Sonia Rabello de Castro

Sonia Rabello de Castro has a Ph.D. in law and is a professor of administrative law and urban law at the University of the State of Rio de Janeiro (UERJ). She was elected in 2008 as a member of the Municipal Legislative Council of the City of Rio de Janeiro, representing the Green Party. She is also a member of the Ethics and Mores Parliamentary Committee and represents the Legislative Municipal Council at the Environmental Municipal Council.

From 1992 to 1996 she was attorney general for the Municipality of Rio de Janeiro, where she collaborated in the development of several far-reaching urban projects, including the Favela-Bairro program. She has also worked as director of legal services for a number of public entities and has published numerous articles on urban development, housing, governance, public administration, and preservation of the cultural patrimony. Her book on Preservation of the Brazilian Cultural Patrimony (Preservação do Patrimônio Cultural Brasileiro) *is considered a basic reference for administrative and juridical decisions on this topic.*

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LAND LINES: *How did you become associated with the Lincoln Institute of Land Policy?*
SONIA RABELLO: I met Martim Smolka, the director of the Program on Latin America and the Caribbean, in the late 1990s, when I was researching how the traditional concept of property rights based upon civil law could be transformed in the context of urban law. The development of new urban laws could lead to conceptual changes in the way the right to property was originally understood, given the need to adapt the concept to meet the social and economic requirements of urban development. At that time, Brazil had not yet approved the federal urban development law known as the City Statute (*Estatuto da Cidade*), although the Brazilian Federal Constitution of 1988 had introduced the principle of urban development as a social function subject to public policy.

As a visiting fellow at Lincoln House in 2000 I became convinced of the need to create a new, more modern concept of property rights that would reflect the current urban reality in Latin America and allow for the use of the city by all citizens, whether they are property owners or not.

LAND LINES: *Can you explain this property rights concept further?*
SONIA RABELLO: It is the need to distinguish the right to own land from the right to build on that land. The Civil Code in Latin American countries follows the French model, which defines real estate property rights as having three components guaranteed to the owner: the right to use the property; the right to receive income accruing from the property; and the right to dispose of the property. Only the owner can exercise these rights. The right to build is not in itself an inherent component of this property right, but a condition for the owner to use the property, without which the utility of the property would be voided—and in this case the very meaning of the property right would be lost.

For the owner to exercise her ownership right to use the property, the public authority, through established urban planning regulations, must allocate a minimum building coefficient to that land. The building coefficient refers to the amount of development allowed on a parcel, also known as floor-area-ratio (FAR). The allocation of an equitable and free minimum building coefficient applied to all properties uniformly has a double function. First, it guarantees to all owners and possessors an economic use of their property. Second, it precludes the occurrence of unjust differences in the allocation of building coefficients among owners.

LAND LINES: *Why is this concept important for Latin America?*
SONIA RABELLO: All Latin American countries, including Brazil, have been addressing urban regulation and land policy at the national level, especially since the economic stabilization and redemocratization during the 1990s, when the need to consider the so-called accumulated social debt became a prominent issue. At the time, Latin American cities were experiencing acute problems due to the lack of basic infrastructure services such as sewer systems, public spaces, transportation, and access to affordable housing, as well as the challenge of creating a more equitable distribution of costs and benefits in the urbanization process.

LAND LINES: *How relevant is Brazil's City Statute in this process?*
SONIA RABELLO: The City Statute, which was approved in 2001, confirms the distinction between the right to own land and the right to build, a distinction that had been discussed and implemented since the 1970s in São Paulo and other Brazilian cities. The expression "right to build" as used in the Brazilian Civil Code had led many landowners to assume that their right to own land also included the right to build on the land, in keeping with urban legislation and norms.

How much and what can be built is reflected in the price of land. That is, parcels with a higher building coefficient than others, or parcels where commercial use is permitted as well as residential use, sell at prices that incorporate the benefits freely given to landowners by the public authorities. When this happens, landowners appropriate as their private good the

building rights provided by urban law, even though they had not invested in the infrastructure or services needed to support the land development. As a result, the costs of urbanization fall entirely on the public authority while private citizens profit, contradicting the general legal principle barring enrichment without just cause.

LAND LINES: *What does the principle of "enrichment without just cause" mean?*
SONIA RABELLO: This general principle of law, accepted in most Latin American countries, deems unacceptable an increase in private wealth that does not result from the person's own labor or investment—that is, a legitimate cause pertaining to the person who benefits financially. In Brazil this principle is explicit in the legislation, specifically in the Civil Code, and is applicable to the entire juridical system.

LAND LINES: *How does the City Statute provide for the separation of the right to own land from the right to build?*
SONIA RABELLO: This concept was introduced through the instrument known as "charge for awarded building rights" (*outorga onerosa do direito de construir*) in Art. 28: "The master plan may delineate areas where the building right can be exercised above the basic coefficient adopted, given a counterpart payment by the beneficiary." It is important to emphasize that the City Statute is a federal law that addresses the content of real estate property rights and has the same hierarchical standing as the Civil Code. Thus, if the law states that the public authority shall charge for a given right, then that right does not belong to the person to whom it is given.

LAND LINES: *In what way does the "charge for awarded building rights" help to preclude enrichment without just cause?*
SONIA RABELLO: The charge extracts the corresponding value of such rights from the land price. In other words, without that charge, the land price would include the value of the building rights freely granted to the landowner by the urban planning legislation. Without the charge, when the landowner sold the land he would be paid according to its market value, which includes the maximum use permitted on that land.

LAND LINES: *However, if I buy land expecting to build at a given floor-area-ratio that exceeds the basic coefficient and the public authority charges for these awarded building rights, wouldn't that imply paying twice for the land?*
SONIA RABELLO: No, as long as the system of acquiring building rights from the public authority is well-established. Under the new law, building rights above the minimum coefficient belong to the city as a whole and must be purchased separately from the public authority. As a result, when paying the landowner, the buyer discounts from the land price the value of the additional awarded building rights.

LAND LINES: *In what other ways is this charge implemented to benefit society?*
SONIA RABELLO: In addition to addressing unjust enrichment, the principle concerns the legitimacy of recovering the added land value generated by public sector interventions in the urbanization process, and to prevent the added value accruing to the landowner. This principle is also reflected in the compensation paid for urban land expropriation. When not recovered by the public authority, the value of the additional building rights becomes an integral part of the market price. If the public authority expropriates that land, the landowner will receive compensation equivalent to the market price, which includes the land value plus the value of the building coefficient granted by the public authority free of charge.

LAND LINES: *Since the property tax is imposed on real estate property, wouldn't this charge constitute double-taxing?*
SONIA RABELLO: To understand why this is not the case we need to look at the important distinction between the Colombian and Brazilian legislation. The Colombian law classifies the value capture charge as a tax, but in Brazil it is defined as an instrument for the public authority to recover a good that belongs to society. That is, the nature of the charge is a responsibility relative to the costs of urbanization. A decision by the Brazilian Supreme Court (RE509422 STFSC of 2008) resolved this issue by ruling that the charge for awarded building rights is not a tax but a payment for which the landowner is responsible.

I think this juridical opinion is coherent given that a tax corresponds to a contribution to the public treasury from one's private assets, but, as noted, awarded building rights are not privately owned but are a public good that belongs to the city as a whole. To classify the value capture charge as a tax suggests a juridical inconsistency, since taxation is a form of assessing private wealth to finance public goods and services. This is not the case in Brazil, since the charge is levied on an essentially public asset.

LAND LINES: *Does the judiciary in Latin America accept and implement these concepts?*
SONIA RABELLO: Not uniformly or consistently. These juridical concepts fundamentally change the traditional understanding of property rights. Because of that, the principles upon which they are based and the logic behind them must be disseminated and assimilated more broadly. This is a judicial evolution that has to happen in order to reduce the exacerbated social exclusion that characterized Latin American cities.

LAND LINES: *How has the Lincoln Institute's Program on Latin America and the Caribbean contributed to this new vision of land policy in the region?*
SONIA RABELLO: The Institute has been a very important influence in clarifying land policy issues among public officials and politicians in Latin America, especially through its training programs in which participants can be exposed to such principles, concepts and ideas, exchange experiences, and build a new land policy culture. The Institute has developed a critical mass of people committed to improving the quality of land policies and promoting new strategies to finance urban development. Understanding that individual property rights can coexist with social rights to the city has been a critical factor driving the evolution of urban thinking in the region.