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The legal meaning of Lefebvre's the right to the city: Addressing the gap between global campaign and scholarly debate

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Abstract

There is a growing consideration globally of a right to the city in urban policies, strategies and legislation. The mention of this concept in the UN's New Urban Agenda vision statement, in relation to human rights, both acknowledges and encourages this trend. It is also a result of lobbying and contestation. In the Anglo-American scholarly literature, there has been caution as to whether Henri Lefebvre intended a legal and institutionalized meaning for his 'right to the city'. This paper reviews these debates and from that perspective examines Lefebvre's positions on law, rights and the right to the city. It locates this within his wider political strategy and in particular the three-pronged strategy he put forward in *The Urban Revolution* to address the urban question – political foregrounding of the urban, promotion of self-management, and introduction of the right to the city into a transformed contractual system. By contextualizing and reviewing *Everyday Life in the Modern World* (published immediately before *Right to the City*), the paper examines Lefebvre's thinking on rights formation, within 'opening', or the process of inducing change. The paper engages with meanings Lefebvre provides for rights in his concept of the right to the city, including his later conception of a contract of citizenship. The paper suggests that engagement with a fluid role of law and rights, in combination with Lefebvre's other strategies, is important in opening the pathway he charts for the realization of this right, whether through local or global initiatives.

Key words:
Right to the City; Henri Lefebvre; Rights; legal meaning; New Urban Agenda

> Only a global project can begin to define all the rights of individuals, by determining the conditions of their entry into practice. Let us note some of these rights: *the right to town* (the right not to be thrown out of society and civilisation into some space which has been produced solely for the purpose of discrimination), and *the right to be different* (the right not to be classified forcibly into categories which have been determined by the necessarily homogenising powers). In spite of these powers and Power itself, is it possible to put forward a project which is for the development and realisation of "freedoms" and "rights" and against their disappearing behind a smokescreen of more or less revolutionary phraseology… How can the old principle of *habeas corpus* be conceived and maintained, how can it be rescued from its bourgeois usage?
> (Lefebvre, 1973/1976:35)

Introduction

Civil society organisations and activists, many of them linked to the Global Platform for the Right to the City, welcome the mention of a right to the city in the opening statement of the 'shared vision' of the New Urban Agenda adopted in Quito on 20 October 2016 (Habitat III, 2016a). This follows more than a decade of civil society activism coming together in World Social Forums as of 2001 (Kuymulu, 2013). The New Urban Agenda refers to the right to the city as an umbrella frame, noting that some governments have enshrined its principles in their visions and declarations or institutionalized them in their policy and legislation. Though in some contradiction with New Urban Agenda concepts such as competitiveness and sustainable economic growth[1], right to the city principles are understood to be captured in the New Urban Agenda through statements on equality, freedom, inclusion and justice, for which it highlights human rights underpinnings. The underlying framing is one in which a right to the city and related principles have (among others) a legal meaning.

[1] Concerns over such contradictions, in particular on the role of the private sector in effecting inclusion, are voiced by Kuymulu (2013) in the context of UN-Habitat 'co-opting' the right to the city as a theme for its 2010 World Urban Forum.

In the negotiations in August 2016 on the content of the New Urban Agenda, several states steered against inclusion of the notion of a right to the city (Scruggs, 2016), some seemingly fearing its interference with market-based developmentalism. The Global Platform for the Right to the City (2016) escalated its petitioning and social media campaign during the last negotiations in early September, to positive effect. The debate on how and whether a right to the city should be included in the New Urban Agenda was also informed by a Policy Unit under Habitat III, which had deliberated on the meaning of this right in relation to existing human rights. It framed the right to the city specifically as a collective right and as a diffuse right[2] (Habitat III, 2016b). It recommended the right to the city as a new paradigm that should form the foundation or 'heart' of the New Urban Agenda. The Policy Unit's paper spells out a number of rights for both current and future generations, bridges urban and rural settings, places tangible obligations on governments, and makes direct reference to Brazil's City Statute of 2001 and Ecuador's 2008 Constitution as examples of the operationalization of this right (ibid.).

Prior to the Habitat III process and beyond the Latin American examples of Ecuador and Brazil, calls for institutionalizing the right to the city have related to the need for the reform of institutions and the law "to strike a fairer contract between state and citizen" (Brown, 2013: 968). At one extreme, this may refer to post-war situations such as in Angola, in which the law is taken advantage of to further the development of the city for elites and at the expense of ordinary inhabitants (Smith and Jenkins, 2012: 153-4). At the other extreme are countries like South Africa, where elite developments have also taken advantage of loopholes in law, but where the judicial system with its refinements through Constitutional litigation is nevertheless understood to facilitate realization of a right to the city for ordinary inhabitants, in that it allows for individual and collective claims to be made in relation to urban space and urban life (Coggin and Pieterse, 2012:259). For South Africa, it has been argued that the notion of a collective right to the city needs to guide the still incomplete reform of land rights and the planning system (Huchzermeyer, 2016). However, there is discomfort about the idea of institutionalizing a right to the city. Mayer (2012:71), for instance, is adamant that the right to the city in a Lefebvrian sense should be understood as an 'oppositional demand' rather than or less as a 'juridical right'.

It has been argued that different interpretations or "multiple formulations" of Lefebvre's right to the city are needed in order to sustain a debate (Purcell, 2014:141,142), and that it is desirable and inevitable to carefully and reflexively modify and transform his work (Kipfer et al., 2013:116).Kipfer et al. (2013:127) have cautiously welcomed a plurality in the direction right-to-the-city thinking and strategizing takes. However, the question remains as to whether the current legal and institutional interpretations of the right to the city must of necessity mean a departure from Henri Lefebvre's conceptualization of the right to the city, or whether Lefebvre's writings can be usefully employed to reflect on and advance the legal and institutional direction that a right to the city takes. Contexts such as Angola, but also Brazil, Ecuador or South Africa, differ from that in which Lefebvre articulated a right to the city in France in the late 1960s (Smith and Jenkins, 2012:142). Adding to a concern with transferability, the dominant approach in Anglo-American scholarly literature has been to caution against an institutionalization, warning of a reformist approach that folds a right to the city into the dominant liberal system of individualized rights.

This debate, which I review in the first section of the paper, suggests there is scope to reexamine Lefebvre's writing that is currently accessible in English with a view to understanding his positions on rights, particularly in relation to the situation which the contemporary condition has brought to the fore, namely a growing call globally for the institutionalization of a legal right to the city. Thus this paper presents a reading that seeks to respond to the seeming distance between Anglo-American scholarly positions[3] on the one hand and collective demands for institutionalization of a right to the city internationally and at country level on the other. Optimistic that this gap can be reduced, it explores the extent to which Lefebvre intended a legal interpretation and an institutionalization of the right to the city. The paper presents a reading of Lefebvre's right to the city within his wider political strategy, and within the urban political strategy in which he includes the incorporation of this 'right' in a transformed contractual system. The paper takes particular interest in Lefebvre's concept or process of 'opening' towards a different future, and examines his reasoning on the seldom-acknowledged role of rights formation in this process. It then turns more concretely to Lefebvre's own dialectical position on rights, through which he addressed debates that were underway over the three decades in which he engaged with the urban question. In focusing on Lefebvre's consistent political strategy (which aligns to his urban political philosophy and forms a thread through his circular and at times experimental and exploratory writing), the paper suggests

[2] Whereas a collective right applies to all inhabitants including future generations, a diffuse right applies to individuals who have "common legal interests but are only circumstantially connected" (Moreira, 2007:48).
[3] This refers to dominant positions, noting exceptions such as Mitchell (2003), Brown (2013) and Purcell (2013,2014).

that Lefebvre chose the word 'right', intending a legal meaning (though never static) as part of the pathway or 'opening' to a future in which rights are not claimed from a state. Therefore the paper attempts to distinguish between Lefebvre's position on contemporary rights and the legal system (including the necessity to be able to legally claim a right to the city) and his position on a right to the city in a fundamentally different future towards which his work is directed.

Debates and interpretations of Lefebvre's meaning of rights and their institutionalization

Lefebvre coined the term and idea of a 'right to the city' at a time when both abstract and concrete rights were being debated (Kofman and Lebas, 1996). Lefebvre's three texts on the right to the city (Lefebvre, 1967, 1968, 1972) and his other urban-focused writing into the early 1970s including *The Urban Revolution* (1970) enjoyed respect and influence in France at that time and beyond. As professor and director of an urban sociology institute at the new University Paris 10 at Nanterre where he taught from 1965, Lefebvre was called upon by politicians and ministers (Kofman and Lebas, 1996). After being expelled from the Communist Party in 1957 and freed from its restrictions, he shifted his interest from rural to urban sociology, interspersing his extended interest on everyday life with a phase in which he more directly addressed political and strategic questions and practice on the urban. He enjoyed the intellectual and practical debates and engagements on the urban (ibid.). At the same time, he was drawn to the student movement of the 1960s, its countercultures, and radical activist groups including those that became the Situationist International, drawing ideas of freedom also from his earlier involvement with the Surrealists (Shields, 1999). His writing, teaching and involvement in activism profoundly impacted on the student rebellion in May 1968 (Elden, 2004:3)

This engagement in the 1960s and early 1970s with urban theory and practice, as well as experiments in appropriation through the student movement, preceded his writing on society and space, with *The Production of Space* published in 1974. For the latter, he is less recognized in France than in the English speaking world (Kofman and Lebas, 1996). Anglo-American readers in turn "tended to view his other writing through the prism of the spatial" (Kofman and Lebas, 1996:6) and of everyday life. This tendency may in part explain a reception and interpretation of Lefebvre's ideas on the right to the city among Anglo-American scholars that steers away from any legal and institutionalized meaning. Authors like Shields (1999) and Merrifield (2006) give important explanation of Lefebvre's philosophy, his use of the term 'freedom' in relation to everyday life to which I return below, and his spatial theory, but do not reflect on his thoughts and positions on rights. In his discussion on the relevance of 'rights-talk', Mitchell (2003:28,29) bridges the gap between Lefebvre's spatial theory and his thinking on rights by, explaining that the institutionalization of rights should be seen as "a moment in the production of space" and can support or defend produced space against "forces of abstraction that seek to destroy it". Inscribing rights into law is therefore "one aspect of [the] struggle to resist the hegemony of abstract space" (ibid.:29).

Mitchell (2003:22) provides two further explanations for concerns with the extent to which rights are useful in achieving social transformation. One relates to "the rise of a more 'postmodern' discourse in the wake of the defeat of the 1968 uprisings"; this discourse sees rights as universalizing and totalizing (ibid.). One might cite as example Purcell's (2002) careful assessment of Lefebvre's right to the city as potentially dangerous in the outcomes it could have, and his call for a deeper consideration of identity politics. Purcell (2002) finds more relevance in the concept of citizenship and examines the meaning of rights from this perspective (2003). He develops this further through a more extended and positive reading of Lefebvre's ideas on the right to the city a decade later when more of Lefebvre's work is available in English translation, and also relying on his own translation (Purcell, 2013, 2014).

The other explanation that Mitchell (2003) provides traces concerns with rights to an inaccurate interpretation of Marx's skepticism of rights; Marx did not discard rights altogether, but emphasized that they needed backing by power (ibid.). Thus in a Marxist sense, "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 conflict" (ibid.:22). Thus rights are indispensable to Marxist and socialist urban transformation, as is acknowledging their limits and the need to continuously struggle for them (ibid.:38). Whereas the institutionalization of rights may result in the wrong interests being protected, the same institutionalization, resulting from processes such as direct action and class struggle, can lead to the "(liberal) state" becoming "a key protector of the weak" (ibid.:25).

Nevertheless, when the French Ministry made attempts to institutionalise Lefebvre's ideas drawn from *The Right to the City*, Lefebvre himself did not approve [4](Kofman and Lebas, 1996:38), perhaps further reinforcing interpretations that he did not intend the institutionalization of the right to the city, or suggesting ambiguity in Lefebvre's thinking. Thus Kipfer et al. (2013:128, 129) use Fernandes' (2007) position that a Lefebvrian right to the city has been institutionalized in Brazil through the City Statute of 2001 as an example when arguing that "[s]uch operationalizations … miss the central point of the 'right to the city', which, far from an isolated right to particular physical spaces, was meant to highlight the 'strategic importance of the urban' in social struggle" (Kipfer et al., 2013: 128-9). Harvey (2012:xii) goes as far as to question any link to Lefebvre's legacy in Brazilian "insurgent citizenship" around the enactment of a form of right to the city.

The inevitable state-centredness of an institutionalization of a right to the city is seen to contradict the larger project in which Lefebvre locates the right to the city, which is one that contests the power of the state (Butler, 2012:157,158; Kipfer, Saberi and Wieditz, 2013:128). However, in Mitchell's (2003:26) reading, "[t]he creation of a progressively democratic state (or even a first step towards that old dream of seeing the state wither away) must itself, in good part, begin by *strengthening* the state, *especially* in an era of 'globalization'" (Mitchell, 2003:26). With this in mind, we find in Lefebvre's writing positions on the contemporary importance of rights and of an institutionalized right to the city, as well as positions on the very different meaning of rights in a future society that is progressively more autonomous from a state. This distinction is overlooked, for instance by Butler (2012: 148), who substantiates his discomfort with Fernandes' (2007) claim about the Lefebvrian roots of the Brazilian urban law by citing a passage in which Lefebvre expressly states that the right to the city is "not a natural right or a contractual one" (Lefebvre, 1973/1996:194). I return to this quote below to contextualize is, suggesting that it relates to Lefebvre's discussion of the future meaning of rights in relation to a withered state.

Given reference in the above debate to the Brazilian claim that its City Statute of 2001 represents a Lefebvrian right to the city, it is relevant to briefly expand on this legal provision and its journey into Brazilian law. Lefebvre's *Right to the City* was available in Portuguese translation, published by Editora Documentos in Brazil already in 1969 (Machado, 2008), a year after its appearance in France. Fernandes (2007:204) mentions the inspiration and "political-philosophical framework" that the socio-legal movement in Brazil, alongside those in other Latin American countries, has drawn from Lefebvre's right to the city since the 1970s. In Brazil as in France, the a reading of Lefebvre's urban texts was not through the 'spatial prism', but rather it will have resonated directly with emerging collective practices of participatory base democracy and the defense of rights in the struggle against an authoritarian regime (Mainwaring, 1984; Avritzer, 2010)[5]. Legal changes that the Brazilian urban reform movement achieved represent a long fought for paradigmatic shift towards a "new legal-urban order" (Fernandes, 2007.:211). This subjects property rights to a social and environmental function and secures collective rights to housing, to processes such as informal settlement regularization, urban planning and surplus value capture, and to democratic participation in urban management and planning (ibid.). The City Statute's wording in Article 2, Section 1 is to "guarantee the right to sustainable cities" (Caixa Economica Federal, 2001:40). While it focusses this guarantee on the most urgent deficiencies for Brazil's marginalized urban population, namely "urban land, housing, environmental sanitation, urban infrastructure, transportation and public services, … work and leisure", its wider interpretation as Lefebvrian relates to provisions for democratization of the state and for the legal ranking of the social above the speculative or commercial interests in property (Caixa Economica Federal, 2001:40), thus elevating use value over exchange value. Whether or not Lefebvre would have approved, the City Statute was published in 2001 with an explanatory text that clearly stated: "as we already know, the approval of a legal measure is only the beginning, and never the conclusion, of a social process" (ibid.:35). Before exploring thoughts on this social process in Lefebvre's writing, I review in the next section the political strategy in which Lefebvre locates his call for a right to the city, and for its institutionalization.

The right to the city within Lefebvre's interdependent political strategy

Lefebvre's engagement with the urban or urban life began in the 1960s as, in a changing world, urbanization and "economic transformation" were producing mounting urban questions (Lefebvre, 1976/2009:161). While the period of intense engagement with this topic ended in 1972, the urban remained an important reference point

[4] Lefebvre's "sharp critique" and "unwillingness to compromise" contributed to his marginalisation in France from the mid-1970s onwards (Kofman and Lebas, 1996:38).

[5] The influence of social theory and trends in Brazilian intellectual thinking (Souza, 1993: 74) must be acknowledged at this point.

in his work up to the end of his life in 1991. Through this, Lefebvre provided an understanding of contemporary society and developed a politics towards its future, though with a growing interest in or necessity to understand the planetary or global. Lefebvre's urban-focused texts from the late 1960s and early 1970s in which he develops his idea of the right to the city are based on deep concern with the urban condition and the everyday life it offered, marked as it was by Fordist capitalist processes facilitated by the state (and since then intensified through post-Fordist and post-Keynesian, neoliberal and developmental conditions[6]). Lefebvre decries the extent to which society is subjected to the economy, the extent to which the state dominates space (often violently so), the extent to which space is primarily valued for exchange and shaped accordingly, and the extent to which both state and the market occasion a reductionism leading to the production of a uniform and dispersed habitat and homogenisation of urban space. The urban in Lefebvre's work is at the core of society and not a sectoral concern; it is also at the core of a possible future that he envisions. He begins The Right to the City highlighting the need to show "the horizon and the road… towards possibilities" (Lefebvre, 1968/1996:63).

Thus Lefebvre projects a transformation to a different future, that of urban society. Purcell (2014:150) captures this as "a movement to go beyond the existing city". This would be made possible by a state and political party that accept a declining role in decision making, increasingly making way for democratic practice and self-management or *autogestion* (Lefebvre, 1966/2009), for collective creative work or the *oeuvre* to replace products (Lefebvre 1968/1996:75), for use value of urban space to become more important than that of exchange (1968/1996:75), for spatial domination to give way to appropriation (Lefebvre 1974/1991:164), homogeneity to difference (1968/1996:127), dispersion to centrality (1970/2003:125), and reduction to complexity (1974/1991:105). All these are processes necessary to bring about the city, itself never static, that Lefebvre captures in the complex notion of the 'right to the city'.

Lefebvre understands direct democracy and grassroots/base control as a prerequisite for urban society. He strives for a condition in which the state increasingly makes way for grassroots formations. Some argue Lefebvre could have taken libertarian thought more seriously (Souza, 2010:318), others note Lefebvre's criticism of anarchism, but nevertheless recognizing an "anarchist twist" in the socialism that Lefebvre projects (Kipfer, 2008:206). Thus his work is understood to be closer to "anarcho-syndicalism or libertarian socialism than to Marxism" (Purcell, 2014:145). While Marx framed the withering democratic state as "created through the act of revolution" replacing the bourgeois state (Lefebvre, 1964/2009:85), Lefebvre (1986/2009:305), writing a text on revolutions in the mid 1980s, leaves the question "where and how to realize" direct democracy unanswered: "Is it 'self-instituted'? Does it emerge from a Constitution? Or from practice, from a way of living?" Nevertheless, he recommends a political strategy in which self-management or *autogestion* (distinct from co-management which suggests a consistently strong state) is "the essential element" (though "only one element") (Lefebvre, 1966/2009:150).

In "radical-democratic transformation" the state emerges as 'arena' for a base democracy (Brenner, 2009:15,16). However, such a state is one that dissolves over time: "The State of *autogestion*, which is to say the State at whose core *autogestion* is raised to power, can only be a State that is withering away" (Lefebvre, 1966/2009:150). More forcefully stated, "autogestion cannot avoid a collision with that stato-political system" (ibid.:147). Using an analogy that Lefebvre later applies to the spaces in which shanty towns of Latin America come to exist (Lefebvre, 1974/1991), Lefebvre notes that "[o]nce aimed at ground level, in a fissure, this humble plant [of self-management] comes to threaten the huge state edifce" (Lefebvre, 1966/2009:147). Indeed then, as Lefebvre (1970/2003:180) explains in *The Urban Revolution*, "the state and the urban" are "incompatible". For Brenner and Elden (2009:38) Lefebvre's politics of *autogestion* and withering of the state have the potential "to provide an important normative reference point for the rejuvenation of political struggles" for the democratization or "hyperdemocratisation… of governance arrangements". For Butler (2012:158) Lefebvre's right to the city as a new or alternative model of 'spatial citizenship' would only hold potential in destabilizing and challenging "the dominance of capitalist social relations" if "pursued simultaneously with the right to difference as part of a generalized spatial politics of autogestion". Towards the end of his life Lefebvre also included the possibility of a right to *autogestion* as a citizenship right (Elden, 2004:227; Purcell, 2014:148).

Apart from *autogestion* and its implications for the state, Lefebvre includes two other essential elements in his political strategy. One relates to the appropriate articulation of the urban question within the political realm, or as Elden (2004:157) puts it "to recognize the importance of urban problems as a question of first order". The other relates contractual rights. Lefebvre puts all three forward forcefully in the *The Urban Revolution*, when concluding a chapter titled 'toward an urban strategy':

[6] In 1989, towards the end of his life, Lefebvre observed that "the condition of city dwellers (*citadins*) was degraded even further" (Lefebvre, 1989/2014: 203).

1. "The introduction of the urban problematic into (French) political life by moving it to the foreground".
2. "The development of a program that begins with a form of generalized self-management", with an important interplay between industrial and urban self-management, also involving "markets and the control of investments".
3. "The introduction into the enlarged, transformed, concretized contractual system of a 'right to the city' (the right not to be excluded from centrality and its movement)".

(Lefebvre, 1970/2003: 150)

Recognizing the urban problematic as a question of first order is related to "two key strategies of understanding"; these are "radical critique" on the one hand and a "science of the urban phenomena" on the other (Elden, 2004:157). The articulation of the urban problematic is critical in Lefebvre's urban work, in particular *The Urban Revolution*. Lefebvre takes "reductivist disciplines, the fragmentary sciences, which have become specialized and institutionalized" including town planners or "urbanists" to task in their role of scripting a diagnosis (Lefebvre, 1970/2003:135). Lefebvre finds them acting either on behalf of "'private' interests" or those "of higher institutions and powers" (ibid.:158), thus masking and concealing or blocking "a view of the horizon, a path to urban knowledge and practice" (ibid.:160). Urbanism, which treats space "deceptively neutral and apolitical" (ibid.:164), "accompanies the decline of the spontaneous city" (ibid.:160), preventing "thought from becoming a consideration of the possible, a reflection of the future" (ibid.:161). Powerfully, "[u]rbanism organizes a sector that appears to be free and accessible, open to rational activity: inhabited space. It controls the consumption of space and the habitat" (ibid.:164). For Lefebvre,

> "[t]he strategy of knowledge implies (1) radical critique of what is called urbanism, its ambiguity, its contradictions, its variations, what it avows and hides; (2) the development of a science of the urban phenomenon, beginning with its form and content (aiming at convergence through the unity of these two approaches)" (ibid.:149).

Central to the "science of the urban" is "[c]ritical thought" that "transgresses the boundaries separating the specialized sciences of human reality" (ibid.:140). A "critique of everyday life" contributes to this by exposing the strategies that underlie the urban condition, and by comparing "the real and the possible" (ibid.). This seems central to articulating the urban problematic and introducing it from that perspective into political debates.

Towards the end of this paper, I return to Lefebvre's idea of a contractual system in his three-pronged political strategy, asking what this implies for his meaning of the term 'right'. Most scholarly engagements with Lefebvre's right to the city do not embrace this aspect. They emphasise the analytical-aspirational dimension (rather than legal actualization) of the right to the city with frequent reference to an argument by Lefebvre that "the right to the city is like a cry and a demand" (Lefebvre, 1968/1996:158). I discuss this in the next section which examines how Lefebvre's articulation of a process of right-formation and the role of the working class within this unfolds. I ask where exactly Lefebvre locates the right as opposed to the yearning and the collective activism. Here I build on Purcell's (2013:316,317) reading that for Lefebvre "a right is a beginning. It is a political opening statement, a point of departure from which we begin a generalized struggle for a thoroughgoing renewal of political life".

Lefebvre's thinking on the role of rights formation within political opening

For the radical-democratic transformation that Lefebvre envisages, a critical question is what the potentials are for setting such a process into motion, and how it unfolds. Lefebvre uses the term 'opening' to refer to a change-inducing potential. As already mentioned, Lefebvre articulates *autogestion* as "the opening toward the possible" (Lefebvre, 1966/2009:150). But, as the quote from Purcell (2013) above suggests, he also understands rights as having this potential. To explore his thinking of this process of opening and the formation of rights within this, I turn to the book that Lefebvre published in the same year and immediately before *Right to the City*[7], namely *Everyday Life in the Modern World* (Lefebvre, 1968/1971). Elden (2004:114) describes this book as one of several "moments" in Lefebvre's examination of everyday life which spanned from the 1930s to the end of his life in the early 1990s. Based on lectures that he taught in the 1960s at Nanterre (from 1965) and before that at Strasbourg, *Everyday Life in the Modern World* is regarded as a summary of his work on everyday life up to that

[7] Elden's (2004: 258) listing of Lefebvre's complete work has *Everyday Life in the Modern World* preceding *Right to the City*. This sequence is also evident when one compares the two texts. Translated into English already in 1971, *Everyday Life in the Modern World* has received very little if any attention in the Anglo-American scholarly discussion on Lefebvre's work on the urban and on rights.

time (ibid.). This perhaps explains why it has seldom been reviewed in its own right. It is of particular interest to an understanding of Lefebvre's thinking on rights as highlights the need for an 'opening', or 'way of escape' from the misery of everyday life and the rationale that keeps it in place, and which at the same time is "an inevitable starting point for the realization of the possible" (Lefebvre, 1968/1971: 14, also quoted in Merrifield, 2006:10). Lefebvre (1968/1971) argues that this opening, starting within the experience of misery rising out of housing shortages or standardarized mass housing involves the yearning for freedoms and the formation of a series of rights including those beyond housing, relating to the city. In the chapter titled "Terrorism and everyday life" he problematizes the diffuse and ongoing terror of the co-existence of poverty and "ostentatious" privilege enabled through laws, codes and courts, and through various forms of violence (Lefebvre, 1968/1971).[8] In societies subject to such terrorism, adaptation, which he likens with creativity, is restricted to the private sphere, the home, which Lefebvre portrays as an "illusion of freedom" (ibid.: 147). Lefebvre's notion of freedom is informed by the Surrealists, and is likened with poetry, creativity, spontaneity, adventure and the romantic (Shield, 1999:33). Merrifield (2006:154,155) explains that it was individual freedom that Lefebvre cared for, unconstrained by "drudge or routine" or by political or other "group dogma" and not to be mistaken with the freedom offered by the "world market".

Individual freedom though, is not to be confused with individualization, although Lefebvre recognizes a dialectical relationship. Thus he argues that urbanization (which he understands both in the sense of the shift from rural to urban concentrations of population and in the production and expansion of the built environment) brings with it two contradicting processes – "socialization of society" which is "dear to more or less Marxist-inspired reformers" and at the same time an "individualization" within the "massification" or amassing of people in space (Lefebvre 1968/1971: 151). Lefebvre acknowledges the real freedom of independence that is made possible through individualization. With this, Lefebvre leads his reader to a passage that seems critical to understanding his rationale for conceptualizing, in his next book, a 'right to the city':

> Nobody nowadays would deny a boy or girl of twenty or twenty-five the right to lead an independent life, leave the family, have – and if possible choose – a career, take lodgings and dispose of himself or herself freely; thus in this massification there exists a certain degree of individuation involving problems of rights, freedom of work, of leisure, of careers, of education, of housing; such extensions of *habeas corpus* ['having a body' in a legal sense, therefore with rights] are not achieved without difficulty, and they tend to take the form of claims, and to be formulated in ethical and legal terms; they are appropriated by and for the state for strategic purposes, but simultaneously recognized and ratified to a certain extent by it – as for instance in the case of the *housing problem* (an early and very incomplete manifestation, the first stirrings, one might say, of a freedom that will soon have to be reformulated as the ***freedom of the City***). (ibid.)

Lefebvre (1968/1971:152) refers to these stirrings as "demands and aspirations", and as "part of civilization" they are "cultural phenomena"; they are

> "more potentialities than facts, aspirations faintly tinted with assertiveness…; 'values' rather than facts, not even acknowledged as rights (except ethically, which is better than not at all, but does not go very far), there is no proof that they will not vanish, for if a crisis occurs or the consequences of 'massification' simply become overwhelming these faintly outlined rights will be swept away… Thus it is no use relying on these cultural phenomena, for if they have a direction they do not show us how to reach the opening. Our arguments would be incomplete and carry very little weight if we did not show how these new values and rights are born and how they develop until social recognition becomes inevitable".

As already mentioned, Kofman and Lebas (1996:19) note of that time that "[r]ights were on the agenda, not just the abstract rights of man and the citizen but concrete rights pertaining to social groups, such as old people and women, conditions of work, culture, housing, amongst others". In *Everyday Life in the Modern World*, Lefebvre proceeds: "housing rights – which could turn building into a public service – are far from being recognized as rights; the state, by intervening in this problem, has modified the practice but not the theory" (Lefebvre, 1968/1971: 151).

[8] Fernandes (2007:208) would have liked Lefebvre to take this critique of the law or legal order further; though not citing *Everyday Life in the Modern World* (Lefebvre, 1968/71), Fernandes regrets that Lefebvre never discussed "the critical role of law in the urbanization process".

Lefebvre gives clues as to what he meant with 'right' as he developed his thinking towards articulating a right to the city. In the last indented passage above, in *Everyday Life in the Modern World*, Lefebvre makes a clear distinction between "ethically" acknowledged rights "faintly outlined", and rights that are actually capable of inducing an opening. He continues immediately with a section on 'Writing and terrorism', in which the 'written *word'* signifies law. Thus "the city, written on mapped space and graduated time, transitions from laws of custom to stipulated laws (that is from habit to conventional codes)" (ibid., 1968/1971: 155). He elaborates with positions on law which Mitchell (2003:22) traces to Marx: that law "is a necessary condition for all *institutions*"; but that this includes the danger of supplementing "persuasion with intimidation" (ibid.: 156) and that bureaucracy has a "propensity to found its power on" law (ibid.: 159). Therefore, Lefebvre (1968/1971:156) emphasizes that law "must be justified before the assembled population", subject to "collective control".

Lefebvre (1968/1971:161) debates declarations of freedom, including that of the city, in contrast to rights that claim institutional recognition. He returns to the city in a section titled "The opening". Here he writes about the turn to "a new era of urban society", "already more than a dream", in which he summarizes much of his ideas subsequently applied in *Right to the City* and *The Urban Revolution* – encounter, creativity, festival (ibid.: 188-90). However, he argues

> "the city will none the less involve structures (spatial, formal); its practical existence will be practically defined (inscription and prescription) but this morphology will project (inscribe, prescribe) on the field relations whose social and intellectual reality will not be reduced to this projection" (Lefebvre, 1968/1971: 190)

Everyday Life in the Modern World closes with a passage about 'revolutionary process'. On 'urban reform and revolution', Lefebvre (1968/1971.:205) underscores that "urban experience, and in particular the struggle for the city (for its preservation and restoration, for the *freedom of the city*), provide the setting and objectives for a number of revolutionary actions", this requiring both "political programme" and "an economic control". On urban reform, he refers to a "revolutionary reform" that would shake "the structure of neo-capitalist ownership, laws and ideologies".

The book *Right to the City* returns in its later chapters to this theme, in relation to right-formation and its potentiality. In the chapter titled Right to the City, Lefebvre addresses "abstract rights",[9] which need to be completed by "concrete rights" (ibid.:157), including the rights of different people and to "training and education, to work, to culture, to rest, to health, to housing" (ibid.:157) and "the right to urban life" (ibid.:158). He acknowledges the "revolutionary beginnings" of such rights, and the important role of "the working class" as "social carrier or support of [their] realization" (ibid.:158). He highlights the indispensable role of working class pressure for "the recognition of rights, for their entry into customs, for their inscription into codes which are still incomplete", but also suggestively notes that working class pressure in itself is "not sufficient" (ibid.:157)[10]. Earlier in the same text he argues that the "science of the city… is necessary but not sufficient" (ibid.:153). A wider reading of Lefebvre allows for the interpretation that *autogestion*, as well as the articulation of concrete rights are processes that have to accompany and be part or lead out of working class pressure. In turn, the three-pronged political strategy is toothless without its base and support in the working class.

It is in this discussion on abstract and concrete rights and the role of the working class in *The Right to the City* that Lefebvre embeds the phrase 'cry and demand', a much-used reference to Lefebvre's idea of a right to the city (e.g. Purcell, 2002, 2003, 2013; Marcuse, 2009, 2012; Harvey, 2012; Coggin and Pieterse, 2012; Kuymulu, 2013; Erdi-Lelandais, 2014). The cry, as Harvey (2012:x) acknowledges, is a response to the misery of everyday life. In *Everyday Life in the Modern World*, Lefebvre (1968/1971:125) already mentions:

> "A cry of loneliness rises from the depths and the caves where, at the heart of everyday life, the most limited and specialized quotidianness lies coiled, the intolerable loneliness of unceasing communication and information" (Lefebvre, 1968/1971:125).

[9] 'Abstract rights' may presumably be taken as those rights enabling a free will by ensuring respect for one another.

[10] In *The Survival of Capitalism*, Lefebvre (1973/1976:37) states this position on the working class differently. In a passage on the "capacity for choice" of the working class, he writes ''While the working class cannot do everything by itself…, there is also nothing that can be done without it"

In *Right to the City* Lefebvre (1968/1996: 158) uses the words 'cry and demand' within a brief engagement with a "pseudo-right", namely the "right to nature", commodified or commercialized through "leisure" as an escape from the city, and as a rationale for displacing the city of encounter, use value and urban life. Lefebvre contrasts this pseudo-right to nature on the one hand with the right to the city as a "cry and demand" on the other (ibid.). In an embedded reading, one cannot divorce this from Lefebvre's engagement here with the formation of rights in a legal sense and the opening this represents, that is from faint aspirations to inscriptions into codes and beyond that into practice.

In his "Theses on the City, the Urban and Planning" with which Lefebvre (1968/1996) closes *Right to the City*, he returns to the importance of the process through which rights emerge, here explicitly including the right to the city:

> In these difficult conditions, at the heart of a society which cannot completely oppose them and yet obstructs them, rights which define civilization (in, but often *against* society – by, but often *against* culture) will find their way. These rights which are not well recognized, progressively become customary before being inscribed into formalized codes. They will change reality if entered into social practice: right to work, to training and education, to health, housing, leisure, to life. Among these rights in the making features the right to the city (not to the ancient city, but to urban life, renewed centrality…)" (ibid.: 179)

Lefebvre emphasises the particular significance that this right has for the working class, for which it is "a means and an end, a way and a horizon"; but being the bearer of this right, the working class also represents the interests of "civilization" and of "inhabitants" (ibid.). Lefebvre emphasizes that "[o]nly the proletariat can invest its social and political activity in the realization of urban society. Equally, only it can renew the meaning of productive and creative activity by destroying the ideology of consumption" (ibid.:180).

From this review of Lefebvre's arguments on the formation and political/cultural role of a legal or codified 'right' to the city, and beyond, I now turn to the pointers he provides on the meaning of a legal right. This is drawn from his debates about law and rights generally as well as the right to the city. It takes us from *Right to the City* to *The Urban Revolution* and to Lefebvre's work on a contract of citizenship written in the late 1980s, which both Fernandes (2007) and Purcell (2014) unpack and draw on extensively in their recommendations for more legal and concrete applications of Lefebvre's right to the city.

Reading Lefebvre's right to the city as a demand for an improved, transitional and transforming contractual system: what kind of rights?

What kind of a law was Lefebvre referring to in his political strategy, "the enlarged, transformed, concretized contractual system" into which he envisaged a 'right to the city' to be included? While this paper cannot offer a much-needed legal analysis and interpretation, it reviews various passages in Lefebvre's translated work which provide clues, though not fully conclusive answers.

In the *Urban Revolution*, the penultimate chapter titled "Urban Society" addresses the subject of "*urban laws*" (Lefebvre, 1970/2003: 178). However, this does not lend itself to any direct legal interpretation. It relates to a process in which the state withers away. Lefebvre first lists "negative laws". These do not comply with the conventional legal meaning of 'negative' (namely laws that prevent interference and relate to liberty). Rather they are perhaps corrective, removing obstacles to urban life such as "segregation" in the production of space or the "separation between people" (ibid.). Lefebvre continues that "[t]hese negative laws in turn imply a number of positive laws" (ibid.:179). Again, these don't comply with the conventional legal meaning of 'positive' (namely a duty to provide). Instead, Lefebvre points here to the ultimate condition of urban life being governed by "custom" rather than "contract" (ibid.). Further, with positive law he implies a shift from exchange to use. While "contract law" governs "exchange and reciprocity in exchange", urban life in Lefebvre's conception emphasizes use over exchange, and use "privileges custom over contract". He adds that this does not "imply that the contract system cannot be transformed and improved" (ibid.).

From this reading, the transformed contractual system in Lefebvre's political strategy is merely a route towards urban life which itself is governed differently (by custom rather than contract), in which space is no longer commodified, in which self-management is generalized and in which the state, which "can only prevent the urban from taking shape", has withered away (ibid.:180). In this sense, Lefebvre concludes that "urbanism", or

professional practice that seeks to shape the urban, and we could add urban law with its procedures and regulations as they stand, "is a mask for the state and political action" (ibid.).

This helps us understand what at first glance appears as a contradiction in Lefebvre's work. In the section above, I reviewed quite clear arguments by Lefebvre about the need for the inclusion of the right to the city into a transformed contractual system. The seeming contradiction is in a statement he made three years later, which Butler (2012:148) cites to illustrate that Lefebvre did not intend the right to the city to be implemented in a positivist or juridically enforceable way. Lefebvre (1973/1996: 194) wrote "*the right to the city* refers to the globality thus aimed at. Certainly it is not a natural right, nor a contractual one". If read in the progression that Lefebvre charts, Lefebvre herewith implies that ultimately, once fully achieved, the right to the city will not be underpinned by a law in any conventional sense that we know. Butler (2012:148) acknowledges that Lefebvre did not reject "the strategic use of legal mechanisms to further political demands". It was not in the scope of Butler's project to address the difficult question as to what such legal mechanisms may be, particularly in a transformed contractual system on the route to that ultimate condition (itself never static). But it is from this angle that one would need to approach the Brazilian City Statute and other similar legal mechanisms, within their particular legal system that at least in part underpins the urban condition these legal instruments seek to address and transform.

Both Fernandes (2007) and Purcell (2013, 2014) take us to Lefebvre's late writing on the contract of citizenship, most easily accessible in English in the chapter "From the social pact to the contract of citizenship", in *Henri Lefebvre: Key Writings* (Elden, Lebas and Kofman, 2003), originally in *Du Contrat de Citoyenneté* published in 1990. Fernandes points to Lefebvre's argument here that "the longstanding liberal tradition of citizenship rights" needed to be reformed. In Fernandes' reading,

> Lefebvre proposed a contemporary formula for social citizenship, expressing a 'social project' which requires a new political contract between the state and citizens in order to reduce the gap between state and government, and between the institutional power and the power of civil society (Fernandes, 2007: 207).

Lefebvre already announced this direction in his work in a publication the previous year. After reviewing disconcerting contemporary urban tendencies, he concludes by asking "Given these trends, isn't it necessary to reformulate the framework for citizenship (citoyenneté)? The city dweller and the citizen must be linked but not conflated. The right to the city implies nothing less than a revolutionary concept of citizenship" (Lefebvre, 1989/2014:205). In a very short passage specifically on the right to the city in the translated chapter from *Du Contrat de Citoyenneté*, Lefebvre (1990/2003:253) highlights that "[t]he link between 'being a city-dweller' and citizenship is inevitable in societies that are becoming urbanized". Here Lefebvre summarizes the right to the city as "The right to urban life, with all its services and advantages …[w]ith its implications and consequences, which are still not firmly attached to the new citizenship" (ibid.). He places it under "the new rights of the citizen", alongside rights to culture, "identity within difference (and equality)", self-management and services, organized under a new "political contract" (ibid.:250-253).

To Purcell (2013: 316), Lefebvre's "new contract of citizenship aims at … a change that cannot in any sense be contained within the traditional idea of rights as legal protections offered by the liberal-democratic state". Purcell (2013:317) identifies an incompatibility of Lefebvre's politics of *autogestion* (and "the withering away of the state") with "any politics that demands more rights guaranteed through the liberal-democratic state". Therefore, Purcell (2014:142) argues that Lefebvre "does not see the right to the city as an incremental addition to existing liberal-democratic rights". But while Lefebvre highlights a "fundamental difference between human rights and citizen rights" (Elden, 2004:230), he is not dismissive of human rights nor of litigation under existing legal frameworks. To those on the Left questioning the use of rights he replies: "Would not a serious error on the part of the Marxist tendency be to have underestimated and even ignored both human rights and the universal struggle for those rights, the struggle to make them broader and deeper? Because of their 'bourgeois' origins? Probably, but that did not stop Marxists from claiming allegiance to the French Revolution" (which brought about the Declaration of the Rights of Man and of the Citizen, though in itself limited) (Lefebvre, 1990/2003:247).

Lefevbre confronts a resigned negativity based on a radical philosophical approach to Marxism, as well as the dogmatism of institutional Marxism. Thus "it is a matter of using [Marx] as a starting-point and inventing

something new. Of returning to the process of becoming and opening up a future" (1990/2003:239).[11] Here Lefebvre also embraces the possibility of transformation through contemporary law and the judiciary. He cites a 1986 example from Spain in which litigation against a political party that broke its promise led to a judgement that extended democracy by "enshrining in law the citizen's right to participate actively in political and civil society" (1990/2003: 243). Thus the idea of a "contract of citizenship" had "entered the realm of the practical by an unexpected route: the courts" (ibid.). Further, Lefebvre shows how this contract of citizenship reduces the 'weight' of the state, extending democracy, potentially serving "as the basis for a new beginning" (ibid.:250), as Purcell (2014:146) also highlights in his own translation of Lefebvre's (1990) text. Lefebvre therefore leaves us with an encouragement to find the transformative potential within existing rights frameworks, using them towards developing the contract of citizenship that would enable towns and cities to unfold with the open-ended attributes he includes within his right to the city.

Conclusion

This paper has sought to foreground the question of rights in Lefebvre's work on the urban and the right to the city. This included both his thought process towards articulating a right to the city with the role of the formation of rights and beyond, as well as his later writing on a contract of citizenship. The purpose of this review is to encourage further debate that could connect Lefebvrian scholarship more directly with the global movement towards a legal and institutionalised right to the city. If the inclusion of right to the city in the New Urban Agenda is understood as a potential opening, the invigorated efforts to give meaning to this right at transnational, country and local level should be accompanied and supported by scholarly explorations and reflections on how this may be steered, and through which levers change may be effected and sustained in the desired direction. The role of critical urbanism as political, as overcoming disciplinary fragmentation and as connected to practice must incorporate the analysis of existing legal frameworks and development of alternatives in which the weight of the state, but also the market, recedes and space is opened up for the expansion of self-management along with appropriation, habitation, use value, diversity and centrality in their many possible manifestations. The opening or transitional role that Lefebvre envisages for the formation of legal rights and their 'entry into social practice', suggests that shying away altogether from a legal interpretation of the right to the city may in effect block a pathway that Lefebvre charts for the realization of this right.

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[11] Showing how history had been influenced at least as much by misinterpretations of Marx's thought as by his thought as such, he adds (perhaps also with a wink at efforts to identify the purest meaning of his right to the city), that "falsifications are an integral part of the fertility of great doctrines of thought" (Lefebvre, 1990/2003:249).

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