

Cultural heritage in Brazilian legislation and areas of protection of cultural environment in Rio de Janeiro

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ABSTRACT: This paper aims to present the evolution of legislative protection of cultural heritage in Brazil. We chose to broaden the discussion, having a starting point at the definition of cultural heritage and its regulation in an international level in order to achieve the Brazilian legal system, specifically focusing on Rio de Janeiro, and contextualizing it in the contemporary world. The chapter on our legislation includes a draft of Mario de Andrade, the Decree-Law 35/1937; the Federal Constitution of 1988 and Decree 3551/2000. We make the legal treatment of the theme in Rio de Janeiro explicit; former seat of the Brazilian Empire and a former federal capital, full of monuments and areas of cultural preservation.

KEYWORDS: Cultural heritage. Preservation. Rio de Janeiro.

O patrimônio cultural na legislação brasileira e as áreas de proteção do ambiente cultural no Rio de Janeiro

RESUMO: Este trabalho tem por objetivo apresentar a evolução legislativa da proteção ao patrimônio cultural no Brasil. Escolhemos ampliar a discussão, partindo da definição de patrimônio cultural e sua regulamentação no âmbito internacional para atingir o ordenamento jurídico brasileiro, em especial o do Rio de Janeiro, e contextualizá-lo no mundo contemporâneo. O capítulo relativo à nossa legislação abrange o anteprojeto de Mario de Andrade, o Decreto-lei 35/1937, a Constituição Federal de 1988 e o Decreto 3551/2000. Em capítulo específico explicitamos o tratamento jurídico dado ao tema na cidade do Rio de Janeiro, antiga sede do Império e ex-Capital Federal, rica em monumentos e áreas de preservação cultural.

PALAVRAS CHAVE: Patrimônio cultural. Preservação. Rio de Janeiro.

Cultural heritage

The central idea of the anthropological concept is that culture is a learned behavior, and it doesn't depend on genetic transmission. If one is lacking of genetic guidelines - the

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human mind is an empty box at birth - he organizes his collective behavior through symbolic systems that he creates and then transmits them as if they were rules. This way, men can adapt to the environment while involving a production of knowledge and techniques. This behavior can be perceived and processed by the following generation. Considering this, men have built through symbolic systems, a constantly changing artificial environment in which they can live. Thus, culture is movement of creation, transmission and reformulation of the artificial environment (BELTRÃO, 2002).

Although it is not unusual to think of cultural heritage as legacy or as valuable goods representing a nation, it has gained much attention in researches produced by anthropologists, sociologists, historians, architects and professionals from different areas, establishing it as an interdisciplinary theme.

The word "heritage" is rooted in time and space. It is originally linked to family structures, economic and legal implications of a stable society. Within anthropology, the concept of heritage can be understood as a set of goods, material or not, rights, actions, possessions or anything else that belongs to someone who is capable of economic assessment (CANANI, 2005). Nowadays, it means something to be enjoyed by the community, consisting of the continuous accumulation of a diversity of objects gathered by a common past: works and masterpieces of fine arts and applied arts, works and products of all kinds of knowledge and human savoir faire. The concept of patrimony is related to the institution and mentality because of a constant social mobility.

The institutionalization of the patrimony first happened in the late eighteenth century with a modern view of history and city. It was during the Enlightenment that the historical patrimony, consisted of antiques, had an iconographic and conceptual renewal. The idea of a common patrimony for a social group, which defined its identity and made it worthy of protection, happened through practices that amplified the circle of collectors and lovers of antiques and opened new social strata: exhibitions, public sales, catalog publishing of large sales and private collections³.

The conceptual shift of wealth relates to the republican project of building a national identity which consolidates the national states (BATISTA, 2006) while the modern state emerges, as a consequence of the ideas of citizens' rights, representation, and democratic republic. One of the first legal acts of the French Constituent of October 2nd, 1789, was to make the clergy's goods "available to the nation", followed by emigrated goods and later by

³ Cf. Canani (2005) for a more complete historical approach.

the Crown's possessions. Therefore, the idea of nation has guaranteed the ideological status of heritage, and the national State has ensured its preservation through specific practices. Its uprising became the basis for a conceptual change in patrimony, which has been inserted into a larger project of building a national identity, and has consolidated the modern nation-states (BELTRÃO, 2002).

The first patrimony category contemplated was the one related to the common life, the historical heritage represented by the buildings and art objects. The idea of historical patrimony has gradually been taken over by the cultural patrimony. The initial aspect was reductionist and emphasized historical aspects already established by an official historiography. When "cultural" and "historical" were put together, the concept of the everyday life dimension and immaterial actions was brought up.

Therefore, a conceptual range is in the anthropological definition of culture, expressed as "everything that characterizes a human population", as "a way of living, thinking and speaking according to a specific social group", or even as a symbolic expression of knowledge through ideas, construction of objects, artistic and ritualistic practices (BELTRÃO, 2002). The tangible and intangible material or immaterial goods, which can be cultural patrimony, are considered "events or a meaningful testimony of the human culture", responsible for shaping the cultural identity of people.

The patrimony is directly related to the idea of ownership. Property is a universal idea of human culture because everyone can find a way of having it, either individually or collectively. Thus, all material objects that can be found every day are considered property. So, property is a type of social creation. An object's significance isn't only due to its existence. There is value added to it, which is socially experienced by rules that define its destination and durability in the group, also establishing a network of people (CANANI, 2005).

According to Canani (2005), a patrimony is a father to son transferring of property. A specific public agency located outside the group of houses which are subjects of public politics, assigns value and significance to it.

The idea of "Cultural Patrimony" has been playing a significant role in the Western world lately. When speaking about artistic monuments in the past, which are interpreted as specific facts in a civilization, progress has been made concerning cultural property, relating to collective identities. Thus, multiple landscapes, architecture, traditions, cuisine, expressions of art, documents and archaeological sites have been recognized and valued by communities

and government agencies in the local, state, national or international areas (ZANIRATO; RIBEIRO, 2006).

In the course of the twentieth century, the knowledge of culture and history has changed and has affected the understanding of property. The speed of urbanization in the twentieth century transformed the city into some kind of living tissue, consisting of buildings and people, assembling past environments that can be preserved and integrated to the urban dynamics. It became a social practice in which one can see landscapes, architecture, streets, ways to socialize, a place that isn't homogeneous nor articulated, but rather an overlapped mosaic, which expresses time and ways of living.

Another understanding of history was also considered with a focus on the anthropological interest in man and his existence, concerning all social instruments and all fields in which there is an expression of human activity. This understanding led to the valorization of cultural aspects: languages, communication tools, social relationships, rites, ceremonies, collective behavior, value systems and beliefs that were seen as cultural references in human groups, signs that define cultures and require safeguards.

This new understanding has led a reformulation of the patrimony's concept. The cultural value, the symbolic dimension that involves the production and reproduction of cultures, expressed in the usage of property, was incorporated to the definition of heritage. There has been an alteration due to the fact that the identity of a people cannot only be defined only as a reference to the Western cultures, and the peasant culture cannot be seen as something less when referring to industrial activities (ZANIRATO; RIBEIRO, 2006).

So, it's possible to say that "Cultural Heritage" includes three categories with important social memory elements of a people or a nation. The **first category** includes the elements of nature; the environment. The **second** is the intellectual product, the accumulation of knowledge by men throughout history. The **third** is about cultural products, resulting from men's ability to survive the environment.

Public policies of recognition of the immaterial patrimony have been implemented by the Brazilian government as recognition of real estate assets, as patrimony, such as cultural processes that can be registered in docket, and traditional actions of restoration and preservation of properties have made researchers reflect on the implementing and maintaining such policies. Canani (2005) explains that the secularized state, which has a centralized power, is able to create, transform, maintain and destroy things that are vital to human life.

The state works on charismatic attributions, creating meanings so as to induce certain feelings in people. While focusing on these feelings of identification with the national State, the patrimony's cultural policies and the national culture are emerging in Brazil. Thus, as the aforementioned author said, we could also say that "[...] the public policy's objects of establishing a historical and cultural heritage originate such policies that mingle with society in a sacred way."(CANANI, 2005, p.169).

Internationalization of cultural heritage

It was necessary to promote various events in the twentieth century in order to protect historic and cultural assets on an international scale. At the same time that industrialization has advanced and produced complex and renewed cities, a concern with the conservation of the past urban forms emerged. The construction of something new starts to incorporate what was old little by little, even if it has to happen for other purposes.

The Athens Charter (1931) was the first international document to have historical and artistic property protection, as shown within the society of Nations, the recognition that protection of the property was a subject beyond national borders. When World War II happened and the United Nations (UN) were established in 1945, there was a clear need to establish the rights and duties of human beings, including the creation of the United Nations for Education, Science and Culture (UNESCO) on November 16th, 1945, which was extremely important to the preservation of cultural patrimony worldwide, as the institution's mandate allows it to intervene in education, science and culture. There was a concern about the conservation of heritage in an international dimension. The privileges of Unesco had a meaning after the issuance of the Universal Declaration of Human Rights in December of 1948, establishing the right to education and culture as world prerogatives.

UNESCO's goal is to promote peace and human rights based on intellectual and moral solidarity of mankind. The agency encourages the cooperation in Member States and develops an international program to preserve the cultural heritage of each country and to defend the diversity of world cultures. The international meetings result as "recommendations" that can be followed by member countries on the procedures to preserve material and immaterial properties.

UNESCO proposes to formulate guidelines, criteria and priorities for the protection of cultural property. Therefore, a new concept of cultural property emerged in international forums in the Fifties, when the Hague Convention in 1954, defined as cultural heritage architectural monuments, archaeological sites and objects and structures inherited from the past generations. They were historically, culturally and artistically valuable goods representing the cultural resources of a society or a social group. As Zanirato and Ribeiro (2006) noted, the goods could be divided in categories, according to their importance for people's cultural heritage. For this reason, other international documents use this nomenclature, so as to show a new concept of property.

The Charter of Venice was signed in 1964, wide spreading the concept of patrimony and the preservation associated to it. Thereafter, conservation included cities and urban areas too, focusing on the buildings' aesthetics. The main idea is to enjoy the goods aesthetically, as objects capable of provoking memory and relate to men through communication in a certain historical period of time, but which is directly related all humanity.

According to UNESCO (2007), "a world with so much global interaction revitalizes the traditional and popular cultures, ensuring the survival of a diversity of cultures in each community, transforming it into a pluralistic world."

UNESCO has been struggling to create and consolidate mechanisms of recognition and defense in the last twenty years. The Organization established the Recommendation on the Safeguarding of Traditional Culture and Folklore in 1989, and it has been encouraging its implementation around the world since then. This legal instrument provides evidence to identify, preserve and continue the patrimony, or extinguish it.

UNESCO adopted the Convention for the Safeguarding of the Intangible Cultural Heritage in 2003, after technical studies and discussions with international experts, lawyers and members of governments. This agreement regulates the intangible cultural heritage, and complements the World Heritage Convention of 1972, which takes care of the tangible goods, in order to include all cultural heritage of humanity.

The Intangible Cultural Heritage is about the expressions of life and the traditions that communities, groups and individuals all over the world receive from their ancestors and pass on to their descendants. Despite trying to maintain an identity and continuity, this patrimony is especially vulnerable because of its constantly changing and multiplication of owners. That is why the international community adopted the Convention for the Safeguarding of the Intangible Cultural Heritage in 2003.

It is important to promote and to protect the memory and cultural events represented throughout the world as monuments, historic sites and cultural landscapes. The culture of people is not only defined physically. There is so much information in traditions and folklore, languages, parties and many other aspects and manifestations, transmitted orally or by body language, which is collectively re-created and modified from time to time. The intangible cultural heritage of the people is the immaterial cultural patrimony (UNESCO, 1972).

There have been many legal instruments, conventions, declarations, resolutions and recommendations concerning the protection of cultural heritage in the last decades, so conventions and recommendations adopted by UNESCO started to enrich the international law culture and the domestic law with the development of its own laws.

The protection of cultural property is so important to the United Nations Charter that it does not separate hierarchically the economic, social and cultural rights, placing them as something that influence the development, peace and security among people.

Cultural heritage in the Brazilian legislation

Primary ties and the importance of symbols to reinforce that one is part of the group and that there is identification to a nation state, so it is necessary to examine the legislation that establishes the heritage in Brazil, through which the State uses its power.

As Canani (2005) explains, the law project which began the discussions on preservation of cultural heritage in Brazil was asked during the Getúlio Vargas' government, in 1936, when the Minister of Education, Gustavo Capanema, asked Mario de Andrade to write it.

A contestation about heritage in Brazil started in a group of intellectuals during the modern movement, whose proposal was to renew and produce art, music and literature that were original and typically Brazilian. During the Modern Movement, there were important artists such as Mario de Andrade, Oswald de Andrade, Manuel Bandeira, Carlos Drummond de Andrade, Cândido Portinari, Tarsila do Amaral and Lucio Costa. Mario de Andrade was especially ambiguous. Although he preached modernization, he also wanted to keep the traditions (CANANI, 2005).

The modern intellectuals started to worry about the Brazilian heritage and its value. They were also influenced by a cultural movement called "Week 22". Among them, Mário de

Andrade and Lúcio Costa were especially important to the creation and operation of the national agency for protection. Paradoxically, the modern, who looked for new views of culture, chose to protect only the buildings and monuments of stone and lime, which represented a colonial country, selecting the sites and monuments of the eighteenth century as a symbol of our socio-cultural roots, ballast of our national identity.

After Mario de Andrade's project, other standards appeared, revealing some kind of worry with the preservation of a heritage for future generations, creating a complementary scene in the Brazilian legal system. The promulgation of Decree-Law n. 25 of November 30th, 1937, led this rule of law to organize the protection of historical and artistic heritage by establishing the registration as an instrument of public policy.

In fact, the Brazilian conservationist policy happened in this early century, with the creation of the Inspector of National Monuments in 1934, a pioneering initiative of the government to institutionalize an action and protect the Brazilian cultural heritage. There is the Office of Historic and Artistic Heritage (Sphan), which defines heritage as "[...] all the movable and immovable property in the country and whose conservation is of public interest is either for connecting the remarkable Brazilian history, or because of its exceptional archaeological and ethnographic, literary or artistic value" (IPHAN, 1976).

This organization, later called Iphan, shares the task of identifying and registering historic, cultural and artistic patrimony in states and cities. The registration of real estate can be accomplished in any of the federal instances, and each one of them obeys the same law. Registering is to officially recognize an asset at an organization with patrimony registration.

The Decree-Law n. 25 of November 30th, 1937, regulates the protection of cultural property in Brazil. According to the legislation, a good must be legally preserved and its original features should be maintained by the landlord. The State controls the property of cultural values represented by this asset, and the State also promotes the welfare, but the cultural values are always the values of a social group. Thus, whenever verifying each building or monument preserved, it is necessary to question what the values that it represents are, which attributes justify its existence as cultural heritage, and what kind of relationship it develops with the local people, the owners of this culture, with their assets and monuments registered.

The 1st art. Of the Decree-Law N. 25/37 limits the impact of the normative concept of cultural heritage, considering that

- [...] cultural and artistic national heritage are all movable and immovable property in the country, whose conservation is interests people

because of its connections to remarkable facts of Brazilian history, or for its exceptional archaeological, ethnographic, literary or artistic value (BRASIL, 1937).

Brazil has been developing a policy for the identification and preservation of artwork, monuments and other material property through the legal institute of registration since 1937, and it has been the only way for the Brazilian government to preserve its cultural heritage. Although it works efficiently, whenever it's applied to buildings, artwork and other property of this nature, the registration does not happen and even makes it inappropriate and inadequate to preserve intangible cultural and symbolic ties. During the Seventies, the policy of cultural heritage's criteria was thought over again and revised systematically, culminating in proposals that could incorporate these aspects of symbolic and cultural references too, which would "shift the focus of the property - which generally shows its size - for dynamic allocation of meanings and values" (LONDRES, 2000, p.60-61). There has been great resistance from the former counselors of SPHAN throughout the years; the predecessor of IPHAN, regarding the extent of the evidence of cultural heritage of goods to those not endowed with monumental and artistic value, which culminated in 1984 in a great society's mobilization, the established powers and the press from Bahia, with groups in favor or against it, around the first registering of a *terreiro de Candomblé*, the White House in Salvador, Bahia (VELHO, 2006). This reality began to effectively change with new meanings that were incorporated to the concept of cultural heritage in CF-1988, extension that has allowed some interesting historical innovations⁴.

After the World Heritage Convention in 1977, Brazil has tried to diversify the list of goods to be included in the classification of assets. If there was a high incidence of property of historical interest before, now it covers the cultural and natural diversity of the country. Among the **Brazilian goods considered World Heritage** are the Amazon and Pantanal, the collection of Baroque art and urbanism of the colonial period, the modern architecture of the capital Brasilia, Serra da Capivara with its prehistoric site, the city of Goiás Velho and its vernacular traditions, and others. Canani (2005) says that in the 1970s, two governors' meetings were held in Brazil, one in Brasilia and the other Salvador, which helped to decentralize policies related to preservation activities.

In the 1988 Federal Constitution, cultural heritage is outstanding, and it defines the legislative and executive powers and executive public agencies, according to the promotion,

⁴ For more information on the institutional evolution of the preservation of cultural heritage in Brazil, giving M. Pinheiro (2006).

regulation and supervision of preservation. The federal decentralization turned the Constituent into an important issue in the city, as well as the public participation in processes that regards to participatory democracy upheld by the constitutional text. This participation is manifested, as set out in articles regarding the rights of citizenship, through the possibility of presentation of projects of law, supervision of works, and preservation of property as an exercise of citizenship. We must also consider the legal actions available in the constitutional text, such as the popular action and public civil action, the latter written by a prosecutor, the guardian of legality.

The Federal Constitution of 1988 (BRASIL, 1999) contributes to put in order international concepts of cultural heritage, expanding the categories of goods subject to protection, and especially including the protection on intangible property. The article 216 of the Constitution draws the identification and preservation of cultural values Brazilians, establishing:

Article 216. Brazilian cultural heritage consists of assets of material and immaterial nature, taken individually or together, which bear reference to the identity, action, memory of the various groups that form the Brazilian society, therein included:

- I. forms of expression;
- II. ways of creating, making and living;
- III. the creations of science, art and technology;
- IV. works, objects, documents, buildings and other spaces intended for artistic and cultural expressions;
- V. urban complexes and sites of historical, natural, artistic, archaeological, paleontological, ecological and scientific value.

It is clear, therefore, as Oliveira-Reis (2010) says, that the extent of the constitutional definition of cultural heritage makes possible its defense and protection.

The Decree n. 3551/2000 was issued in August, 2000. It established the Registry of Cultural Property and Intangible Nature and created the "National Program of Intangible Heritage", sharing the records of the property in four books: Knowledge, Celebrations, Forms of Expression and the Monster Seats. The Decree n. 3551 of August 4th, 2000, established the record of cultural intangible character, creating a set of registering books. In 2001, the patrimony legislation was extended, considering a new category of goods that had already been contemplated by Andrade in 1936, although there hadn't been a detailed legal prevision until then.

In 2002, with a new idea of legislation, many cultural events became part of the record books, now divided into four: Knowledge, Celebrations, Forms of Expression and the Monster Seats, different from the nineteenth century⁵.

Based on the new legislation, it is necessary to check what is the procedure adopted by IPHAN to identify and register goods considered national patrimony. According to information supplied by IPHAN (1976):

[...] Such declarations, as in any other federal, state or municipal law, set limits to individual rights aiming to protect and guarantee the rights and interests of society as a whole. It is not dictatorial because its application is done by representatives of civil society and public institutions, with powers established by legislation.

[...] The declaration is an administrative action of the executive branch, beginning with the request to open proceedings at the initiative of any citizen or public institution. This process, after a preliminary technical evaluation, is submitted to the determination of bodies responsible for preservation. If the intention to protect a cultural or natural good is approved, a notification to its owner will be sent. This notification makes the good legally protected from destruction or characterization, until a final decision is taken. The process ends as an inscription in the Book of Registering with a notification to the owners.

So as to identify goods to be protected, considering its content, the Brazilian legislation uses the classification method. The article 216, § 1 provides that the Government, in collaboration with the community, will promote and protect the Brazilian cultural heritage through the inventory, registration, monitoring, lodging, and expropriation and other forms of precaution and preservation.

It is possible to notice that the registration is the most used tool in Brazil to protect cultural property, for its inclusion in the registration book prevents the destruction of the property by the owner. Tipping, an exclusive work for the executive branch, can focus on public or private things, producing legal effects and transforming the goods into something that can be interesting to people. These are constraints on the right of property. A legally

⁵ In the nineteenth century the first statements of Brazilian intangible cultural heritage appear, as Oliveira-Reis (2010) tells: “the Talian is a Venetian dialect of Rio Grande spoken by Italian immigrants in the mountains of western Rio Grande do Sul and Santa Catarina; the craft of making handmade clay pots for ceramic pottery in Goiabeiras - ES; the Jongo, a choreographed musical expression brought to Rio de Janeiro by Angolan slaves and that supported the samba and the party of Nazareth in Belém - PA. The importance of this new way of cultural record reached international recognition by the UNO for the kusiwa art from Wajãpi, indians from Amapá, and the *samba de roda* from Recôncavo in Bahia, as examples of the Oral and Intangible Heritage of Humanity. So, the concept of cultural heritage in a broad sense, points out two aspects that are functional and that might be considered as inseparable: its usage is applied to materiality or tangibility of goods, works and artifacts and, on the other hand, the immaterial symbolic aspect, based on the meanings applied by people who belong to a social group. Finally, a third aspect to be highlighted concerning cultural heritage is the historical experience and the concept of what history is - conceived on a diachronic scale by a black community, or a Guarani-Mbya Indian community, for example – that the cultural manifests witness and should always be highlighted in the definition of the concept.”

registered good is not necessarily expropriated and, as José Afonso da Silva (2001, p.160) said:

[...] the registration is limited to the absolute character of the property, because it reduces the extent of the rights of the owner through a legal regime that requires that the registered good a connection with destination, of unmodified and limits on alienability.

Currently, the internationally recognized criteria for interventions in cultural heritage conservation recall the recommendations of the “Venice Charter”. The first condition for the preservation of heritage buildings is an awareness of their historic, artistic, scientific and/or emotional value, by the group concerned. Another condition is its effective use. The degradation of a building is also due to non-use. Everything has a useful life determined by their inherent characteristics and the way they are maintained. Thus, the systematic preventive or corrective maintenance is the best way to preserve a heritage, registered or not. The restoration is necessary when the degradation of the material had reached the limits of compromising the integrity of a particular cultural good (IPHAN, 1976).

The legislative developments on the Brazilian cultural heritage ensured greater popular participation in the registration process. If that strengthens democracy and citizenship, on the other hand, the same law grants to the technical power to evaluate the relevance of tipping applications, bequeathing to them the power to decide ultimately, once there is a hierarchy to be observed in public administration (CANANI, 2005).

Unfortunately, the concern about urban issues in Brazil is recent. Since 1988, the Federal Constitution municipalized the regulatory jurisdiction of the matter (Article 182), recognizing that the legal regime of urban private property is identified to the urban law, and not civil law. So, the focus of implementing municipal policies changes and the possibilities of planning for the Municipal Power, even if it is regulating the use of private property. However, cities still act in an unarticulated way, due to the difficulties is to supervise and regulate cultural heritage. So, as Beltrão (2002) said,

Despite the law states that the coordination of activities that protect the cultural heritage, carried out by the Union, states and municipalities and by private individuals and institutions (Decree-Law 25 of 1937, arts. 23 and 25), founded on the premise that the protection cultural heritage can only be efficient and organized, both on national and international levels, among states that work together, we observe that, by default policies and actions of the state, usually unarticulated, urban sprawl has resulted in characterization of a large amount of registered objects. The consequences are disastrous: it creates different types of land division with the establishment of buildings on the land, which changes the spatial configuration of the registered nuclei, even in cases where there was a concern to reproduce stylistically architectural typology originated in the new buildings.

The idea to solve this situation, as highlighted by Rodrigues (apud BELTRÃO, 2002) would be the creation of a

National System for the Preservation of Cultural Heritage, established by law, in which each political government entity had clearly defined the scope of the activities, in order to avoid overlapping which normally results in the application of the constitutional system of concurrent jurisdiction and at the same time, creates mechanisms of cooperation between those entities, with special emphasis on the weaker part, the city.

The proper functioning of the system, as explained above, must be based on popular participation, the basis of democratic rule of law, together with the appropriate Government agencies, in order to solve their conflicts related to property issues, because of the social function of property, constitutionally provided (CF 1988, Article 5, XXII⁶), and that should serve the public interest⁷.

It is important to notice that the registration is a legal juridical instrument related to material goods. The protection of intangible goods should be made by other means such as registration and enrollment.

Thus, we can state that the registration constitutes a legal way of preservation, among all those Government actions to preserve the memory or cultural values. The most important issue, after the legislative progress, concerns the management of cultural heritage, starting with the need to define how the "State shall guarantee to everyone the full exercise of cultural rights and access to sources of national culture [...]"(BRASIL, 1999, art. 215).

What we see in Brazil is the seeking of integration in public and private initiatives, in addition to a progressive education movement and communities' awareness. In a global basis, cultural rights have acquired new dimensions, and the cultural issue is one of the most important definitions of national identity, and their subsequent differentiation faces a united world with a tough path of technology and information (BATISTA, 2006). If globalization threatens to "pasteurize" consumption patterns, including culture; on the other hand, it creates spaces to reinforce the right of cultural diversity, valuing these aspects and principles of sustainable development. Therefore, to preserve cultural values and places is to recognize the

⁶ Cf. BRASIL, 1999.

⁷ In this sense, give Chauí (1992, p.37): "A cultural policy that idolizes the memory as the memory or the memory that hides under a single official memory which is irrevocably committed to the present forms of domination, inherited from the past ignored. Doomed to repeat and prevented innovation that cultural policy is an accomplice to the status quo."

memory and the cultural identity of an entire population, with great impact and interest in all mankind (BATISTA, 2006; BELTRÃO, 2002).

Cultural heritage and policy center of the revival of Rio de Janeiro

The center of Rio de Janeiro is the heart of the administrative, financial and commercial city. This is the second financial center of Brazil, supporting Sao Paulo. The region is rich in cultural centers, libraries, museums and theaters, as well as agencies to provide services and universities. This area concentrates several options of bars, restaurants and also Santos Dumont Airport⁸.

However, the central region of Rio de Janeiro was abandoned for many years. In the 1980s there was a beginning of discussion on the drafting of recovery of cultural heritage, architecture and history to try to reoccupy the local public space. The first challenge was to reconcile the customary use of buildings and public and private spaces, mostly aimed for business and financial activities, with increasing use by the population, cultural and recreational equipment available, especially since downtown Rio isn't a residential area, usually quiet at night.

The city of Rio de Janeiro then chose the design of the Cultural Corridor, which is an attempt to attract investors and raise the property owners to implement projects of urban space through cultural programs. Thus, the proposal was that initiatives were also attracted to the installation of bars and restaurants, and revitalization of schedules and movie theaters in the downtown area. Complementing this project, in 1990, an encouraging to the creation of residential units in the historic district began.

Rio Art Foundation, linked to the Department of Culture, is responsible for designing the Cultural Corridor. One of the main focuses of the project is community participation in local decision-making through awareness of the importance of revitalizing the region, the

⁸ In the center of Rio are, among others: the National Library, the Royal Portuguese Reading Room, the Lyceum Literary Portuguese, the Centro Cultural Banco do Brazil, the Centro Cultural dos Correios, the Casa França-Brasil, the Museu de História Nacional; the Paço Imperial, the Museu Nacional de Belas Artes, the Museu de Arte Moderna, the Mosteiro de São Bento, the Mosteiro de Santo Antônio, the Convento do Carmo (where the Rector of Cândido Mendes University is), the Universidade Federal do Rio de Janeiro (Escola Nacional de Direito and Instituto de Filosofia and Ciências Sociais, both located in historic buildings), the Teatro Municipal, the Teatro Carlos Gomes, the Teatro João Caetano, the Teatro Rival, the headquarters of Petrobrás, the headquarters of Banco do Brasil, the headquarters of Caixa Econômica Federal, the headquarters of Vale do Rio Doce, the headquarters of Banco Nacional de Desenvolvimento Social (BNDS), the City of Rio de Janeiro, the City Council, the State Legislature, the Court of Rio de Janeiro, the Federal Court.

need to preserve the heritage and encouraging the monitoring and supervision of project implementation, and hence favored the reconciliation of urban occupation with the preservation of historic architectural collection and the new productive activities in the surroundings (PINHEIRO, E., 2008).

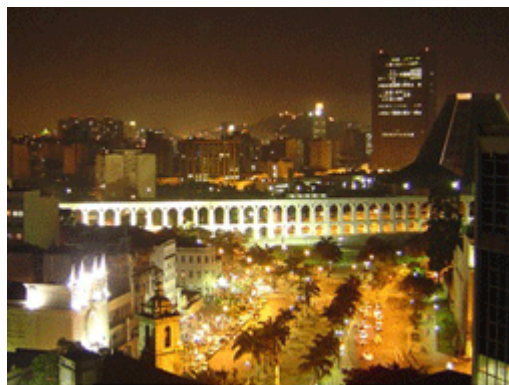


Areas of Cultural Corridor and other areas of revitalization

Source: Google maps

The revitalization project of the Center also aims to bring new options for economic development, attracting investments to the region and tourism, mainly in Rio de Janeiro, more focused on the seafont and natural attractions of greater visual appeal, as the Sugar Loaf, Copacabana beach, or the Corcovado. So, a new infrastructure, renovation of existing facilities and development of the production and cultural goods had to be created. Given these needs, in early 1990s, began the recovery of buildings and increasing public-private partnership, giving focus on specific projects, with subsequent interventions in urban space⁹.

⁹ Examples of this movement: Circo Voador, Fundação Progresso, Feira do Lavradio for the revitalization of Tiradentes Square theaters, the recovery of the tradition of the bohemian Lapa and the occupation of the new city with cultural and recreational programs, such as Escola de Circo or Beto Carrero World. Similarly, the surrounding communities begin to organize themselves in order to promote the recovery of local traditions such as samba and carnival in the districts of Gamboa e Santo Cristo in order to recover the cultural heritage of these areas.



Night view of Lapa Arches (downtown), Rio de Janeiro

Source: Google image

In the Cultural Corridor, the New Town was awarded the Teleport in Rio de Janeiro (where it does business center of New Town - CECN), which includes the planning of urban design in the region and the proposed review of planning legislation (PINHEIRO, E., 2008).

The new head of restoration work of urban space in the city is the occupation of the port area, which has already a restructuring project designed by *Instituto Pereira Passos* since 2001, and aims to increase the supply of homes, economic and cultural activities in the region, creating more income, jobs and revitalizing the cultural heritage of the city¹⁰. This region is also catching the public and private investors' eye, leading to changes in the plumbing and wiring, and also encouraging the rehabilitation of residential units on public roads as Sacadura Cabral Street and Mosqueira Cunha Barbosa Street, which had their architectural collection consisting of houses of the colonial period renewed.

The Brazilian Constitution assigns responsibility for the preservation of listed items of the executive powers in the federal, state and municipal branches. In Rio de Janeiro, the cultural heritage is protected in three levels:

- Federal: Under the authority of IPHAN (Institute of Historic and Artistic Heritage);
- State: Under the authority of INEPAC (State Institute of Cultural Heritage);
- Hall: Under the authority of DGPC (General Department for Cultural Heritage), the WACC (Municipal Council of Cultural Heritage) and the Technical Office of the Cultural Corridor.

¹⁰ The technical cooperation agreement, signed between Federal, State and City with Caixa Econômica Federal and Dock Company of Rio de Janeiro, since the expected recovery of historical and cultural, to the creation of convention centers, construction of a public aquarium and a marina changes the road network. Some relevant activities are already taking place as the Rio Fashion Week and many international fairs.

The consequences of the municipal occupation of public and private spaces downtown Rio de Janeiro, are already happening and benefiting a population of about two million people, users of urban services and works in the region¹¹. These people belong to different social groups which demonstrate the success of the proposal, once it encourages and promotes social integration in the area, bringing social, economic and cultural rights for citizens. In that case, the municipal government has encouraged programs of low budget or free cost in the center, which is another way to occupy the space.

It is, therefore, from the regulatory impact of the cultural life of Rio de Janeiro city and the implementation of the rights of citizenship, that we will examine the legal aspects relating to protected areas of the cultural environment in Rio de Janeiro.

Environmental conservation in Rio de Janeiro: areas of cultural protection of environment

Since 1988, the Federal Constitution gave common powers to the Union, States, Federal District and cities to protect documents, works and other property of historical, artistic and cultural monuments, remarkable landscapes, archaeological sites and the environment¹².

At the same time, it assured the municipalities the power to promote a protection of the historical cultural heritage site, as long as supervisory federal and state actions were provided¹³.

The chapter on urban policy predicted the need for cities with more than twenty thousand inhabitants to prepare Master Plans approved by city councils, to serve as a basic tool of development policy and urban expansion according to the concept of the social function of property¹⁴.

Certainly, along with the constitutional concern to promote the protection of cultural elements, there was a dimension of care about urban issues, especially to the urban areas that

¹¹ Since the implementation of the Cultural Corridor, there has been a changing of profile of the local trade, with the installation of bookstores, cafes, restaurants, movie theaters and bars downtown, as well as fashion shops and cultural institutions, for example, the creation of the Cultural Center of the Federal Court and the opening of new art gallery.

¹² See Article 23, sections III and VI of the Constitution (BRASIL, 1999).

¹³ This is the wording of Article 30, IX, of the Federal Constitution (BRASIL, 1999).

¹⁴ Article 182, sections I and II of the Constitution (BRASIL, 1999).

should also be inspired by a social function due to private property, specifically provided in the Chart.

In fact, once the urban juridical retells the Roman law, dividing all the rules into four groups: rules to ensure the safety of buildings; standards relating to the protection of the buildings' aesthetics, standards to keep these buildings and finally, to organize the urban planning (CORREIA, 2001).

The property must have been considered within its urban set, as illustrated by commands contained in the Federal Constitution and the Master Plan of Rio de Janeiro - Supplementary Law N. 16/92.

In 1992, the Ten-Year Plan, Complementary Law 16/1992, set out the foundation of a new public policy for protection of cultural heritage by establishing the Environmental Cultural Protection Area - APAC, an instrument used to protect the environment¹⁵.

It is possible to say that in Rio de Janeiro, there are ways of preserving supported by both the Constitution and the Master Plan of the city. According to article 124, there are Units of Environmental Conservation", as the "Protected Areas of the Cultural Environment "¹⁶.

It shows that the cultural heritage is not limited to tipping buildings or monuments. It is also about preserving urban areas which represent many stages of the city's occupation, making each neighborhood unique and special¹⁷.

According to this new concept, the Environmental Area of Cultural Protection focuses on building the memory of a city. The goods may come from public or private land, but because of cultural interests or landscape features, there has to be an occupation that values and protects the environment, preserving and recovering the urban centers.

¹⁵ While the Environmental Protection Area - APA- would be used only for the natural environment.

¹⁶ Article 124, III, of the Master Plan (RIO DE JANEIRO, 2011).

¹⁷ Complete list of protected areas by district: Botafogo - Decree 22,221 of 04/11/2002; Catete - Law 1769/91 and Decree 25,693 of 23/08/05, the Centro Cultural - Decree 4141/83, Law 506/84 and Law 1139/87, Cidade Nova and Catumbi - Decree 10,040 of 11/03/91; Estácio - Decree 19000/2000; Red Cross - Decree 11883/92; Teófilo Otoni - Decree 16419/97, Gamboa and Santo Cristo - Law 971 of 04/05/1987 and Decree 7351 of 14/01/88; Lido - Decree 11448/92; Bairro Peixoto - Decree 9226 of 13/03/90 and 12/05/89 Act of 1390; Cosme Velho - Act of 1784 29/10/91; Humaitá - Law 730 of 04/09/85 and Decree 4665 of 27/08/84; Ipanema - Decree 23,161 of 21/07/2003; Jardim Botânico - C. Cotton - Decree 7313/87 and Decree 23067/2003; Jockey Club - Decree 14,898 of 20/06/96; Jardim Botânico - Decree 20,939 of 24/12/2001 (republished on 27/3/03); the Cosme Velho and Laranjeiras - Law 1784/91 (Cosme Velho) and Decree 17,028 of 25/9/98; Holiday Married - Decree 13,051 of 29/06/94 and Decree 20,611, 10/10/2001; Leblon - Decree 20,300 of 27/07/01; Paquetá - Decree 17,555 of 18 / 05/99; Santa Cruz - Decree 12,524 of 09/12/93; Santa Teresa - Law 495 of 09/01/84 and Decree 5050 of 23/04/85, St. Kitts (includes hose and Benfica) - Complementary Law 24 of 19/11/93, Tijuca - Decree 12,864 of 29/04/94; Urca - Decree 7451 of 03/03/88, Vila Isabel - Law 2038 of 19/11/93.

The Plan previewed overriding programs of environmental policy and cultural appreciation of the city, like the program of protection, restoration and upgrading of cultural heritage and the urban environment¹⁸.

According to the program, the APACs should be limited and declared by the Government, just like the urban environments connected to the City's morphology, which will have a development and renewal according to the cultural preservation needs, without stopping its development¹⁹.

Unlike tipping, in which the value of each building justifies its preservation, APAC considers the whole set important. The protection of an area is preceded by a study of urban development, not limited to dimensions, from that point on, the goods are inventoried, recorded and classified. After the classification, the goods become part of Rio de Janeiro's environmental database.

The property of exceptional value is tipped; those that characterize the set are preserved, and the others are protected²⁰. According to data provided by the city of Rio de Janeiro, there are over one thousand listed items, as described in the illustration:

The city has among its listed property, movable and immovable goods, natural and landscape goods, urban art (fountains, statues) and even

¹⁸ Article 126 of the Master Plan. (RIO DE JANEIRO, 2011).

¹⁹ Corresponds to the command of Article 130 of the Plan, as follows

Art 130 - The program for the protection and valorization of cultural heritage and the urban environment includes:

- I - the definition and declaration of Areas of Environmental Protection and Cultural defining the criteria for protection;
- II - the protection and enhancement of the landscape and urban centers of interest;
- III - the identification of urban environments adequately integrated into the morphology of the City that will renew its growth and commensurate with the needs of protection;
- IV - the drafting of the landscape restoration, urban environment and the recovery of public parks and public spaces, aiming to adapt to the protected set;
- V - review of procedures and ongoing assessment of the application for exemption from Property Tax and Urban Land as a tool to encourage conservation of cultural heritage;
- VI - the creation of new tax instrument character, urban and financial incentives for the conservation of cultural heritage;
- VII - the inventory, classification and registration of cultural heritage and landscape of the city, its continuous updating and integration to the database environment;
- VIII - to review the Alignment Project in force for public parks included in Cultural Environment Protection Area that are at odds with their conservation criteria;
- IX - the revaluation of permits for installation of street fittings, linking advertisement, prior information, artifacts and small equipment for public use;
- X - the control and supervision of works, facilities and activities that focus on the listed property and its surrounding areas and Protected Areas of the Cultural Environment;
- XI - the integration of actions of protection, conservation and revitalization of cultural heritage agencies and entities of local, state and federal governments and the community " (RIO DE JANEIRO, 2011).

²⁰ According to the Municipality of Rio de Janeiro, there are currently 36 urban areas protected from APAC and protected areas surrounding the listed property, located in North, South, West and Central City which includes about 30 thousand preserved and protected properties.

intangible assets that preserve Rio de Janeiro's people's identity, due to its history and importance, such as: *Banda de Ipanema* and *Lambe-lambe*. They protect the cultural heritage in the city of Rio de Janeiro, the inventory, the tipping, the creation of the Areas of Environmental Protection and the Declaration of Cultural Heritage for the immaterial goods.²¹

The City Council for the Protection of Cultural Heritage While is responsible for protecting the listed property and the buildings constructed before 1938, while the Coordination of Protection and Conservation is in charge of protecting the assets at APAC and the intangible goods.

The municipal legislation²² provides the protection of buildings constructed before 1937, and the City Council for the Protection of Cultural Heritage evaluates its alterations²³.

A property is classified as well-preserved when it belongs to an architectural set that represents the cultural identity of a neighborhood, a region, or even a place situated around a tipped property. The preservation allows to maintain facades or roofs, permitting internal modification, as long as it doesn't interfere in the architectural features preserved²⁴.

So, the good in question is a new property that has no set value, but it can be restricted so as not to mischaracterize what is already protected, once it is located or tipped around the preserved property. After the examination and approval of a Controlling Body, it can be replaced or modified.

In order to ensure the protection of such property, the Directing Plan previews that the agency responsible for protection requires that the owner recovers a property in bad condition,

²¹Data available at the City Hall of Rio de Janeiro (<http://www.rio.rj.gov.br>)

²² Decree 20048/2001.

²³ Art 132 - The demolitions, buildings and any works to be carried out in the surrounding areas of listed properties and the limits of the Protected Areas of the Cultural Environment shall be approved by the municipal bodies and agencies, state and federal remedies (RIO DE JANEIRO, 2011).

²⁴ Art 131 - In the creation of an Area of Environmental Protection will be related cultural assets preserved and protected property, and set their criteria for preservation.

§ 1 - To control and monitor the criteria for preservation, the declaration of protected area of the Cultural Environment may include the creation of technical office depending on the nature and complexity of the site.

§ 2 - Understood to be well preserved, that it is located in Cultural Environmental Protection Area, must maintain the characteristics that have been identified as important to the ambience and cultural identity of the area, according to criteria established by the regulatory authority. § 3 - It is capable of cultural preservation who meets any of the following requirements: I - is part of a set of goods of cultural value in the area in which it is inserted; II - to present typical morphological and recurrent characteristics in the area in which it is inserted; III - provide testimony in the various stages of urban development of the area in which it is inserted; IV- have clear affective collective value or would constitute a landmark in the history of the community. § 4 - The term value in question that is located in Cultural Environmental Protection Area, part of the ambience of well-preserved or set and may be modified or demolished, leaving the new building subject to restrictions to prevent the distortion of all preserved at the discretion of an umbrella (RIO DE JANEIRO 2011).

and authorizes administrative embargo, demolition, restoring, or reconstructing work without previous authorization²⁵.

If the demolition has already happened without a previous permission of the body in charge, or if it has been attacked, or even if an accident has happened in a preserved or tipped property, the State shall determine their reconstruction so as to maintain the original characteristics of the property. Whenever considering a commercial establishment, an economic activity's license location can be disenfranchised.

However, the Master Plan of Rio de Janeiro assured to the protected property the right to request an exemption of property tax, service tax of any kind and work rates in private areas²⁶, encouraging the conservation of cultural heritage.

Final considerations

The maturation of the concept of heritage is a result of linking cultural and natural heritage. There has been a development since an important historical rupture, which recognized the deeds of heroes and dominant classes as something to be remembered. The intangible heritage has become an object of analysis, even with the difficulties of its maintenance and conservation. Dialogues, rites and religious practices started incorporating mankind's works to UNESCO.

Therefore, the concept of heritage has evolved through time, and the search of an urban man's identity in the midst of a lot of information from many sectors – due to globalization of culture and "facilitated" by the advance of technology, which provides access to information in real time, by a diffusion of simultaneous events - has removed modern man's sense of belonging.

At first, men turn to the material heritage when looking for an identity, so goods and significant objects can shape our cultural identity. Then, there is a rescue of the intangible heritage, festivals, celebrations, places and the knowledge that is part of our cultural heritage and that, somehow, is latent in the collective unconscious. The recovery of this history is crucial, not only because of its cultural aspect, but also because of its social function.

²⁵ Article 133 of the Master Plan (RIO DE JANEIRO, 2011).

²⁶ See Article 130 of the Supplementary Law No. 16/92 and also Decree No. 28247/2007.

The historical constructions that were glorious in the past, are now abandoned and deteriorating. They need to be recovered, not only to rescue the culture and preservation of a time, but also to allow new commercial or residential usage. Old commercial buildings that were once home offices and shops can now be used as homes for low-income population, fulfilling an important social role and contributing to reduce the housing deficit.

The existence of urban infrastructure around these buildings makes their recovery and usage less expensive to society than the construction of new homes. *Tiradentes* Project in Rio de Janeiro is a regeneration process with the support of *Caixa Econômica Federal (CEF)* and the Inter-American Development Bank (IDB). The project to revitalize the old “*Bairro do Recife*” attempts to join the historical rescue and cultural sustainability of the heritage, the creation of information technology business clusters and exporting.

The usage of historically important buildings for cultural purposes has been a commonplace in large cities, such as the Cultural Centers of the *Banco do Brasil*, in Rio de Janeiro and São Paulo and more recently, *Santander Cultural* in Porto Alegre. In Belo Horizonte, a good experience was sponsored by the restoration of the *Casa do Conde de Santa Marinha*, without the law’s incentive. Throughout Brazil, several buildings of railway stations have been restored to hold cultural cafes, cinemas, local exposure, specialized classrooms, libraries, etc. The restoration of historic squares is another good example, and it is often linked to private and institutional return. A good example is the restoration of *Praça da Liberdade*, also in Belo Horizonte, by the MBR, which annually allocates resources to maintain the space and has conquered public recognition for this (OLIVEIRA, 2007).

The scarce public budget turn into major sources for funding for restoration works of cultural heritage laws to encourage local culture, state and federal (the last one recently included the patrimony area in the list of assets that have one hundred percent exemption tax) and private foundations and public banks such as *CEF*, the *Banco de Desenvolvimento de Minas Gerais (BDMG)* and the *BID* that, by the Monumenta Program allots resources in return for federal, state and local conservation of heritage. There are many possibilities of financing models that can be applied to public projects and local implementation of cultural policies and private projects for corporate communications through cultural marketing, with social responsibility. Anyway, the citizen always wins with the recovery of cultural property.

The protection of cultural elements needed special and innovative care in urban areas, inspired by the social function of property. Precisely for this reason, in Rio de Janeiro, ways

to preserve are previewed among the units of Environmental Conservation, the Protected Areas of the Cultural Environment.

APAC is the mechanism to preserve urban centers representing the various stages of occupation in the city of Rio de Janeiro, justifying the protection in respect and memory of a city, for the preservation and restoration of it.

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Appendix - Brazilian legislation on cultural heritage

Law No. 3.924 / 1961 - Provides for the archaeological sites and prehistoric.

Law No. 8313/1991 - Law ROUANET-Restores principles of Law No. 7505 of 2 July 1986, establishing the National Program of Support to Culture - PRONAC, and other measures.

Law No. 6292/1995 - Provides for the registration of property in the Institute of Historic and Artistic Heritage – IPHAN.

Law No. 9312/1996 - Amends. 5 of Law No. 8313 of 23 December 1991, which "restores the principles of Law No. 7505 of 2 July 1986, establishing the National Program of Support to Culture - PRONAC and other measures.

Law No. 9999/2000 - Changes the item VIII of art. 5 of Law No. 8313 of 23 December 1991, as amended by Law No. 9312 of 5 November 1996, re-establishing the principle of Law No. 7505 of 2 July 1986, establishing the National Cultural Support -- PRONAC and other measures, increasing to three percent of gross lottery revenues and federal contests prognosis for the Program.

Complementary Law No. 16 of 1992 - Ten-Year Plan of the City of Rio de Janeiro.