

STORIES FROM A FAVELA

The limits of (property) law

JANICE GRAY

Mention the city, Rio de Janeiro, and most people are likely to have a reaction...whether they have been there or not. For some, the place evokes images of the great train robber, Ronald Biggs. For others, it's a case of recalling the performance and glamour of Brazilian soccer stars and beach volleyball heroes. For others still, the images include the statue of Cristo Redentor, Sugar Loaf and the cable car, carioca¹ music, year-round sunshine, stunning mountains bursting out of the sea and a fitness-orientated beach culture which for women involves the mandatory wearing of a 'filo dental' bikini (known in some cultures as a 'g-string' or 'thong'), while for men it involves perambulation along the promenade in more demure, little, stretchy swimming shorts.

My preconceived ideas about Rio probably contained some of these images too, but when I took my last sabbatical in South America, I was directly confronted by counter images that were at times challenging, exhilarating and remarkably frightening. I was motivated to visit Brazil and Argentina because I am interested in land law and, in particular, the issue of adverse

possession. I had read about *favelas* or shanty towns having spawned throughout Brazil and indeed in many other parts of Latin America.² It fascinated me that favelas provided surrogate public housing, which on the one hand governments encouraged because resource allocation did not extend to the provision of an extensive, formal system of public housing, but at the same time, those very same governments arranged for the bull-dozing and demolition of many favelas, leaving thousands of people homeless.

Getting set up

In Rio, I was attached to the Human Rights Centre, Department of Law, at the Pontificia Universidade Catolica do Rio de Janeiro (PUC) where I found that I had the luxury of being assigned a 'stagiare' for the duration of my stay; a form of assistance which would not be offered to a visiting academic at my 'first world' university. The stagiare was a later year law student, who spoke excellent English, had a superb grounding in social anthropology and demonstrated wonderful foresight and intuition. She arranged, escorted me to and translated at, a series of appointments and interviews with legal academics, architects and urban planners at both PUC and the Federal University of Rio ('Federal University'). She also put me in contact with an anthropologist, who grew up in a favela and who was in an excellent position to provide me with some background to, and a better understanding of, the terrain in which I was working. However, her *piece de resistance* was getting me into one of the more dangerous favelas in Rio ... but more of that later.

(Mis)reading the signs

Those legal and urban planning academics who I met at Federal University and who were working in favelas had warned me that I could not go into a favela without good contacts. A visit needed to be orchestrated carefully.³ Trust had to exist. Favelas could be frightening places. I was told by cariocas themselves not to wear any jewellery outside the favela, let alone inside, and not to carry cameras or cash. (Indeed, several middle class locals explained to me that they basically did not use cash anymore, embracing debit cards as a safer option.) At first, these warnings seemed alarmist. Yet, clearly many were not. For example, when I went to work at PUC one Monday morning and commented to one of my colleagues that I had heard fireworks from the gay and lesbian parade at Ipanema she ruefully replied, 'I live in Ipanema, too. Although



REFERENCES

1. Carioca is the term for the inhabitants of Rio.
2. P. Robb, *A Death in Brazil* (2003) 9 offers an etymology for the word 'favela' as: 'In the remote hinterland of Bahia in the Northeast of Brazil, there was a rocky peak rising by a flat river bed called Monte Favella. At the end of the previous century, thousands of Brazilian troops had been sent from Rio and other places south on a terrible punitive expedition and they had camped on Monte Favella, which gave its name, after they came back, to the encampments of the poor on the spectacular hills of Rio.'
3. Ibid. Peter Robb supports this commonly held view when he notes that: 'Twenty years later [ie 2003] no outsider would dream of entering a favela without protection'.

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Ipanema is a middle class area, there is a favela in it. I heard the fire works too. They were not part of the gay and lesbian parade. The letting off of fireworks is a code, to let people know that a new supply of drugs has arrived in the favela.⁴

So much for being the flaneur, who would wander around the city absorbing it like a sponge. I had just skated over the top and found out first hand how little I knew of the new world I was so keen to understand and translate.

Entering the favela

My quest to find out more about how space and, in particular, land, is acquired, used and transferred in favelas took me on a journey to a favela I will call Favela XY.⁴ Arranging this visit took considerable effort and involved some risk, on the part of many. I received my instructions from my outside contact. I was not to dress in any red clothing. I was to wear jeans, joggers without a brand name (not all that easy to find) and a T shirt as well as leave my watch and any jewellery back at my apartment. We collected our contact and drove through the streets and tunnels of Rio out towards Federal University, noticing several other favelas along the way. As we approached Favela XY, our contact told us to drive very slowly through the ill-defined entrance area and past the few very basic restaurants and shops. We were also told to make our faces visible and to wind down our windows because the tinted glass prevented the favela dwellers from seeing who we were. It had to be established that we were not from a rival drug gang.

Rio has three main drug rings. They are known as Comando Vermelho (the Red Command), Comando Terceiro (the Third Command) and the Friends of Friends, which is a subset of the Third Command. (As I was not permitted to wear red to Favela XY, I figured that it was not run by the Red Command.) Membership of a Command is sometimes conveyed by the brand of clothing that boys and young men associated with the gang wear. For example, the brand TCK is associated with the Third Command and Nike with the Red Command.

Favela XY, unlike many other favelas, did have internal streets because its genesis did not lie in spontaneous spawning. It began life as more of a public housing project, similar to the favela in the film, *City of God*.⁵ Apparently, another favela, known as Da Mare, had

been levelled to the ground and Favela XY had been built by the Mayor⁶ to accommodate the displaced.⁷

On arrival, I was taken to my internal contact's home. The house was no more than three metres wide, yet its very narrow lounge room on the ground floor housed two quite large couches and a huge stereo system equipped with a karaoke microphone. The bathroom was tiled and spotlessly clean like the rest of the house but I observed that the toilet needed to be physically turned on and off before and after use. (The nearby river acts as the sanitation facility for this favela.) As the dwelling tour progressed, I discovered that the house was not unlike a 'jack and the bean stalk' phenomenon. With each tiny spiral staircase that I mounted, I found another floor had been added, when funds and materials had permitted, so that the spindly house stretched high into the sky. At the peak was a terrace area, home to a large satellite television dish and a ferocious guard dog. Evidence of consumerism lay all around.⁸

When I enquired about compliance with planning laws for such housing and, in particular, laws regarding the use of designated materials, safety considerations and height restrictions for example, I was greeted with polite disbelief. The only limits on extending in this part of the favela seemed to arise from a lack of building materials or the likelihood of disputes with potentially violent neighbours. However, more restrictions seemed to exist in an adjoining *favela bairro*, that is, an 'urbanised'⁹ favela, that I visited. There, the modest, standard concrete-block houses consisted of two rooms — a bathroom and a joint lounge, dining, kitchen and bedroom area — but the authorities responsible for the building of the houses seemed to recognise that their occupants would wish to expand them some time in the future. Nevertheless, the authorities set out very clearly boundaries beyond which expansion could not go. The limitations made it plain that encroachments onto common areas would not be tolerated. Yet, in the very setting of those limits, there was an awareness that the space needed to be re-read with the occupants' own signatures.

Musical squats

Close to the *favela bairro* were several vacant blocks of land on which mangy horses grazed and derelict cars had been left. Previously, houses also occupied the same space but they had been demolished purportedly because the area was to be 'urbanised'. Locals were very sceptical that this was the real reason. Residents

4. In order to protect my contacts the actual name of the favela has not been used. I also visited other favelas, including some in Salvador.

5. The *City of God* is based on the novel of the same name by Paulo Lins, who himself, was born in a favela and formed the idea of writing the novel, while conducting research and interviews for anthropologist, Professor Alba Zaluar. Zaluar was investigating criminality in Brazilian favelas.

6. The term, 'Mayor', seemed to describe an elected government agent, either State or municipal. My sources were circumspect about explaining more.

7. The information that follows was given to me by my contact within the favela. For reasons of safety and trust, I cannot identify that person(s).

8. Alba Zaluar, *Traffic Networks in Rio* (2001) 1 <www.india-seminar.com/2001/504/504%20alba%20zaluar.htm> at 5 August 2005. Zaluar notes that '[t]here has been a revolution in consumption patterns in Brazilian society: there are more consumer goods and shopping centres'. She sees cultural values having changed, becoming 'more individualistic' and demonstrating modern values such as 'always seeking the best for yourself'. The 'making of easy money' has become a widespread value since the 1970s and she notes that '[d]rug traffic is part of this new social, economic and political environment.'

9. 'Urbanised favelas' have basic facilities such as electricity, water and a ring road for emergency vehicles.

explained that the 'Deputy', who was described as a politician or official figure, sympathetic to favela dwellers, would try to find out who really held title to the land on which people had illegally built houses. Wherever possible the Deputy would organise a transfer of that title to the Mayor so that the land could be used by the favela community for housing. However, there was an irony, which did not go unnoticed by the locals, that before title to the land was officially transferred to the Mayor under such an arrangement, the Mayor was often the very person responsible for evicting the people who lived on the land. When evictions loomed, the Deputy assumed the role of scout, tipping off the squatters on these blocks, who would pack up and vacate the land so on the Mayor's arrival there was no one to evict. After the Mayor's departure, predictably, the squatters re-appeared. Any title gained by mere possession was clearly rather fragile.

Getting connected

Back in Favela XY, there was a mix of housing, all multi-storey but varying greatly in levels of tidiness, maintenance and facility. Power was hijacked from the main electricity lines out in public streets and diverted into the favela. Extension cords and makeshift electrical devices existed like cobwebs both in internal rooms and on the exterior of houses. One resident told me that the fear of being shot tended to keep the electricity suppliers from coming to collect payments.

Subdividing

The subdivision of houses (through a division of air-space) was common. In the poorest section of Favela XY I visited one house originally built as a two-storey dwelling but where the residents had sold off those first two floors and added levels three and four for themselves. The original owners were justifiably proud of their increased amenity including the lovely city views from the roof top. While internally the property was far from complete, revealing half rendered cardboard walls and unfinished kitchen tiling, for example, the home was equipped with air-conditioning, a pinball machine and a very modern microwave oven; all further evidence of the rife consumerism that Zaluar sees as contextualising drug trafficking.¹⁰ It is also worth noting that the original owners/sub-dividers to whom I spoke, could offer no evidence of any official transfers of title (through registration) of the lower two floors. The transactions appeared to be entirely private and informal. Presumably enforcement of these agreements would also be dealt with privately, involving whatever means of resolution the parties decided were most suitable.

Financing

The houses in Favela XY were financed by Caixa Federal (a lending agency) which acted as mortgagee. My contacts did not know of anyone in the favela, who was not still in a mortgagee/mortgagor relationship with Caixa Federal. It seems that virtually no-one in a

favela could self-finance an initial purchase and nor did they get to the stage where the loans were ever paid off. It was pointed out that if a person had sufficient funds to self-finance, they would be inclined to use their funds as a deposit to purchase a more expensive property outside the favela.¹¹

Selling

The explanations that I received regarding the sale of properties in Favela XY made the process seem relatively straightforward, although property lawyers suggested that little conveyancing in Brazil was simple.¹² I was told that when one wishes to sell one's property in Favela XY, one simply erects a 'for sale' sign and hopes that a buyer will materialise. If a buyer emerges, the mortgage to Caixa Federal is discharged and a new mortgage is entered into by the purchaser. In this favela, it did not seem necessary to obtain the drug lord's approval for a sale to a would-be purchaser. By contrast, the drug lord's approval was a strictly enforced requirement in some other favelas, particularly those which did not have their origins in formal public housing schemes; which created, from the outset, a known and systematic method of sale, purchase and mortgage. In the many spontaneously-spawned favelas (existing without the constraints of an instigating authority), the drug traffickers' control extended beyond the usual areas of conduct, work, use of public space and social networks, to the process of sale and purchase of houses. In the spontaneously formed favelas, the drug traffickers' power to decide who joined and left the favela went largely unchecked.¹³

Tracing title

While my original objective had been to explore the doctrine of adverse possession in relation to favelas, that issue did not seem to arise directly in Favela XY. Here, the original residents had acquired title from an official authority, and although that authority itself may not have had good title to give, there was no clear evidence of that being the case. Yet, because Brazilian land law involves a newer scheme of registration co-existing alongside an older scheme (which is falling into disuse), it is complex task to discern who is the true owner.

Clearly, the doctrine of adverse possession has more obvious relevance outside Favela XY in other favelas, which have developed organically and have involved initial trespass on land with clear evidence of an intention to possess; commonly found in the plastic, tin, cardboard and wood which so often forms the basis of many homes.

Disposing of the bodies

The issue of the common ownership of some sections of land in Favela XY was another that I sought to pursue. At one spot, my tour of Favela XY revealed a clump of banana trees growing on the bank of the river, bordering the favela. Observing that the tree appeared to be on land unrelated to any house, I enquired whether the land was communal and

10. Alba Zaluar, above n 8.

11. See Pedro Abramo, *The Functioning of Informal Land Markets in Favelas and the Mobility of the Poor*, Research Project (work in progress), <www.lincolninst.edu/education/research-detail.asp?id=24> at 5 August 2005.

12. Daniela Vargas, a property lawyer/academic, in the Department of Law, PUC was one such lawyer: interview with Daniela Vargas (Oral interview, 29 June 2004).

13. The issue of obtaining the drug lord's consent, support and approval for a range of activities in the favela emerged often. For example, if one wanted to hold a party, generally one could not do so in one's own home because there would be insufficient space so one would hold it in public space. If people did not complain, it was simply a party. If they did complain, it was a skirmish, settled by the drug dealer or bosses.

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accordingly if the fruit of the trees was also regarded as common property. I was met with a hushed silence. The Portuguese word for 'cemetery' was mumbled and then it was explained that each night in this favela, there was a shoot-out, sometimes begun by the police and sometimes begun by members of the Commands. Fatalities were commonplace and it was behind the banana trees that the bodies were thrown until they were later rolled down the bank into the river, where they rotted into anonymity. My stagiare also told me that one sometimes sees the bodies floating in the river when one drives to the Federal University nearby.

Further, when shoot-outs take place between this favela and another on the other side of the expressway crossing the river, motorists on that expressway are at risk. They have been inadvertently shot. Dealing with such violence and risk seems to be accepted as simply part of the way of life in Rio and in many ways it made my questions about land ownership and title seem trite. As Anna Lucio Britto put it, 'I am not sure whether favela dwellers want legislation and rights. It is more important to them to have public services such as water and electricity.'¹⁴

Violence and the structure of the drug trade

My questions about space and its use had a little more relevance when they connected with the reality of life in favelas, and in particular, the reality of violence.¹⁵ Understanding the violence involves some appreciation of the structure of the drug trade in Rio. That structure is complex and well beyond the ambit of this paper. Suffice it to say that at Favela XY, the drug lord is called the *Ligno* and he does not live or come to the favela. He has a tier of 'managers' directly beneath him, who also do not live at the favela but the 'bosses' beneath the managers are 'on site'. This structure is apparently replicated in favelas all over Rio and elsewhere in Brazil, where it can be noted that 'the power relationships and the division of labour are sometimes very exploitative'.¹⁶ The *Ligno* is sometime referred to as the 'owner' of the 'boca de fumo' (selling place) or in other circles he is known as the 'trafficker'. He takes the 'lion's share' of the profits while the 'managers' and 'bosses', the latter sometimes known as 'vapours' because they vapourise in and out of view in their role of drug sellers, only get a small percentage of the total profits.¹⁷ Further, although each favela is run by a different Command and between them disputes are often settled with guns, there is, at another level, a degree of co-operation between favelas. This is observable when

one favela runs out of a certain drug and another favela ferries over supplies to the first favela until it is restocked through its regular source.

Favela XY is a little different from some favelas in that two Commands, the Third Command and its splinter Command, Friends of Friends, operate within the same space. They are regularly in dispute with each other and, as a result, the space in the favela is divided by invisible boundaries which determine the jurisdiction of each. Buildings and signless streets mark out territory. Straying into the territory of an enemy (even if accidental) may well cause a volley of shots to follow. As one of the consequences of the bifurcation of space, the buildings in this favela are riddled with bullet holes. I was told that the worst place to live was on a corner because corner buildings can be a target from a number of different angles. Therefore, it was considered better to position shops in corner positions because when the fighting began the shutters could be pulled down and they might deflect some of the bullets. Further, narrow streets were better to live in than wide streets, because in the former the shots were inclined to run the length of the street rather than penetrate the houses. It was more difficult to line up one's target in a skinny street.

Each night, when the shooting starts, residents go inside but I was told that they don't lie on the floor to reduce their risk of being hit. They just carry on with daily tasks such as cooking dinner or cleaning. By resisting the violence which interrupts their use and enjoyment of the internal space, they resist something larger; something they are effectively powerless to change.

Fortunately, my visit to Favela XY ended before any gun shots began. At about 6 pm, I was asked politely if I had any further questions. Thinking that I must have delayed the questioner from commencing his job outside the favela, I apologised but he explained that he did not have to go work that day. 'It is just that the "managers" will be arriving very soon to conduct their business. It will be dangerous. The shooting will begin. You need to leave now.'

I left, feeling grateful and honoured for the things that I had been taught that day. But I also felt a little troubled by whether or not my visit had exploited the favela dwellers' privacy and dignity. As we sped into Rio's chaotic traffic, it became even clearer to me, both at an emotional and a physical level, that I could not leave the favela behind. Favelas cannot be cordoned off from the wider world as some seek to do when they suggest 'containing' favelas by building walls around them.

14. Professor Anna-Maria Britto, Postgraduate School of Architecture, Federal University of Rio de Janeiro (Oral interview, 28 June 2004)

15. Alba Zaluar, *Violence Related to Illegal Drugs, Youth and Masculinity Ethos*, [3] <http://lanic.utexas.edu/project/etext/violence/memoria/session_3.html> at 5 August 2005 observed that the risk of dying from violent causes was considerably higher amongst young male favela dwellers as compared with young male non-favela dwellers. She found, by reference to a study, dealing with death, violent causes, youth and favelas, that in Copacabana (a middle class district) with four favelas, the rate of violent deaths for males aged between 5 to 19 years was 3.1 per 100 000 for non-favela youth compared to 8.6 per 100 000 for favela youth. In Tijuca, another middle class district with many favelas, the rate was 4.2 per 100 000 for non favela youth compared with 16.9 per 100 000 for favela youth. In Madureira, a lower middle class area, the differential was even greater. The rate was 9.8 per 100 000 for non favela youth compared with 19.6 per 100 000 for favela youth.

16. Alba Zaluar, *Traffic Networks in Rio*, above n 8, 6.

17. *Ibid* 5–6.

The favela is, in some senses, already amorphous. Its dwellers already transgress spaces. They live between two worlds and they must know the code of living in each. Theirs is an ambiguous life. On one hand, they live in the designated space of the favela, but on the other they also live in the wider world, in the space of supermarkets, roads or the homes of the middle class, where they work as cleaners or dog-walkers.

'Duel' power: parallel governance

In many ways, the poverty that I observed in Brazil, through the lens of housing, did not look much different from poverty in many other parts of the world. Although the architectural style of housing may vary between countries, the lack of amenities, crudity of construction and density of population did not seem worlds away from the slums of Vietnam, India or China. What set Brazil apart, for me, was the backdrop of lawlessness and violence against which other issues, such as housing and property, need to be considered and understood. As Regine Schonberg put it, when examining drug activities in the Amazon: '[I]mpunity and corruption are so generalised and embedded within private and public life that the aggregation of new criminal activities appears almost natural... Impunity has become almost institutionalised over the past 10-15 years.' She observed that there was a 'strange element' whereby 'federal police agents, federal judges and public prosecutors are either being incorporated or threatened away'.¹⁸ Cariocas and others unhesitatingly described the police to me as 'uniformed thieves' and pointed out that disputes were solved by a pistol not the law.¹⁹

A form of parallel governance exists. At the formal level, governance is conducted through laws passed by elected parliamentarians. But informally, governance is conducted through sets of exchanges, negotiations and accommodations framed in the cultures and practices of non-elected leaders, in particular those of drug traffickers, whose 'laws' exist informally outside the traditional legal framework; 'laws' which are the product of Brazil's drug-based economy.²⁰ The

regulation of use, as well as the sale and purchase, of land — that is, issues which would traditionally be conceived of as legal issues — are, in the favelas of Brazil, commonly dealt with in a non-legal way. They are often dealt with according to the 'might is right' principle. The degree of one's stake in society, measured by the ability to invoke and enforce formal legal rules and/or the ability to utilise extra-legal force backed or conducted by the drug lords, acts as the determinant of how far one's will can be enforced. Regulation of land use and transfer (along with other aspects of life) is regulated by one's degree of citizenship. Whilst there might well be a parallel legal right to the power of citizenship, use of legal rights in the favelas was not often observable. Given that there is a prevailing sense of lawlessness,²¹ it is hardly surprising that the non-legal methods of ordering and governing favela life tend to dominate. The pretence of legal compliance seems to have fallen away in favour of adherence to another order, determined by the conditions of life in the favela and by the drug economy and culture to which the favela is linked.

Clifford Geertz has argued that law is 'local knowledge, local not just to place, time, class, and variety of issue, but as to accent ... vernacular characterisations of what happens connected to vernacular imaginings of what can'.²² The act of 'cultural translation'²³ of land and housing issues called for by Geertz is, to put it mildly, somewhat difficult to conduct in the context of Brazilian favelas, if one enters with a set of questions about formal legal rights and remedies, as I discovered. Both 'vernacular characterisations of what happens' and 'vernacular imaginings of what can' in the favelas are so influenced by the culture and organisation of the drug trade and the forms of violence through which it is conducted that the search for a 'legal sensibility' must start at the limits of law.

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18. Regine Schonberg, 'Lessons from the Brazilian Amazon', (2001) 504 *Seminar* <www.india-seminar.com/semframe.htm> at 5 August 2005.

19. Alba Zaluar states that 'Prison and police precincts are equated to "factories of bandits". The justice system is propelled by money': Alba Zaluar, *Traffic Networks in Rio*, above n 8, 4. In Salvador and in Iguassu (near the Misiones region of Argentina), locals also spoke to me of a culture of police corruption developing in the context of poor pay, available opportunities for graft and an expectation that law enforcers could not be relied upon to act honestly and fairly.

20. The sense of the 'law' that governs Rio is demonstrated by the account in n 21.

21. At Easter, 2004, fighting between two rival drug commands, over the leadership of the Rochina favela led to the blocking of the main road and tunnel in Rio, near Barra. A woman, travelling with her husband and two nephews refused to stop. She was shot dead. Rio was brought to a stand-still and many people were too afraid to leave their homes for several days. Police went into Rochina but it took about five days to quell the riot. Although the federal government offered to send in troops, the State government opposed the offer.

22. Clifford Geertz, *Local Knowledge* (1983) 218.

23. *Ibid.*

MENTIONS



RED CROSS HYPOTHETICAL

The All's Fair in Law and War Hypothetical is set in 2015, with global water resources in short supply and rising tensions around water access. Under dispute is a lake, bordering two countries, where Water Treaty negotiations

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HOT TOPICS

Legal issues in plain language
No 52: Copyright

This issue of *Hot Topics* looks at what is covered by the Copyright

Act / 1968 and also how copyright law applies in practice in Australia. Of particular interest is the way copyright law is developing in relation to the music and film industries and the internet. Also covered: how copyright law interacts with other areas of law such as contract law.

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