of their possession, squatters may produce papers such as rental contracts or fake title deeds to support their claims and attest to their "good faith" (Van Gelder 2010). Holston (1991: 424) notes that informal settlement dwellers regularly compete in legal arenas from which they have been excluded because they have learned, in large measure through land struggles, how to use the law's complications to extralegal advantage.

There is sometimes also a belief among residents that state institutions can be used to support informal property ownership, and documents from the government, such as public utilities bills, are used to convince government officials of dwellers' rights to land and enlist their support (Durand-Lasserve 2006; Kim 2004; Kundu 2004; Reerink 2011; Roquas 2001; Smart 1986). This may be a particularly viable strategy in situations where state agencies are perceived as weak or illegitimate, as these circumstances hinder the effective enforcement of property rights (Fitzpatrick 2006). A telling example of how people may draw from different legal orders is provided by Kim (2004), who shows that in Ho Chi Minh City, Vietnam, houses with both a freehold property right and additional "legal paper" have a higher value and provide more tenure security than houses with just the property right. The author explains that possessing more documentation assists the owner in negotiating his/her property right. That is, legal papers alone can be a form of property right enforceable by a state agent, and legal title is superior to the mere possession of legal papers. However, having both is preferable because, rather than the rule of

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law automatically privileging the title holder, the right must still be negotiated when challenged (Kim 2004: 301).

Yet another way in which state law continues to play a role in the informal city resides in the fact that the legal status of land (e.g., public, private, agrarian, customary) prior to occupation will partly determine the ensuing relationship between a settlement and the state. Government agencies have the discretionary powers to define the land conflict and intervene in a settlement, but any intervention, such as the eviction of settlers, the introduction of infrastructure or services, or the legalization of a settlement, requires a normative framework and a "legal" justification (Azuela 1987). The exact form this justification takes depends on the status of the land prior to occupation and the legal implications will therefore emerge in the form of legitimation taken (Azuela 1987).

How the State Adapts

Whereas informal residents, while contravening the legal order in specific ways, also try to be in conformity with it in other respects and have to adapt to official law to gain access to the state's resources and keep the consequences of their illegality to a minimum, the state, in turn, is forced to adapt to the reality that has emerged on the ground. Urban planning legislation often does not contemplate the informal city and does not allow the registration of unserviced land or land that is not formally subdivided into lots. Informal urbanization, however, usually takes a form that does not (fully) conform to law as the very illegality of this mode of land appropriation dictates its form. New legislation, therefore, often has to be passed or existing legislation needs to be amended in order to regularize land that is otherwise unfit for urbanization, such as land located in environmentally sensitive or risky areas, lacking infrastructure, or otherwise not conforming to legal requirements.

Holston (1991), analyzing land conflict in São Paulo, describes how Brazilian land law is used by all parties involved in the conflict, public, private, and settlers, to further their interests. He notes that since the 1940s many of São Paulo's workers, unable to access to formal housing market, take to either squatting or buying land in informal subdivisions in the urban periphery of the city. Like in other cities throughout the developing world, dwellings in these settlements are constructed over a period of decades and the initial precarious shacks are gradually transformed into finished, furnished and decorated homes. The illegality of the settlements eventually prompts a confrontation with the authorities in which residents usually succeed, after long struggle, in legalizing their precarious land claims. In other words, there is a fundamental

relationship between usurpation and legitimation that characterizes the development of São Paulo's urban periphery. Holston (1991: 695) notes that "[i]n this paradoxical context, law itself is a means of manipulation, complication, stratagem, and violence by which all parties (. . .) further their interests." It therefore defines an arena of conflict in which distinctions between legal and illegal are temporary and their relations unstable.

Dwellers may invoke law not only to emphasize their legitimacy or for fraudulent purposes, but also to bring the land conflict into the legal arena precisely in order to keep it unresolved—yet contained—by limiting the options of the state and the landowner to respond with force, until the political will is found for a solution (Holston 1991: 437). Here, law offers both a stage and a language of resistance, and the adoption of a legal vocabulary permits engagement in terms which the state is obliged to understand, forces it to justify its actions and effectively enforces delays in interventions that may be detrimental to the squatters (Azuela 1989; Jones 1998). This situation is well illustrated in a study on land invasions in Buenos Aires (Van Gelder 2010) where it has become a common practice to vote in expropriation laws to seize occupied land on grounds of public interest. The state is then under the obligation to indemnify the landowner for the loss of his or her land within a specified term, generally two to five years. When this period expires and the state has not compensated the landowner, the squatters are once again subject to eviction, although a law can be extended which is common practice. Van Gelder (2010: 260) notes that:

> "Even though this state of affairs keeps residents in a situation of legal uncertainty, it can be of strategic use precisely because it keeps the land conflict unresolved. During the period in which the law is in force, residents cannot be evicted and a settlement continues to consolidate. Even though a settlement formally once again faces the threat of eviction when the law expires, the de facto tenure security has improved significantly during the period in which the law was in force due to the consolidation of the settlement and its increased legitimacy. The short-term legal protection increases de facto tenure security that remains even when the former collapses."

In other words, the factual reality of informal settlement in Latin American cities, and elsewhere in the developing world, has become so widespread and persistent that state systems are continuously forced to adapt to it to manage the situation and to prevent informality from spinning completely out of control. Perdomo and Bolívar, discussing Caracas's informal city observe that "[g]iven the situation prevailing *de facto*, the most logical solution is a change

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of official zoning, bringing the situation on paper in line with that on the ground. A river cannot be made to flow under a bridge. The adjustment of legal norms to match existing practice has come to characterize a substantial part of the supposedly 'legal' city" (Perdomo & Bolívar 1998). The situation in which municipal administrations are continuously forced to change their perimeter laws to incorporate informally urbanized areas into the urban perimeter or amend their building codes to urbanize tenure that is otherwise unfit for urbanization has become paradigmatic for cities throughout the developing world.

There is another characteristic of the relationship between the informal settlement and the state that has not been adequately addressed in earlier studies of informality. Most studies presuppose a rather static and structural opposition between the legal and the illegal city and are consequently not able to accommodate the changing nature of this relationship over time. This particular development has so far remained obscured in the literature. As Hart (1961) notes about the emergence of legal systems:

> "The standard terminology of legal and political thought, developed in the shadow of a misleading theory, is apt to oversimplify and obscure the facts. Yet when we take off the spectacles constituted by this terminology and look at the facts, it becomes apparent that a legal system, like a human being, may at one stage be unborn, at a second not yet wholly independent of its mother, then enjoy a healthy independent existence, later decay and finally die."

Explaining the nature of this evolving relationship forms the third and last step of the theoretical framework this article set out to develop.

Resistance versus Adaptation

The development process of informal settlements and the changing nature of their relationship with the state are perhaps most clearly witnessed in settlements that have their origin in a land invasion. Van Gelder (2010), in his study of land invasions in Buenos Aires, describes the development process of these settlements in detail. When performing an invasion a group of squatters, often young urban families, collectively invade a vacant tract of land, parcel it out, and overnight build precarious dwellings on the site. The critical mass of the collective and the construction of dwellings to create facts on the ground, together with establishing an internal administration to manage daily life in the *barrio*, serve to reduce to likelihood of a forced eviction. In this phase, a settlements' illegality and noncompliance are most overt.

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Over the course of time, once the direct threats to its tenure security have waned, the focus of a settlement will shift from noncompliance to adaptation to the state system in an effort to further its legitimacy, and gain access to services and infrastructure. The entry of services, for example, implies official acknowledgement and administrative recognition and enhances both a settlement's legitimacy and its security of tenure. Progressively, the relationship between the settlement and the state becomes less conflictive and gains an increasingly legal character up to a point in which few elements distinguish it from the legal city, the most salient element being an unresolved tenure situation. This developing nature of land invasions shows that the discrepancy between the state legal system and that of the internal normative system is most prominent in the early stages of settlement formation. Over time, a settlement increasingly becomes interwoven with the official legal system, up to the point of actually merging with it when a settlement is legalized (Van Gelder 2010: 264). Legalization, however, is only the last phase in a lengthy consolidation process that may take decades to complete.

In other words, the distinction between the informal system and the external state system is not of an absolute nature as the relationship between the two systems evolves over time. What starts out as a fairly binary opposition may end with the partial or complete dissolution of the informal system. While most prominent in land invasion, this strategy is not restricted to this type of settlement. Illegal subdivisions may be performed using a very similar strategy: presenting the authorities with a *fait accompli* that is difficult to return to its original form and residents in these settlements also progressively attempt to convert the informal tenure into legal tenure through processes of negotiation, contestation and adaptation.

The Noncompliant Settlement

One way of considering the illegal settlement as having an alternative normative system, parallel to the state system, and its ways of relating to the latter system, bears resemblance to Moore's (1973) notion of the "semi-autonomous social field" (SASF). This network of social relations has rule-making capacities and the means to induce or coerce compliance, but is simultaneously set in a larger social matrix that can invade it (Moore 1973). A field can generate proper rules, customs and symbols internally but, as the name suggests, it is also vulnerable to rules and decisions and other forces emanating from the larger world by which it is surrounded (Moore 1973). Much like a system of primary rules, the SASF is a norm system that guides behavior and is capable of inducing

compliance. The external legal system can penetrate it but does not draw definitive conclusions about the nature and direction of influence between the normative orders, there is room for resistance and autonomy (Merry 1988).

By virtue of its illegality, the informal settlement makes for a particular kind of rule system or SASF. As Razzaz (1994) notes, a system that is recognized and condoned by official law as a legal entity, such as the firm or the church, is quite distinct from a legal system not recognized as a legal entity or even considered illegal by its very existence, such as the gang or the illegal settlement. In the latter cases, the tension between the official legal order and the SASF qualifies the latter's designation as *noncompliant*. However, the noncompliance or "civil disobedience" of the illegal settlement is in turn to be differentiated from the defiant behavior of the gang which acts in mere self-interest and seeks no official legitimacy. It should also be distinguished from the forcible resistance of the militant group as the informal settlement does not oppose the existing (political) system itself nor has it the intention of overthrowing it (Rawls 1999). Rather, and in a sense paradoxically, it seeks acceptance by, and entry into, it through illegal means.

As we already saw, influence in the relationship between the systems runs bidirectional as informal urbanization also forces the state to adapt to the reality on the ground:

> "(. . .) a noncompliant SASF, defining new relations, and generating internal rules and inducement mechanisms can arise to advance new interests, to protect existing interests from perceived threats, or to further promote existing interests as new opportunities arise. An important aspect of a noncompliant SASF, however, is not only that it manages to 'carve out' areas of ordering within the domain of government law but also that it often prompts authorities to reconsider their laws, their sanctions, and their methods of enforcement. The dynamic process through which government authorities and noncompliant SASFs readjust and react to each other becomes a defining feature of what constitutes governmental laws, regulations, and enforcement mechanisms, as well as what constitutes SASFs.' (Razzaz 1994)

As also briefly mentioned earlier, in their attempts to adapt to the state system, dwellers directly invoke state law to legitimize their actions and to further their cause. Furthermore, the strategic compliance with different laws acts to avoid reinforcing the settlement's lack of legitimacy and to make it easier for the authorities to recognize and eventually regularize it (Durand-Lasserve 1998). References to legal principles open up a road in which the empirical and physical facts and acts that together constitute the illegal settlement can be represented and dealt with on the legal plane and confront opposing claims.

This underscores the difficulty of maintaining a rigid distinction between the "illegal" and the "legal" and the invalidity of perspectives that envision informal settlements as residing entirely outside the legal realm, as they actually appeal to official legal standards and provisions in which the legitimacy of the settlement and human rights should take precedence over alternative legal claims, such as the violation of property. Stated more accurately, settlers do not only invoke a conflict of rights but also a conflict in law, invoking higher order law (e.g., human rights provisions such as the right to adequate housing) over the law of the state. de Souza Santos (1995:386–87), in a study on squatter settlements in Recife, observes that the invocation of human rights law by squatters adds an additional layer of "higher" legality to the conflict with the land owners:

> "A legal discourse is used [by the squatters] which almost always implicitly wages one type of law against the other (. . . .) and consists of transforming the conflict from a legal dispute on land titles between individual legal subjects, into a social and political conflict between antagonistic classes with antagonistic class interests in which thousands of people struggle for the minimal conditions of survival. By not recognizing such minimal conditions, which are safeguarded by the most basic universally recognized, human rights, the state positions itself below the civilizatory threshold. (. . .) The symbolic expansion of the conflict takes place in different directions (. . .); from an isolated dispute to a series of conflicts resulting from the same social condition from national law to international law; from positive law to natural law."

This shows that while on the one hand resisting the state system, illegal settlements at the same time adapt to it by phrasing their demands in the (legal) discourse of that system. In line with Rawls's notion of civil disobedience, informal settlements attempt to put forward the grounds upon which state authority may be dissented from in ways that, while contrary to law, nevertheless express a fidelity to it and appeal to the fundamental political principles of the (democratic) state (see Rawls 1999).

Paradoxes Revisited

To recapitulate, we ought to be speaking of two normative realities in Third World cities instead of one: official law in the legal city versus the informal systems of the illegal city. However, instead of being separate structures, their interaction gives rise to a dynamic relationship. Particularly at its inception, the orientation of an informal settlement, as a consequence of its illegal nature, will

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be geared more toward its internal workings in a strategy of noncompliance toward the state as the fundamental objective in this phase is preventing eviction and establishing tenure security. Over time, the orientation can become more external and a settlement gradually increases its "legality." In other words, informal settlements are to a certain extent capable of transforming themselves over the course of time to meet (some of) the conditions posed by the state system. During this process, the latter has to simultaneously adjust its norms to adapt to the reality that has formed on the ground. Notions of law, whether centralist or pluralist in nature, that are incapable of accommodating these evolving processes are also unable to settle the paradoxes that were discussed in the introduction and have limited explanatory power with respect to the emergence and persistence of housing informality. Below, I explain how the framework outlined in this article is capable of resolving the paradoxes.

The paradox that one and the same act—the illegal occupation of land—can either be penalized through forced eviction or "rewarded" by means of tenure legalization, can be resolved by pointing out a settlement's ability to withstand attempts at eviction and physically controlling property in ways that render the property right of the landowner ineffective, while also being able to adapt to the state legal system. The choice between eviction and legalization often results from legal provision nor principle, but instead is dictated by a settlements' ability to control space (and resist contestations to it) and its skill in invoking state norms to legitimize an occupation, adapting to the state system by defining itself in legal terms, and pressuring it to undertake steps toward legalization. The state system, for its part, in order to maintain some control over the massive unregulated urban growth is compelled to employ *ad hoc* measures and regularize at least some of the informal settlement in the city.

A second paradox, which regarded the fact that squatter settlements constitute a deliberate violation of property rights while simultaneously sustaining the idea of private property as a substantive principle, can be explained by distinguishing an internal normative system regulating social life within a settlement, from the external state legal system that operates outside it. From their genesis, informal property rights are created and transferred in settlements and even though these practices violate official norms and regulations, the actors legitimize them by referring to standards and rules perceived as valid and authoritative within their settlement in spite of lacking such status outside it. Thus, even though property in modern societies is officially governed by the state legal system, and therefore directly implicates the law of the state, informal property rights emerge when practice decouples

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from formal institutions (Carruthers & Ariovich 2004). Thus, the notion of a parallel legality, with a "law" of the informal settlement separate from the law of the state, resolves this paradox.

Another set of paradoxes discussed in the introduction related to the tendency of governments and development organizations to actively pursue strategies that attempt to incorporate informal settlements into the legal fabric of the city through large-scale legalization schemes. One point of tension arising from this practice is that governments do not protect existing property rights when they decide to legalize informal settlements while simultaneously endorsing a system based on (the protection of) private property, which erodes their legal-institutional foundations and undermines their authority. Furthermore, this practice sits rather uneasy with the fact that the very same legal system that fails to enable legal access to housing alternatives for the poor(er) sectors of society, at the same time attempts to remove the informality it generates through *ad hoc* measures but without contemplating those elements of the sociolegal order that contributed to the informality in the first place.

Resolving these apparent contradictions requires both acknowledging the role of official law in the (re)production of illegality and recognizing the plurality of norm systems governing life inside and outside the informal city. Alternative norm systems have emerged as a consequence of a state legal system not fulfilling the minimum conditions for it to function as intended and which *de facto* is unable to perform its (formal) monopoly on the prescription and enforcement of rules. Essentially, the state in Third World countries confronted with large-scale informal settlement is unable to effectively keep afloat a formal system of property rights.

Toward Application

By way of closure, I will use the framework that was developed to explain why large-scale legalization policies have not been the success some had anticipated (see, e.g., Fernandes 2011). Laying bare some of the inherent problems of these policies from a sociolegal perspective may simultaneously offer some guidance to future efforts to more productively deal with informality as it specifies some of the essential conditions initiatives must meet if they are to be successful. However, while the conceptual framework that was drawn out in this article is of practical value only if it has something meaningful to say about actual policy dealing with informality, the inherent limitations of such an effort should from the outset be acknowledged. Informality in developing countries worldwide is extremely varied and so are state legal systems, political and

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social realities, and levels of development. Hence, to paraphrase Tamanaha (2011), observations can only be offered as broad generalizations and whether these apply and what their distinct implications are depends on a host of factors related to the local context and circumstance. This article intends to provide a conceptual framework for thinking about urban informality and will have more bearing for some contexts than others.

Large-scale Legalization Programs

In the early 1990s, urban policies were recognized as important from an economic perspective due to the prominence of cities as centers of capital accumulation (Zanetta 2004). A "new" development paradigm was introduced according to which the informality issue in developing countries could be resolved by allocating property rights to residents of informal settlements (De Soto 1989, 2000; World Bank 1993). The allocation of private property rights by itself was believed to be a sufficient condition for settlement development and to generate a multiplier effect that included the facilitation of access to services and infrastructure in settlements, access to credit, and the provision of tenure security (De Soto 1989, 2000; World Bank 1993). The reliance on privatization and deregulation embedded in the property rights approach was embraced as a market-based solution to the informality issue under the presumption that the market could succeed where corrupt and bureaucratic administrations had persistently proven to be ineffective over the years (Bromley 1990; Gilbert 2002).[3]

The framework detailing the relation between the legal and the illegal city introduced in this article would predict that legalization programs that are limited to the provision of property title are unlikely to form an adequate remedy for the progressive "informalization" of the developing world. The main reason for this is that, as I will argue in more detail below, legalization programs often do not address a set of core issues, which were discussed earlier, that have led to the development of informal systems in the first place and consequently do not prevent the paradoxes from occurring.

[3] Note that important differences exist between types of legalization policies. Tenure legalization can be both *an end in itself* (that is, providing title as a form of housing commodity), as well as a *means to an end* (in order to provide greater planning control, integration into the property register and tax base, and as an important urban management tool that will enhance the possibilities of replicable infrastructure provision) (Ward 2003). Here, I deal only with the first type of policy which is restricted to the allocation of property titles.

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Failure to Address Primary Needs

For one thing, these programs do little to address the basic needs that tend to go unmet in the poor(est) sectors of society and therefore the minimum requirements for a legal system to function as intended may still be lacking (see Hart 1961). As shown earlier, when these conditions are not met, people have no reason for voluntary compliance with law and are likely fall back on their own strategies. Particularly, those who stand to lose from the allocation of exclusionary property rights may return to remnant norm-based institutions for support, while those who stand to gain from these rights will turn to state agencies to enforce their claims (Fitzpatrick 2006: 1039–40; see also Tamanaha 2011). Therefore, when the state lacks the resources, moral authority, or coercive capacity to override local institutions, the result may be a "return" to legal pluralism (Fitzpatrick 2006). Recall in this respect the point made earlier that interventions are often undertaken without a clear understanding of those elements that led to the emergence of informality and a situation of normative pluralism in the first place. Whether officially recognizing *de facto* possession through legalization will reduce pluralism and enhance security of tenure is contingent on local circumstances.

A related issue regards the fact that the informal settlement is often the only place in the city where the poor can afford to live precisely by virtue of its illegality (Gilbert & Ward 1985). By ensuring that property held under informal tenure systems does not command the full price which formal but in other respects equal tenure would entail, low-income households are able to live in areas that would otherwise be beyond their reach (Doebele 1987; Holston 1991). Whereas an area that resides outside the formal market also implies a certain inaccessibility for the formal sector, the reverse is true for legal(ized) areas where price increases can render a settlement inaccessible for low-income groups. Once a settlement is legalized and enters the formal land market, new actors, such as higher income groups and real estate developers, may take an interest in it, particularly if the settlement is located in a commercially attractive, high-value area, to which dwellers stand vulnerable. Once a settlement is legalized and enters the formal land market, new actors, such as higher income groups and real estate developers, may take an interest in it, particularly if the settlement is located in a commercially attractive, high-value area, to which dwellers stand vulnerable. Also, costs associated with legalization, such as registration fees, taxes and service costs, may turn out to be prohibitive. Low-income settlers will therefore not automatically profit legalization but may be put at risk by such attempts. Recall here also a point made earlier regarding the fact that the informal

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system can provide dwellers with a certain degree of relief from these regulations and other threats from the state system. This is in fact precisely what caused them to emerge in the first place: these systems cater better to their needs. Stated differently, informal systems can provide a sense of protection *against* the formal system for the most vulnerable groups. Dismantling them is therefore not per se the designated policy option.

Indeed, studies in several Latin American countries such as Honduras (Jansen & Roquas 1998), Nicaragua (Broegaard 2005) and Paraguay (Carter & Olinto 2003), show that groups that are most likely to benefit from titling are the relatively wealthy households, who were already able to enforce their rights despite not having title (see also Durand-Lasserve & Selod 2009). In many African and Asian countries, legalization has reportedly shifted the distribution of resources and led to the accumulation of the means of production by small political-economic elites instead of benefiting the poor households (Von Benda-Beckmann 2003).

Failure to Address Causes of Informality

A second reason why the framework outlined in this article would predict only modest success for policy restricted to the allocation of property titles is because it is remedial in nature and ignores the causes of informality. Additionally, the difficulty for poor sectors to access legal housing in combination with policies that legalize informal tenure can operate as a catalyst for new informal occupations as those who lack the resources to access legal housing can occupy land in anticipation of formal acknowledgement by the state (Holston 1991). As such, this vicious cycle resembles the metaphorical dog chasing its own tail. Therefore, aside from regularizing what has formed outside the formal city and attempting to bring it back into its legal fabric, it is crucial to identify and acknowledge those factors that contribute(d) to urban illegality. Inconsistent legal systems, fragmented conditions of urban management, outdated land use legislation that does not consider informality, speculative land markets and a long-standing tradition of legal formalism that fails to deal with the socioeconomic and territorial realities that exist on the ground tend to feature prominently among these factors (Fernandes 2002).

In sum, beyond the question as to whether or not legalization policies should include upgrading measures and more actively address the basic necessities of its target population, such as providing basic services and infrastructure, structural changes in the legal framework are necessary to avoid the emergence of informality in the first place. Fernandes and Rolnik (1998) add that while legislation may be instrumental in the definition of property

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relations, the approval of new urban legislation leads to changes in the existing social order only when it reflects, and is supported by, a participatory social process, which hinges upon political will and commitment. Indeed, as Tamanaha (2011: 3) argues, functioning legal systems require a host of supportive secondary conditions, including a confluence of social, economic, cultural, and political factors and when these background conditions are inadequate, the legal system will be dysfunctional, reform efforts will be stymied, and the populace will avoid or reject the legal system.

Concluding Thoughts

In this article, it was argued that because certain minimal conditions, such as the provision of shelter and tenure security, for a legal system to function as intended are lacking for large parts of the population in cities in developing countries, alternative normative systems have emerged to fill the regulatory voids. Yet, in spite of the pervasive presence of informal settlements and the discrepancy between the city as envisioned by the law and the reality on the ground in these cities, official and standard legal discourse persist in referring to informality as deviation from the norm. However, as was shown, the absence of a general obedience to rules valid according to a legal system's official criteria in cities that sometimes house the majority of their population in informal settlements renders distinctively unproductive the assumption of a properly functioning legal system when addressing informality. The rigid distinction between the legal and the illegal presupposes the existence of an ordered society in which the rule of law prevails and in which both citizens and government acknowledge their responsibilities to observe and ensure the observance of legal norms (Perdomo & Bolívar 1998). These conditions are simply not present in the developing world.

Once it is acknowledged that official law is for a large part not fulfilling the functions it is intended to fulfill, yet observe that there is a form of order within informal settlements that exists in contravention to official norms, we cannot but conclude that current views fall short and that we need a different way of looking at "law" and what it exactly entails with respect to the informal city. Sociolegal research has acknowledged that focusing with the state legal lens will not help us understand the logic of the informal city and that a different angle is needed. The alternative view, captured under the notion of legal pluralism, implied an important step forward in understanding the reality of the illegal city but does little to resolve the situation. As mentioned earlier, if (state) law is one of the main conditioning elements of informality, it is here that the answer

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should be sought. The key to the eventual dissolution of slums, at least in Latin American context, ultimately resides in official law and an inclusive legal order, not in legal pluralism.

Over 30 years ago, in an article on informal settlements in Caracas, Doebele (1977) concluded that: "The vast stretches of makeshift dwellings surrounding virtually every city of the developing world (. . .), are a visual manifestation of the general breakdown of conventional legal and administrative institutions when confronted with the sheer magnitude of current levels of urbanization." Now more than 30 years later, developments in urban Latin America show that this breakdown is not just a consequence of large-scale migration flows or low incomes, as slum dwellers are often not new immigrants who recently arrived from rural areas in search of better livelihoods, but people who were born in the city (Buckley & Kalarickal 2004). It is therefore safe to conclude that other factors are also at work and both the existing legal frameworks and our (legal) understanding of informality feature prominently among them.

Considering the fact that around the turn of the millennium almost one billion people, roughly a third of the world's urban population, lived in informality and that informal settlement worldwide is still increasing, the importance of an improved understanding, both at the academic and policy levels, of the phenomenon is crucial. If anything, this article has shown that a true understanding encompasses intimate knowledge of the social-legal dimension of informality and precisely how the legal and illegal city relate to each other in the developing world.

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