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Urban Dynamics and Horizontal Property: Case Study of the Boavista Axis, Porto, Portugal

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On 14 October 1955, the legal system of horizontal property was formally established in Portugal by the promulgation of a specific statute. Investors, contractors and property owners had been clamouring for such legislation for some time and, in fact, its implementation had been made a legal requirement in Law No. 2030 of 22 June 1948, though it was only fulfilled seven years later. The possibility of sharing ownership of a single building was already contemplated in the ordinances that had been published at the beginning of the 17th century by King Philip II [known as the “Philippine Ordinances”] and also in the first national Civil Code, published in 1867. However, in these, only whole storeys were considered, and matters relating to the division of common elements, maintenance of the building and norms of co-existence remained unregulated.

The Portuguese Civil Code of 1867 regulated various aspects of shared property such as outer walls and party walls, and also considered the possibility of different floors belonging to different owners, and distribution of maintenance and repair costs. Article 2335 states: “If the various storeys of a building belong to different owners, and the means of repair and maintenance are not regulated in their respective title deeds, then the following shall be observed: §1 Common walls and roofs shall be repaired by all in proportion to the value of each fractional interest. §2 The owner of each storey shall be responsible for the maintenance of the interior walls and floors. §3 The owner of the first storey shall pay the cost of maintaining the stair-case that serves it; the owner of the second storey is responsible for the part of the stair-case that serves that apartment from the first floor landing, and so on” (Portugal 1867, 387). As we can see, the basic regulations are defined, but only with regard to maintenance and repair, and division of expenses. Matters relating to common spaces and their usage, for example, had to be established in the title deeds, and were maintained in subsequent acquisitions.

To some extent, the regulation of shared property in Portugal underwent a very similar process to that which occurred in neighbouring countries, such as France and Spain. Co-ownership is first mentioned in a General Code, and only later is a specific law promulgated to regulate the different aspects of it. France is the main reference, firstly with the Napoleonic Code of 1804 [which replaced Roman Law to become the first widely-disseminated modern legal code, establishing the bases of civil law in continental Europe and South America] and later with a law that specifically regulated aspects of co-ownership, promulgated on 28 June 1938 and replaced in 1965 by the Law of 10 July.

In Spain, the first Civil Code promulgated in 1888 approached the matter of shared property in a similar way to the French [and, implicitly, Portuguese] codes. Later, in 1939, Article 396 of the Civil Code was amended to consider the possibility of a building being divided not only into whole storeys, but into various apartments per floor. It also defined and regulated co-owners’ preference rights in the event of sale, and stipulated the need for authorization from them if a
unit were to be used for a purpose other than that initially established. These were the main references for the Portuguese decree-law of 1955, which specifically regulated horizontal property for the first time in the country. As for the United Kingdom, this country has a different system of land use regulation, and horizontal ownership [commonhold] was only established in the 21st century.

The horizontal property regime in Portugal

The 1955 law has two parts: the first [which extends for some four pages out of a total of eight] introduces the subject and the need for regulation, while the second defines and establishes the rules for the implementation of the new property regime. As the decree itself mentions in its introduction, the system of horizontal property [or ownership by storey] “has long figured in our nation’s laws” (Portugal 1955, 879). In fact, it dates back to the Philippine Ordinances, which regulated the right to build doors and windows, and carry out building work on properties that were co-owned. Decree-Law No. 40 333 differs, however, in that it allows for the possibility that a single storey may be divided into different units owned by different people. Thus, it regulated the rights and obligations of the co-owners [or the “condominium”, as they came to be known] relating to the common parts of the building, something that the Civil Code only sketched out in very rudimentary form.

The introductory part of the document is interesting because it describes the general situation in Portugal at that time. It explains why regulation is needed and clarifies the various names used for the system and their appropriate usage, the requirements necessary for its constitution, important definitions, and rights and obligations. All this is expressed in common language, which is then regulated by the clauses in the following pages. The horizontal property regime is recognised as being “a need for modern times, as is attested, not only by the widespread use of this system in many other countries, but also by the repeated demands for it that have been made to the government” (Portugal 1955, 879). As the legislation was issued during the dictatorship period [Estado Novo], there was clearly a concern to take account of the teachings of the regime. For example, the document points out that “the traditional system of independent dwellings, more in keeping with the purity of customs and tranquillity of our domestic life” was gradually being replaced by “the system of residential blocks, more appropriate to the needs of modern living in large cities” (Portugal 1955, 879), which made it perfectly clear that smaller towns should continue to invest in smaller individual properties.

Horizontal property was also considered essential to avoid sprawling cities that ate into the surrounding farmland, not to mention the public transport problem that would appear as a consequence [“which becomes more pressing the greater the distance from the centre to the periphery” (Portugal 1955, 879)]. The legislation also refers to the [traditional] aspiration of the people to own the space in which they live, as well as the pressure exerted by building contractors and the owners of large residential blocks [as “the new system will bring a notable increase in construction” (Portugal 1955, 880)]. Hence, there is a strong connection between the legal system of horizontal property and the dynamics of construction, and the implementation of the law had important implications for urban design, particularly in the city of Porto. This was manifested, in a first phase, by an increase in the size of buildings constructed within the existing urban fabric, whether based on the traditional street-and-block city or the new urban design established by the Athens Charter. Later, it contributed to the configuration of the new city, no longer based on public initiative as it had been until then, but resulting instead from a variety of different private initiatives.

On the date the decree was promulgated, the situation across Portugal varied greatly in accordance with city size and demographic pressure. Internal migration flows were depopulating the rural interior of the country and creating population concentrations in the towns and cities along the coastal strip, particularly Lisbon and Porto. These two cities have quite different characteristics. In Lisbon, most residential buildings were collective, based on models
developed with the rebuilding of the city after the earthquake in the 18th century. However, in Porto, most housing was individual [privately owned or rented], with a direct correspondence between the land register and residential space. As Fernandes points out, "multi-family housing for the middle classes appeared late, not only compared to the main European cities, but also to our own provincial capital" (Fernandes 1996, 364). The urban land register developed out of the need to individualize ownership in accordance with the site on which the property stood. Typically, the land was divided into long narrow plots, which imposed constraints upon building systems and materials (for example, limitations on the maximum span permitted) and upon the viability of public access by means of streets.

If we compare Porto to Lisbon, where there is much more collective housing, there is clearly an interrelation between the land register, type of buildings, construction materials and division of constructed property. In Lisbon, as Mascarenhas (1996) has pointed out, the flats in residential blocks tended to be distributed to the left and right of the staircase to take maximum advantage of the stairwell. Thus, as there were two dwellings to each floor, the lots also tended to be larger than in Porto. In Porto, there were almost no residential blocks [in the sense of purpose-built collective housing] until around the 1940s, as is confirmed in the licensing application records. The continuation of traditional individual housing in the city may be partly explained by the nature of the social fabric, though the fact that collective housing requires a much greater financial effort on the part of the investor would also have limited this type of construction. Thus, housing in the city continued to be largely individual in nature, irrespective of whether it was built for own use or rent, or if it was designed to be middle-class or low-cost. When joint housing ventures occurred, they tended to involve an independent building on an individual plot of land. Thus, even housing designed for workers, the poor and later social housing always involved individual units on a lot of land, even when this was organised into traditional city blocks [islands].

At a later phase, even when housing units no longer corresponded to individual lots [in the sense that different stories were occupied by different dwellings], an ingenious design would almost always ensure independent access without any sharing of the rest of the property [in the form of common areas], beyond the basic infrastructure of the building itself. One such building is the residential block on Rua da Boavista [Boavista Street] designed in 1930 by João Queirós and marketed under the slogan "Inova casas p’todos" [Homes for All] (CMPorto and Queirós 1930). The building consists of six [3 x 2] low-cost housing units for rent distributed over three floors, two above grade, and another half a storey below road level at the same level as the rear patio. Not only do the two upper storeys have independent access directly from the street, the semi-basement, which houses the common service areas, is divided up into individual spaces, each with its own independent access. That is to say, the floor plan is designed in such a way as to ensure that each residential unit is connected directly to the street, to its particular area of the semi-basement and to the rear patio. What is more, it also offers an interesting solution to the problem of illumination, despite the depth of the built area: there are several cuts in the rear elevation forming a series of small wings or fingers with patios in between.

According to the 1971 Súmula Estatística [a statistical review covering the period prior to promulgation of the legislation and the period immediately after it], the average number of dwellings per building in the city of Porto is remarkably low: there were only 2.1 residential units per building in 1952 and 4.2 in 1967 [these data refer to buildings constructed during these years and not to the existing housing stock] (INE 1971).

Case study of the Boavista axis

The area under analysis corresponds to an extensive urban axis stretching in an east-west direction, which was opened in phases between 1784 and 1917. Today, the construction dynamics are still very varied, and the area displays all kinds of building phenomena ranging from vacant lots and new buildings to rehabilitation and demolition/reconstruction (Fig. 1).
The axis consists of three urban units with different origins and characteristics [a diversity that is also reflected in the type and size of the buildings flanking the main thoroughfares]:

- **Rua da Boavista [Boavista Street]**: this is a narrow road some 11m wide and almost 1km long. Its route was traced out in 1784 by the Public Works Board ([Junta de Obras Públicas]), and the first buildings started to appear a decade later [financed by taxes levied on the port wine trade]. This was the first part of the Boavista axis to be urbanized, and as a result, its buildable area [formed of narrow parcels about five m. wide] is almost entirely built on.

- **Avenida da Boavista [Boavista Avenue]**: this was opened after **Rua da Boavista**, and initially shared the same name. It is almost 6km long, with a width of between 27m [at the eastern end] and 30m [in the west]. The first stretch was begun in the mid 19th century, but the last section, in the west, was only completed in 1917. Its character varies considerably from one end to the other, ranging from the markedly urban in **Praça Mouzinho de Albuquerque [Mouzinho de Albuquerque Square]** to a holiday-resort feel near the sea.

- **Praça Mouzinho de Albuquerque**: this was opened in 1866, initially under the name of **Praça da Boavista [Boavista Square]** and is located on **Avenida da Boavista** some 350m from its eastern end. It is an oval-shaped space, with only 18m difference between its shortest and longest parts [222m and 240m respectively]. It now operates as a traffic island with a landscaped central roundabout, and is usually known as the **Rotunda da Boavista [Boavista Roundabout]**.

The different character of each of these three urban units has also affected the way the legislation is reflected in its urbanization dynamic. On the **Rua da Boavista**, building work was practically finished by 1955, which means that most of the properties constructed after that date were renovations carried out within an already-established urban fabric through the demolition of old buildings and construction of new ones. These renovation operations have generally been of two types, either individualized [respecting the initial lots] or involving a combination of several small lots [usually owned by the same person]. The narrowness of the road has meant that the buildings are usually limited to no more than four floors] and indeed, this constraint has also ensured that most of the buildings remained small [in size and gross construction area] even after the promulgation of the decree (Fig. 2).

As for the **Rotunda da Boavista**, this area gradually became considered an attractive urban centre over the course of the 20th century, functioning as a counterpoint to the political...
particularly the stretch closest to the Rotunda (Fig. 3).

The promulgation of the decree clearly influenced the size of property developments, particularly if this is analysed in terms of the real context of the city rather than through statistical data. This influence is especially notable with regard to developments destined for residential purposes, which increased in both quantity and size in the Boavista area. In fact, after the 1960s, the buildings that began to appear on and around this main thoroughfare were on a completely different scale to those built in previous decades. They were larger, in terms of both ground plan and height, and contained more residential units. There are, of course, other factors that need to be taken into account here too, such as social changes, technological advances, and matters relating to licensing and town planning [which gradually responded to the growing desirability of the area, stimulated by the completion of the new bridge over the river at Arrábida, amongst other things]. But what effectively opened the doors to investment in property for sale [whether directly to the final user or for the purpose of leasing] was the possibility of dividing-up a storey into different dwellings and the establishment of rules of coexistence within a condominium.

and administrative centre on Avenida dos Aliados. This centrality [due essentially to private initiative and real-estate market processes] was reinforced in the 21st century by the construction of one of the most iconic buildings in the city, the Casa da Música, designed by Dutch architect Rem Koolhaas. This appreciation in value has extended to the Avenida da Boavista,
Focusing upon this area, we carried out a study into the size of the buildings constructed before and after promulgation of the decree. It was found that licences issued immediately after the promulgation of the decree still reflected earlier decision processes, and a similar time-lag was noted before the results of the application of the law could be seen. However, the legislation clearly had a marked impact on the construction dynamics in this area, as more buildings were constructed, and they were bigger, both in ground area and height, than the earlier ones, containing more individual units. On Rua da Boavista, nine buildings destined for collective housing were licensed between 1941 and 1955. After the promulgation of the decree, for a similar 15-year period [1956-1970], 24 were licensed, almost all of them with a larger ground area. The same occurred in Praça Mouzinho de Albuquerque at a ratio of three to ten, and on Avenida da Boavista at a ratio of seven to 31, and a further 12 buildings were licensed in the five following years [1971-1975] (Fig. 4). Figure 1 shows the collective housing blocks licensed between 1956 and 1975 [in black] and those licensed between 1940 and 1955 [dark grey]. From the location of the buildings, it is also clear that the Rotunda da Boavista has become a desirable area.

Housing development after the promulgation of the Horizontal Property decree

For some years, there were a number of large industrial plants on either side of Avenida da Boavista. However, these were decommissioned in the last 50 years, enabling the re-urbanization of these spaces in the form of large-scale property development. This stimulated the city’s expansion in the west, as it meant that considerable-sized parcels under sole ownership could be developed in joint large-scale operations, causing standards to rise in the area (Fig. 5).

The most important of these developments is the William Graham residential project, built by the company of the same name over the course of two decades (CMPorto and Ricca Gonçalves 1963, 1967). It involved the development of lands previously owned by the Fábrica da Boavista [Boavista Factory], a textile business founded in 1889 by the Graham family of port wine fame. This was the most important development in this part of the city, and also the largest in terms of area, built to high quality standards. The project resulted from the investment opportunities generated by the horizontal property legislation, which affected not only the size of the project as a whole, but also the size of each individual building (Fig. 6).

Another interesting case is a building constructed on Rua de António Patrício, which illustrates some of the private investment possibilities generated by the new law (CMPorto and Losa 1970). This project for a 12-storey residential tower block was launched in 1969 by a group of seven individual investors [mostly liberal professionals, including the engineers responsible for designing the structure]. As the
development was destined for investment, the aim was to sell the units to different owners. The initial idea was to build the block in stages, delaying the completion of some units until the others had been sold in order to optimize yields.

It would have been difficult for a group of private owners [rather than a public institution, bank or guild] to have achieved an undertaking of this dimension with only the civil code and the rules laid down in the title deeds; for not only did the building have around 12,500m² of gross construction area, it also contained a number of common areas. Indeed, this was one of the few buildings where the intention to divide up the building into horizontal properties was made explicit from the outset. The structuring of the architectural specifications reflects the fact that the legislation has not been long in force, and was therefore not yet internalized in professional practice. That is to say, the building use description expressly mentions that it is destined for division into units in accordance with the horizontal property regime, and information is provided as to which areas are to be divided and which are common. In later licensing processes, this information was only included in the final building separation process under the horizontal property regime. However, the building was ultimately used for a different purpose to that which had been initially planned. The investors were unable to sell off the units during construction, and so decided to sell the whole building to an individual client instead. Ironically, it was acquired by the Social Security and was thus never divided up in accordance with the horizontal property regime.

The regulation of property rights [pertaining to land, buildings or parts of buildings] directly influences the way urban space is structured and grows, whether this is undertaken in a planned way or is dependent private enterprise and the dynamics of the property market. Although legislation governing horizontal property was not the only factor influencing building size [social, technical, economic and political issues should also be taken into account], it was effectively the existence of the new law that enabled the change in scale that took place in the second half of the 20th century.
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