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# THE CITY AND ITS PUBLIC SPACES: THE LEGAL DIMENSION EXPLORED SOCIOLOGICALLY

## LA CIUDAD Y SUS ESPACIOS PÚBLICOS: LA DIMENSIÓN LEGAL EXPLORADA SOCIOLÓGICAMENTE

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### INTRODUCTORY REMARKS

In the context of the industrial revolution, Marx and Engels developed a critical understanding about capitalism as a world-wide system of social organisation and built up a theory to explain the functioning of this system. Their theoretical approach laid the foundation for conflict perspectives, which emphasise conflict occurring between groups with opposing interests as an aspect that historically permeates societies. Conflict perspective considers the importance of how humans organise their material production and reproduction on shaping everyday life. Social struggle in a material world is seen as a major source of social change, which can be consciously promoted in order to transform socio-economic circumstances. However, there is a lack of deep and specific reflection about urban problems in capitalist societies. This lack can be noticed in Marx and Engels's writings (LEFEBVRE 1972), but also at a more general level in conflict theory. Regarding Marx and Engels, their founding works only briefly analysed issues as urban conditions, housing and private property (see for instance ENGELS 1845; 1872). In addition, the transference of their arguments from the 19<sup>th</sup> century to the present without serious modification is highly problematic (TUCKER and TUCKER JR. 2001:82).

Further developments of the conflict approach since Marx and Engels's first steps have provided a proper theoretical framework for contemporary urban research. At the end of the 1960s, a conflict perspective to urban studies eventually arose. Leading this resurgence was Lefebvre<sup>2</sup>, whose ideas have been linked to the French student movement of May 1968<sup>3</sup>. Another important contributor to the construction of a conflict approach was Castells<sup>4</sup>, and undoubtedly David Harvey<sup>5</sup>. These authors provocatively denounced the ideological features of urban studies existing at the time – sometimes even denying their scientific character<sup>6</sup> –, while simultaneously providing entirely new concepts to frame urban studies. Lefebvre, Castells and Harvey share an agreement on principle, although their theories offer distinct particularities and orientations<sup>7</sup>. Regarding their common principle/approach, they focus on the social conflict within urban space and the link between urbanisation and capitalism, arguing that

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<sup>2</sup> “Lefebvre must be placed at the head of the queue, because it was he who first showed Marxism the way back to the city. In the early 1970s, [...] only he had broken the silence about the city in Marxism” (KATZNELSON 1992:93).

<sup>3</sup> For an analysis of Lefebvre's work and biography, see Hess (1988).

<sup>4</sup> For a complete and updated analysis of Castells' work, see Stalder (2006).

<sup>5</sup> Panoramic analyses of the main authors engaged on a conflict approach to urban studies highlight the role played by Lefebvre, Castells and Harvey. See Katznelson (1992) and Merrifield (2002).

<sup>6</sup> Chicago School, as the status quo theory in urban studies, was mostly their target.

<sup>7</sup> For some debate on it, see Gottdiener (1985), Katznelson (1992) and Merrifield (2002).

social struggles are at the centre of the processes of spatial transformation. Spaces are not neutral, but reflect and shape social life. Thus space is not simply a mirror of social relations; it is also source of social dynamics. It represents both a way in which the past reaches into the present and a way in which present provides material to build the future. Without understanding the society as a whole, it is not possible to understand space. A theory of space is therefore an essential element of a comprehensive social theory, and vice-versa.

### **LEFEBVRE: THE CITY AS A HUMAN RIGHT AND THE PRODUCTION OF SPACE**

Lefebvre is well-known for coining the idea of right to the city (LEFEBVRE 1968). Through the proposal of a new human right, he synthesises an entire programme -which intends to include social questions concerning the city and urban life- as a priority for the political agenda. In other words, he politicises urban space, which had been seen until then merely as a technical issue dealt with by urban planners. According to the author, social unconsciousness about the politics of space reveals everyday life alienation.

Lefebvre avoids any attempt to give a comprehensive definition of the content of the right to the city. Instead, he provides some clues of its meaning at a highly abstract level. For instance, he argues that classes, groups and individuals who are prevented from fully participating in the collective appropriation of urban space are denied the right to the city. But what does it mean exactly to appropriate urban space? Firstly, it refers to the right to an adequate housing; to a private space of habitation within the city for everyone who lives in it. Appropriation includes the right to be a citizen rather than a mere dweller, which implies self-management of the city through the participation of its inhabitants. Additionally, it means the right to take part in circuits of communication, information and exchange (LEFEBVRE 1968; 2000b).

In fact, the doubt concerning/question of how urban space appropriation actually works in capitalist societies would remain practically unanswered without Lefebvre's theory of space production (2000a). Lefebvre argues that urban space is always a result of a social process of production. As such, urban space is constantly being remade anew as a set of social relationships, which can predominantly assume the meaning of either product or oeuvre. What determines which of these two meanings will finally result is the balance of qualities presented by the urban space produced. If an urban space promotes qualities that promote its use, or in other words use values -such as encounter, centrality, gathering and convergence of differences- then it generates conditions for creative communities and reveals itself as an oeuvre in the sense of a work of art. Otherwise, if space prioritises its exchange value, and its use values become interchangeable for money as a commodity (consequently an instrument for accumulating capital), then it is just a product. Of course, the balance of qualities is the outcome of the productive process. Lefebvre stresses that the capitalist production of the urban space has historically resulted in an imbalance once it puts excessive emphasis on the exchange value. The social struggle for the right to the city is a fight for challenging the dominance of the product above the oeuvre (LEFEBVRE 2000a).

“A group, a class or a faction of a class does not constitute and recognise itself as a collective subject except by engendering (producing) a space” (LEFEBVRE 2000a:478). Lefebvre considers the city a social space occupied and shaped as a result of past social struggles, which involved spatial practices (presences, actions and discourses) of distinct classes and groups in conflict. This pre-existent socio-spatiality tends to allow, suggest or forbid current and future practices according to the representations of space constructed by groups which have conquered hegemony, thereupon dominating space by the control of its process of production. Once produced, space becomes something more than just a product. It interferes with the production process itself, becoming a product and a producer at the same time, therefore an instrument of hegemony<sup>8</sup> able to be used for

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<sup>8</sup> “The concept of hegemony introduced by Gramsci [...] indicates much more than an influence, and even more than the perpetual use of repressive violence. Hegemony is exercised under the entire society, culture and knowledge comprised [...]. It is therefore exercised

achieving multiple goals. For instance, the space of the city can be strategically managed to segregate classes and groups<sup>9</sup>. Capitalism, as a world-wide system of social and economic organisation marked by its unity within its diversity tends to produce a homogeneous urban space, which Lefebvre calls abstract space. This refers to the globalised space of airports, expressways, office buildings, shopping malls. Before the silence and passivity of city users, who have their everyday life spaces manipulated, capitalist agents are taking the initiative to spread their spatial products everywhere, exchanging, selling and buying repetitive spaces the same way as they would buy any other product.

Nonetheless, hegemonic strategies of space production face counter-hegemonic resistance, since strategies of space appropriation are also developed by non-hegemonic collective actors. Through social struggle it is possible to resist and accentuate the differences that make any spatial oeuvre peculiar, irreplaceable and unique as a set of use values. When citizens rise against the implementation of a free-way, when they claim equipments, places for diversion and meeting, counter-spaces, counter-plans, and counter-projects (“spaces of representation”<sup>10</sup>) to what is imposed from above then “representations of space” (“representations of space”<sup>11</sup>) are introduced into space reality. However, sooner or later, if counter-hegemonic forces do not pass from resistance to counter attack, the homogenising *puissance*/force absorbs, integrates and eliminates differences. Social pressure from below/grass-root social pressure -grounded on presences, actions and discourses within space (“spatial practice”<sup>12</sup>)- is able to modify the distribution of the resources assigned to collective interests, but social pressure should not just be addressed to the state as manager of general society interests. It must also confront the state, which is simultaneously responsible for the management of class interests (LEFEBVRE 2000a).

## CASTELLS: THE RISE OF URBAN SOCIAL MOVEMENTS

Castells’ structuralism framed the urban question not so much as an issue of social production, but more specifically as an issue of social reproduction. He argues that urban systems exist as a part of the entire social structure in advanced capitalism (CASTELLS 1972). The urban question is represented by conflicts which arise from the organisation of means of collective consumption in the everyday life of social groups: housing, education, health, transport. Capitalist enterprises do not completely satisfy these demands for everybody, mainly because supplying the required goods and services is not sufficiently profitable. In order to alleviate such a contradiction, the state, under the pressure of labour unions, left-wing political parties and popular movements, begins to provide those goods and services itself (governments build public transportation infrastructures, finance large

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under the institutions and their representations. Nowadays the dominant class maintains its hegemony through all means, which includes knowledge. The link between knowledge and power becomes manifest” (LEFEBVRE, 2000a:17-18).

<sup>9</sup> Segregation is not an outcome of inevitable, evolutionary or natural development. Otherwise, it is strategically generated either by the enforced relocation of certain groups into ghettos through deliberate state actions or by market-driven process (land speculation, high housing costs, etc.).

<sup>10</sup> It is the lived space, the dominated space within society, thus a sub-space. The category refers to complex and varied individual and collective symbolisms, which tend to constitute a more or less coherent system of non-verbal signs and codes. It includes images, memories, desires, and dreams concerning space, either directly experienced or imagined. They are often linked to the clandestine and underground side of social life, but also to art, which can sometimes appear as an unofficial code of interpretation.

<sup>11</sup> It is the conceived space, the dominant space within each society’s mode of production. This category mixes ideology and knowledge. Representations tend to be intellectually elaborated as a coherent, logical and comprehensive system of official verbal signs and codes. By and large it is the space usually conceived by architects, urban planners and technocrats. Its order is assumed to be neutral, as long as it is qualified as scientific, but in fact it always favours somebody. Representations may attribute a specific place to each activity .

<sup>12</sup> It is the perceived space, the set of empirically observable (visible and legible) presences, actions and discourses within everyday life spaces. The spatial practice of each society dialectically presupposes a space at the same time in which generates it. This practice comprises production and reproduction. The spatial practice is associated to the ways people use their time on everyday life activities, it is linked to the paths connecting places of work, private life and leisure (the separation of these places included).

housing complexes). However, such interventions address problems which are in fact components of advanced capitalist structure. There are limits to the degree of state intervention, considering that rising taxes are demanded to finance collective consumption. Consequently these interventions only displace contradictions from the field of economy to the field of politics.

The theory of urban social movements (CASTELLS 1983) marks the sequence of Castells' reflection on urban problems. The author uses an innovative approach, by combining a structural analysis (state intervention to alleviate contradictions of capitalism) with an empirical investigation on urban social movements (local collective actors reacting to the new conditions of state intervention in domains of everyday urban life<sup>13</sup>). Albeit the concept of collective consumption allows a tenuous link to the economic production, Castells recognizes that urban social movements focus mainly on issues outside economy<sup>14</sup>. They should be understood on their own terms, because they are driven by their own hopes, dreams and desires. Non-economic struggles politicising space are also sources of social conflict capable of fuelling spatial transformations opposed to dominant class interests. Such a conclusion echoes Lefebvre's ideas, with urban social movement appearing as a category which is missing in Lefebvre's theory of space production but pertinent to designate collective counter-hegemonic actors struggling for the right to the city.

Before the increasingly fast dissemination of technological innovations around the world during the 1980s and 1990s, Castells realised that he was witnessing a deep transformation on the notion of space and turned the focus of his investigations over to the economic background once again. His argument (CASTELLS 1989; 1996-1998) is simple: space is the material support for time-sharing social practices and, if actors are not present in the same space, they cannot interact in real time. For much of history, however, the only space that allowed for time-sharing was a place, a physical space. Such a situation has completely changed during the last decades. The "space of places" is not alone anymore, because a new type of space has been created: the "space of flows". Suddenly, technology makes it possible to keep in touch in the same temporal space without being in the same physical space. Capitalist key institutions of production are being restructured to take advantage of the space of flows, with the informational revolution also having an impact on everyday life consumption<sup>15</sup>. The space of flows has a materiality (infra-structure of communication, airports, hotel chains) provided by the space of places. It is complex and expensive to create, navigate and maintain space of flows, thus not all urban spaces are able to integrate the materiality required to really become part of the network, which implies new sources of exclusion and stratification among and within cities. Big metropolis, for instance, play a central role in the network, as places where people meet and elites constitute themselves. But in these cities, a particular spatial distribution and specific spatial forms define the separation between the territory occupied by elites and the territory occupied by other groups ("dual city")<sup>16</sup>.

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<sup>13</sup> For an analysis of Castells' conceptualisation on urban social movements, see Martínez Lopes (2003).

<sup>14</sup> The author realises that many progressive urban social movements do not have any direct connection with labour relations in the industrial production. Most times they deal with a distinct set of questions, such as environmentalism, feminism and regional nationalism. Thus, their struggles can be considered not just complementary to traditional ones of labour unions and political parties, but to a certain extent autonomous.

<sup>15</sup> In addition, Castells points out that after an initial moment of reflux (their local character has been challenged by globalisation), urban social movements are starting to take advantage of the space of flows, which is changing their strategies of social struggle towards an articulation between local and global levels of action.

<sup>16</sup> Spatial segregation increases considerably on a global scale. There is the barrier of pricing (expensive offices, prestigious residential neighbourhoods, international cuisine restaurants, secluded leisure clubs, exclusive resorts) which segregates distinct public in different places. Where it is not enough, walls, security services, and other forms of enforced separation are created between social groups. The increasing number of gated communities, for example, cannot be considered an event disconnected from the increase/growth of slums.

## HARVEY: CAPITAL ACCUMULATION THROUGH URBANISATION

Harvey insisted in the spatiality of the underlying conflict between capital and labour. In his works space emerges both as unity of capital accumulation and as a site for class struggle, which are in fact different sides of the same capitalist coin (1989a:59). To a certain extent, he set aside the particularities of other forms of oppression (racism, sexism, ageism, and so on) that prevent groups from fully participating in the collective appropriation of the city. Like Castells, he saw class struggles structuring the creation, management, and use of elements of the built environment such as houses, parks, and side-walks. Some of those items can be appropriated individually, while others have to be used in common. Despite the fact that they are all part of labour's basic condition of living, the system of private ownership and state intervention tends to exclude labour from consumption (HARVEY 1982).

His arguments on the strategies of capital accumulation through urbanisation were further developed (HARVEY 1989a) as he started to question the global processes interfering in the production of urban spaces. A relevant illustration of such processes is provided by Harvey's article on competition amongst cities (1989b). Every city competes with peer cities regarding their position in the international division of labour and consumption. Before such a scenario of increasing inter-urban competition, local governments assumed entrepreneurial practices in order to encourage economic growth and new opportunities of employment. On the one hand, corporate investments are fomented by cities through aggressive strategies aiming to defeat the adversaries on business attraction. On the other hand, development programmes intend to improve place image and explore new economic activities. Important urban transformations have been promoted everywhere to adequate cities for capital's new demands, but the enhancement of urban attractiveness is often a zero-sum competition. "[...] Even the most resolute and avant-garde municipal socialists will find themselves, in the end, playing the capitalist game and performing as agents of discipline of the very processes they are trying to resist" (HARVEY 1989b:5).

Struggles for urban space against the impositions of capital, besides being a contention for basic living conditions, are also a fight over the meaning of the built environment as a set of use values for labour. It is a conflict over what quality of life means in the consumption sphere: whether it means use values advantageous to accumulation or if instead it reflects actual human needs (HARVEY 1982). According to Harvey, alternative ongoing spatial practices and the diversity of models of living that have been invented in the cities around the world give place for some hope. This is the reason why the author devotes one of his books to a dialogue with the utopias (HARVEY 2000). He states "The right to the city is not merely a right of access to what already exists, but a right to change it after our heart's desire", (2003:939).

### Researching urban public spaces

Much of the later research on urban public spaces has its roots in the insights advanced by Lefebvre, Castells and Harvey. Over the past few decades, urban sociologists have been suggesting that public spaces are produced in a way that results in the exclusion of non-hegemonic groups' presence, uses, and discourses; therefore, in violation of the right to the city. The focus on the processes of privatisation and publicisation (CAPRON and HASCHAR-NOÉ 2007) expanded the material places within cities whose spatial relations have been analysed as public: from the traditional ones – streets, plazas, and parks – to new modalities like shopping malls (CAPRON 2002) and stadiums (BASSON 2007); albeit, these are sometimes described as "quasi-public" taking into consideration the vicissitudes of conceptualisation.

Some scholars have considered the right to public space as the very essence of the right to the city. Friedmann (1992) pays attention to the significance of streets: "A city can truly be called a city only when its streets belong to the people" (1992:100). He argues that streets are places of encounter before being traffic arteries. Taking the

streets, people claim them as their own place, celebrating the convivial life and the city as a political community, with a memory of itself and a name. The author highlights two occasions -not very far apart from each other- that clearly represent this right to public space: when people arise in protest against the state, and when they celebrate popular festivities. But in many cities those moments are becoming just glorious memories of the right effectively denied to people during the rest of the time (FRIEDMANN 1992:99-111). Borja (2004) expressly includes the right to public space into his proposal of catalogue of urban rights comprised by the broader notion of right to the city. According to him,

Public space is one of the basic conditions to achieve urban justice; it is a factor of social redistribution, an organiser of egalitarian and integrating urbanism. All zones of the city must be articulated through a system of public spaces and must have elements of monumentality giving them visibility and identity (BORJA 2004:27).

General concerns within/concerning industrial working classes have been abandoned in favour of regards to excluded groups such as street vendors (STAUDT 1996; DONOVAN 2008), indigenous people (SWANSON 2007), homeless people (MITCHELL 2003), youths (MALONE 2002), women (FENSTER 2005), immigrants (DINES 2002), homosexuals (CATUNGAL and MCCANN 2010), and disabled people (KITCHIN and LAW 2001). Different sorts of uses and practices have been addressed, such as political activism (MITCHELL 2003) artistic manifestations (BRUNAUX 2007), sportive uses (ESCAFFRE 2007), cultural practices (FORTUNA et al. 1999) public drinking (JAYNE et al. 2006) and the extension of commercial activities to frontage side-walks (TANGUY 1992).

Patterns of exclusion concerning urban public spaces other than those connected to barriers of pricing and distance have also been getting attention. The organisation of the elements of the built environment and the lack of adequate physical urban structures have both been pointed out as responsible for conditioning exclusionary patterns of access to urban public spaces. Many authors (METZGER 2004; BORJA and MUXÍ 2003) emphasise that urban public spaces are increasingly restricted to roadways for cars and parking lots: although in theory these spaces are accessible to everyone, in reality/practice their use clearly prioritises automotive circulation. However, in certain contexts what is highlighted is the importance of the very existence of streets for circulation. For instance, the lack of architectonic quality of the circulation paths in Brazilian *favelas* poses a serious obstacle for their dwellers, representing a source of exclusion to certain users and uses. In fact, the quality of streets has been demonstrated to change completely from informal to formal zones in Latin American cities (ANDRADE 2004). Additionally, the spatial distribution of urban public space's furniture, equipments and facilities -like accessible public toilets (KITCHIN and LAW 2001)-, has been examined in detail by some studies. Technological mechanisms for controlling behaviour in urban public spaces are not neglected either, especially the issue of surveillance cameras (KOSKELA 2000; FORNI 2006). Likewise, the role played by urban designers (VAN DEUSEN JR. 2002; SMITHSIMON 2008) and the conflicts concerning public works of art and spatial monumentality are also mentioned (MILLER 2006).

There is some discussion in the literature about the processes involving the social production of particular public spaces. An example of this is Brosseau and Gilbert's investigation (2004) on the relationship between the public sphere of the media (newspaper reports) and concrete urban public spaces. Other authors focus on broader processes of social production of urban public spaces which are affecting particular cities. For instance, Valverde (2004) analyses the battle between drug dealers and police forces as a process that is accentuating the erosion of urban public spaces within Rio de Janeiro, which have been transformed into simple passages from one private place to another. Local residents, especially the poorest inhabitants of the *favelas*, have to deal with violent strategies of spatial control implemented by both sides, while the richest dwellers seek protection

through gated condominiums within the city. The spread of urban violence or simply the increment of fear of crime throughout urban centres is often seen as a relevant phenomenon shaping public spaces and leading to urban segregation (PAIN 2000; 2001). Nonetheless, distinct set of processes have also been considered, as is the case of the development of cultural public policies aiming to regenerate urban economy by attracting private investment and tourists (PAZ BALIBREA 2003; EISENGER 2000; JUDD 1999).

## **SOCIO-LEGAL STUDIES AND THE HIDDEN DIMENSION OF URBAN SPACE**

It has been argued that the conflict perspective on urban sociology has achieved conceptual clarity with regard to both its critique of the traditional approaches and its own understanding of the urban phenomenon (FERNANDES 1995:2). Nevertheless, one of its most flagrant limitations is the role played by law in urban struggles, which is almost completely forgotten. Castells and Harvey have little to say about law's impact in the production of urban space. Their analyses is restricted to the insights previously provided by Marx and Engels on private property. Although assuming a human rights discourse<sup>17</sup>, Lefebvre himself paid little attention to the legal implications of the right to the city. Such a concept

was more a political-philosophical platform and did not directly explore how, or the extent to which, the legal order has determined the exclusionary pattern of urban development. To Lefebvre's socio-political arguments, another line of arguments needs to be added; that of legal arguments leading to a critique of the legal order, not only from external socio-political or humanitarian values, but also from within the legal order. Lefebvre's work has given us fundamental elements to understand the socio-economic, political, ideological, and cultural aspects of the urbanisation process. However, there is no articulated discussion on the critical role of law in the urbanisation process to be found in his work" (FERNANDES 2007:208)

The lack of in-depth concerns regarding law showed by conflict urban sociologists, could be interpreted as if the legal dimension were not a constitutive part of urban reality but rather just one of its reflexes. Such a suggestion is far from being correct. The research on law and urban space<sup>18</sup>, the emerging approach that intends to link the interfaces between urban sociology and sociology of law (AZUELA 1999:7-8), has provided, over the past two decades, a number of clues to answer two fundamental questions: what does the right to the city mean exactly in legal terms and which are the roles played by law in the urban space production process (FERNANDES 2007:202-208). Notwithstanding the progresses achieved, there is still a significant disregard towards the question of public space.

<sup>17</sup> Denying the natural or contractual character of the right to the city (LEFEBVRE 2000b:21), Lefebvre withdraws himself from both the natural law and positivist law theories of human rights. The author seems to be not only aware of the social construction that lies behind the appearance and development of any human right, but also consciously engaged on the process of social construction of a new one: the right to the city. Taking into consideration his perfect knowledge of Marx's writings, such awareness is not surprising. Perhaps the most insightful contribution made by Marx to law was his critique of natural law theory and positivism and in his proposal of a social theory of law. "His theoretical project was to reveal what kind of social relations lie behind legal categories and why these social relations take a legal form. Marx held that the idea of rights is neither a property of human beings as such nor a product of sovereign legislation. Rather, it is a social form of the subject that emerges given certain? historical conditions" (FINE 2007:998).

<sup>18</sup> A landmark scientific event for the field was the creation of the International Research Group on Law and Urban Space (IRGLUS), in Oñati in 1992. IRGLUS intends to gather academics from diverse backgrounds – jurists, geographers, sociologists, political scientists, urban planners, environmentalists – who are interested in the interface between law and urbanisation. It was recognised in 1996 as a Working Group of the Research Committee on Sociology of Law (RCSL), which is attached to the International Sociological Association (ISA) (FERNANDES 2000: 11).

## THE LEGAL MEANING OF THE RIGHT TO THE CITY

Originally conceived as a political platform<sup>19</sup> rather than a legal right, the right to the city has recently turned into a right in the juridical sense. The term has been incorporated into the agenda of urban social movements<sup>20</sup>. This turn summarises the attempts to construct a “rights-based approach” to urban politics (UNESCO 2006:9). Lefebvre’s concept has a great influence in Latin America “perhaps more than anywhere else in the world”, where “since the mid-1970s a consistent socio-political mobilisation has been taking place in political and practical terms” (FERNANDES 2007:208). The right to the city was explicitly or partially introduced into the national legislation of some countries of the region, like Brazil (Law 10.257/2001, where the “City Statute”<sup>21</sup>), empowers a new field of public law – the urban law. A similar movement from the political to the legal emerged in Europe. Since the Saint Denis meeting in 2000, hundreds of European city governments have agreed to adopt the “European Charter for the Safeguarding of Human Rights in the City”<sup>22</sup>.

These initiatives constitute antecedents of the proposal of a “World Charter on the Right to the City”. This charter was firstly discussed in Porto Alegre, during the 2002 World Social Forum, based on a draft launched by Brazilian non-governmental organisations. Currently there is a growing international mobilisation aiming to have it approved in the near future by the United Nations as a document of international law (OSORIO, 2006). The latest version of the charter<sup>23</sup> however does not address the right to public space clearly, which can be problematic, as the right to the city is a component of the right to the city and it should be thoroughly explained in the document<sup>24</sup>. This comment also applies to the European Charter, which is equally unclear about the issue<sup>25</sup>.

The growing use of the notion of right to the city in the literature also contributes to the legal development of the concept. Nevertheless, most of the authors who are using the notion of right to the city for guiding investigation do not focus on issues directly concerning urban public spaces. Other interrelated components of this right are privileged. Housing rights and tenure regularisation (BUDDS and TEIXEIRA 2005), environmental protection (SALANOVA 1998), land markets regulation (SALANOVA 1998), access to public services (BUTLER 2007), discrimination of certain groups (BUTLER 2007), preservation of cultural and historical heritage (SALANOVA 1998), participatory governance and urban citizenship (MCCANN 2002; PURCELL 2003); these are the topics

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<sup>19</sup> “The objectives of such right would never fully be achieved but they could be used as standards by which to assess the state of a given society” (FERNANDES and VARLEY 1998:07).

<sup>20</sup> As examples of such a movements it can be mentioned the Habitat International Coalition (HIC), the Centre on Housing Rights and Evictions (COHRE) and the International Alliance of Inhabitants (IAI).

<sup>21</sup> Available in: <[http://www.planalto.gov.br/ccivil\\_03/LEIS/LEIS\\_2001/L10257.htm](http://www.planalto.gov.br/ccivil_03/LEIS/LEIS_2001/L10257.htm)>.

<sup>22</sup> Available in: <[http://www.aidh.org/Europe/Images/charte\\_europ\\_ddh\\_ville.pdf](http://www.aidh.org/Europe/Images/charte_europ_ddh_ville.pdf)>

<sup>23</sup> English version available in: <<http://www.hic-net.org/documents.asp?PID=62>>.

<sup>24</sup> Even though, some indications are given. For instance, it refers to “the right to organise, gather and manifest one’s opinion” (I, 2); “the realisation of projects and investments to the benefit of the urban community as a whole, within criteria of distributive equity” (II, 2.1); “the public and private spaces and goods of the city and its citizens should be used prioritising social, cultural, and environmental interests” (II, 2.2); “city planning and the sector programs and projects should integrate the theme of urban security as an attribute of the public space” (V, 2); “all persons have the right to associate, meet, and manifest themselves. Cities should provide and guarantee public spaces for this effect” (IX); “cities should guarantee that the security forces under their jurisdiction apply the use of force strictly within the provisions of the law and with democratic control” (XI, II); “cities should [...] promote the recovery and rehabilitation of degraded areas and urban facilities” (XVI, II).

<sup>25</sup> Albeit some indications are given, for example: “the city offers public spaces to the organisation of open meetings and informal encounters. It assures for everyone open access to those spaces respected the regulations” (IX, 3); “public spaces proper to cultural and social activities are offered to the citizens within the cities under equal conditions for all its inhabitants” (XV, 2); “citizens have the right to an ordered urban development able to assure an harmonic relation among the habitat, public services, equipments, green areas and structures destined to collective uses” (XIX, 1); “local authorities assure the existence of qualified spaces for play, open to all children” (XXI, 2).



that have frequently deserved inquiry under such a rubric in the last years. Nevertheless, to a great degree it remains unclear “what the right to the city entails” and “the consequences that the idea will have for empowering urban residents” (PURCELL 2002:99).

## THE ROLES PLAYED BY LAW IN THE PRODUCTION OF URBAN SPACE

If the meaning of the word “right” within the notion of right to the city remains barely understood (AZUELA 1991:151), undoubtedly “it helps, as a properly political notion, to ‘wrong’ the ‘right’ order” (DIKEÇ 2002:96). In other words, the reflection on the right to the city calls for research on the role played by law in the production of oppressive forms of urban space. Since the end of the 1980s, socio-legal scholars from different continents engaged in exploration of a conflict-theory perspective that encompasses this academic task. Among the most important authors in the field, a few names that spring to mind are: Antonio Azuela (Mexico)<sup>26</sup>, Edésio Fernandes (Brazil)<sup>27</sup>, Issachar Rosen-Zvi (Israel)<sup>28</sup>, Chris Butler (Australia)<sup>29</sup>, Nicholas Blomley (Canada) and Don Mitchell (United States). Each of them focuses on analysing the context of urban development of its own country. However, I should underline that only two of the authors mentioned discuss in detail urban public spaces. Other topics normally privileged rather than the latter are: planning regimes (AZUELA 1999; FERNANDES 1995;

<sup>26</sup> Azuela’s (1999) landmark work demonstrates the key role played by property in structuring cities. He departs from Macpherson’s suggestion that private property is a social relation marked by two features: it is a right, which means that it cannot be comprehended without mention the state power; and it is a capacity that someone has to exclude the other from the use and benefits of something. But he realises such a concept is static and thus not sufficient to understand changes on property arrangements and functions in specific historical circumstances. The contributions given by urban sociology need to be considered in order to dynamically examine the complex social struggles in the urban space. Azuela distinguishes several different actors (individuals, families, corporations, *ejidos* etc.), objects (houses, apartments, empty lands, etc.) and process (urbanisation process, public policies) which structure property relations in contemporary Mexican urban spaces (1999: 13-20). The author’s main point is that property could not exist as a social relation without being a legal relation as well. Law constitutes social actors, protects interests involved in property regimes and generalises concrete arrangements (AZUELA, 1999:203-230).

<sup>27</sup> In his main work, Fernandes (1995) criticises the traditional legal research that, committed to the ideology of private rights and individualism, understands the city as no more than a bounded area comprised of demarked plots of land owned by individuals. He also points out that critical urban research has almost nothing to say about the intricate network of social relations established in the urban scene considered illegal, particularly those regarding to the use of land. The author gives his contribution to fulfil the gap, investigating the role played by law on the Brazilian urbanisation process, focusing the changes on federal legislation and the potential a redefined legal order has to encourage a process of urban reform. Fernandes suggests that, far from being merely a matter determined automatically by economic processes, urban legislation performs important functions in the production of urban space. Moreover, according to him there is a relevant connection between formal law and urban informality (FERNANDES 1995).

<sup>28</sup> Rosen-Zvi’s (2004) recent book explores the ways state deals with various groups through spatial mechanisms. He shows Israel as a paradigm of how a multiethnic national-State, dominated by an hegemonic ethnic group and following Zionist ideological positions, discriminates other ethnic groups through a treatment concerning space conferrable by the courts that often depends on the group involved. The author presents three case studies involving distinct groups within Israeli society. The first case explores the spatial dimension of school desegregation with regard to the ethnic subgroup Arab-Jews. It is demonstrated the link between residential segregation and school segregation. The second case analyses the situation involving the Bedouin-Arab minority and the recurrent initiatives taken by the Israeli government to settle them in segregated planned townships, but at the same time keeping them incorporated to the regional economy. The third case addresses ultra-Orthodox community’s attempts to prohibit traffic during the Sabbath in streets that border neighbourhoods which are heavily populated by this group (ROSEN-ZVI 2004).

<sup>29</sup> Butler’s (2003) PhD thesis deeply relies in Lefebvre to understand the role played by law in the production of urban space. He applies a conflict theoretical framework to analyse issues concerning Australian urban development. He argues suburbia in Queensland is a form of neoliberal abstract space, produced through a land use planning-system by which the state assist in the production of space privileging expert authorities function in the decision-making process. Abolishing techniques of zoning, a recent legislative reform increased the reliance on market mechanisms to designate spatial uses, what does not tend to change the social relations of abstract space produced as outcome.

ROSEN-ZVI 2002; BUTLER 2003), informal legal settlements (AZUELA 1999; FERNANDES 1995) and public housing programmes (AZUELA 1999).

Blomley has written several articles exploring distinct social dimensions of property within cities and providing some insights in urban public spaces. He puts forward the concept of landscape as a useful bridge to entail spatial practice and representations of space, given its double meaning “both as a physical environment and as a particular way of seeing a space” (BLOMLEY 1998: 568). According to Blomley, landscapes are both material (a site) and discursive (a sight). They can serve either as a way to reify dominant property relations (thus as representations of space) or as a way to create spaces of contestation (as representational spaces). Another meaningful concept that acts as a similar bridge is the map (BLOMLEY 1998). Furthermore, he explores the ways private property principles have been transferred to public order regulation and policing in Canada (BLOMLEY 2004). Blomley links this phenomenon with the “dominance of certain notions of property in which the commons, a space of not-property, is imagined as inherently disordered and dangerous” (2004:636).

Perhaps the most consistent contribution to the understanding of the role played by law in the production of urban public spaces was given by Mitchell (2003), despite of some problematic points in his argument concerning law. He analyses struggles for public space in the cities of United States through a conflict perspective, connecting them with the notions of right to the city and space production. “If the idea of public space and its role in urban life needs to be preserved”, he argues, “then we also need to be aware that idea has never been guaranteed. It has only been won through concerted struggle, and then, after the fact, guaranteed (at certain extent) in law” (MITCHELL 2003:4-5). The author highlights that the right to the city depends upon public spaces. According to Mitchell, such right is defined by social debates and struggles over the production of public space.

Mitchell notes an increasing call for repressive order in urban public spaces. The excuses to its imposition are becoming common sense ideas: fear of terrorist attacks, perception of crime threat, maintenance of users’ security, improvement of traffic flow, protection of pedestrians from unwanted solicitations, harassments and assault, and so on. The mechanisms of social control mobilised are similar, but more and more sophisticated: “zero tolerance” police practices; enclosure of places through walls, hedges and fences; guards, prominent signs and surveillance cameras; public space zoning, architectural tactics, etc. Mayors are ordering police to arrest any homeless, migrant or loitering teenager who did not “move along” when told to do so, even if they committed no crime; the use of streets, squares and parks by political activists for rallies, marches and demonstrations faces dissuasion through stringent policing (MITCHELL 2003:16-17). Nonetheless, the goal behind these polices is “to assure that public spaces remain ‘public’ rather than hijacked by undesirable users”, which means to keep them accessible only to middle- and upper-class residents and visitors (MITCHELL 2003:2-3).

Before the above strategies, Mitchell argues that there is a need not only to produce public space but also to actively take it (2003:5-6). It will always be necessary to fight for taking control of public spaces in defiance of the order imposed upon people in the name of interests of few (MITCHELL 2003:14). “Neoliberal urban reform calls for the constant increase of urban order. Struggle for the right to the city must therefore seek to establish a different kind of order, one built not on the fears of the bourgeoisie but on the needs of the poorest and more marginalized residents” (MITCHELL 2003:9). According to Mitchell, “urbanism is at least in part a product of a struggle over the legal content of public space – who owns it, who controls it, who has the right to be in it, and what they may or may not do once there” (2003:46). Public spaces are produced through a dialectics of inclusion and exclusion, order and disorder, rationality and irrationality, violent and peaceful dissent; excluded groups have to fight their way into the public if they want to be heard or sometimes even seen (MITCHELL 2003:51-52).

Mitchell adopts Lefebvre's categories to explain the conflict between two opposed visions about what urban public space means and for whom it is public. On the one hand, non-hegemonic groups imagine public spaces as unconstrained and politicised places, marked by free interactions, absence of coercion by powerful institutions and tolerance to the risk of disorder. On the other, hegemonic groups conceive public space as controlled, orderly and safe spaces planned for retreat, recreation and entertainment, whose use is restricted to the properly behaved public. The former vision is identified with representational spaces, while the latter corresponds to representations of space. Whatever the origins of any public space may be (planned as often happens, appropriated or incidental as can also), its status as public is created and maintained through spatial practices influenced by both visions, arising out of the dialectic between representations of space and representational spaces (MITCHELL 2003:128-129).

"Rights talk" according to Mitchell matters in spatial struggle, and so does law. Any politics of space is mediated by normative argument. The language of rights is seen by him as a powerful normative tool that allows for progressive policies than can be obtained through social struggle, institutionalised and subsequently reinforced by state force (MITCHELL 2003:10-26). He considers rights as a set of instructions about the use of power; they establish a sort of a framework within which power operates (MITCHELL 2003:26-27). Rights are "at once a means of organizing power, a means of contesting power, and a means of adjudicating power, and these three roles frequently come into conflict" (MITCHELL 2003:22). But his socio-legal conceptions on rights are imprecise. Mitchell seems to realise that there is a social construction behind these rights, but at the same time he seems to reduce rights merely to constitutional rights (state rights). This paradoxical understanding of rights suggests the absence of a pluralist approach to law in his analysis.

Another topic that reveals the same deficiency within Mitchell's legal ideas is his obsession to contradict North-American scholar Robert Ellickson particularly his proposal on urban public space zoning. Ellickson (1991) argues that informal controls on social order are often more effective than legal ones. He is critical of the state both at national and local scales and believes property owners have a greater stake in preserving urban qualities and values than do bureaucracies. Departing from this premise, the author recommends changes in land management. It should not be conditioned by the federal constitution. Rather, it should vary according to the circumstances of different social spaces, so be directly regulated by neighbourhood's and cities' norms. The author further develops his argument towards a detailed proposal of urban public space zoning (ELICKSON 1996). According to Ellickson, instead of outlawing unwanted behaviour altogether (general and identical regulatory regime for all public spaces), cities should establish different norms for distinct places: for example, red, yellow and green zones. The reason for distinguishing zones is supposedly the fact that the degree of harm caused by some conducts changes across the urban area as long as they face sensibilities of distinct urban communities. Ellickson thinks that the type of zone to be adopted and its respective standards of behaviour should be informally chosen by each community itself and enforced through the aid given by trustworthy police officers. In short, what Ellickson is suggesting can be interpreted as a conservative form of legal pluralism.

Mitchell notes this conservative character and underlines two crucial points: Ellickson does not explicitly define community and neither answers the question about how to determine informal community standards. His notion of community apparently does not include, for example, homeless people, for being in principle a community of owners (MITCHELL 2003:217-218). "We must always be aware of who benefits from social order and consensus and who doesn't, whose interests are served and whose are not", Mitchell warns (2003:219). But there is a problem in Mitchell's criticism. The author seems to dismiss the existence of such informal norms. A pluralist approach to law would possibly push Mitchell further into his incipient argument pointing out that "if they exist at all, [...] [community norms] are the result of serious and concerted social struggle" (2003:219). Precisely for this reason, such forms of law governing space should be considered as modes of regulation that can either be oppressive or emancipatory.

## FINAL REMARKS

Urban sociology is a mature scientific field and much can be drawn from the large literature on urban public spaces for the purposes of further research. It illuminates the complexity of environments, places, actors, practices and processes involved in the urban question concerning public space and set apart reductionist attempts to approach its legal dimension. Nevertheless, in spite of frequent mention of statutes, by-laws and judicial cases, urban scholarship broadly fails to explain the roles performed by different forms of law regarding exclusionary patterns over urban public spaces. Law and urban space, otherwise, can still be considered an incipient approach. Notwithstanding the relevance of the existent socio-legal literature, fundamental gaps, lack of evidence and unresolved debates remain. First, it is important to highlight that the monistic approach to law predominates. The focus until now has mainly been on how legal institutions, formal legislation and courts' decisions affect the social production of urban space. This prompts us to explore-in a better way-the distinct manifestations of law that inform everyday life. Second, the urban conflicts related to housing and other private spaces have been the core of the research agenda, while the conflict dimension of the arrangements of property concerning public spaces has been almost forgotten. In addition, there are few empirical studies with regard to the legal dimension of the social production of public spaces able to link it to broader processes. The understanding of the urban phenomenon calls for interdisciplinary research. Particularly, the fruitful articulation between urban sociology and sociology of law ought to be fostered as a necessary step for paving the way to a science of the urban phenomenon (FERNANDES 1996:34). Exploring the legal dimension of urban public spaces could illuminate aspects commonly neglected in the debates at the core of both disciplines.

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