Diversity or displacement? Housing capital and the right to place

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Abstract

Increasing costs of housing and processes of gentrification are excluding poorer people from convenient areas of cities where they have traditionally lived. This paper responds to the loss of diversity being experienced in part of inner western of Sydney which has been a first home for successive waves of immigrants. It considers claims to various rights and forms of capital as a possible foundation of resistance to gentrification and the commodification of housing, and for their potential to promote egalitarian participation in urban life more generally. It asks whether there is any sense in which residents of a neighbourhood can assert a right to place. In conclusion, the interaction between rights and forms of capital is seen to be mediated by exchange and contestation. These concepts will be used to examine some of the social, political and economic means for promoting claims to cultural rights and the primacy of housing's use value.

Key words

Resumen

Los costes crecientes de la vivienda y los procesos de gentrificación están excluyendo a personas más pobres de vecindarios cómodos donde siempre habían residido. Este artículo responde a la pérdida de la diversidad que se ha experimentado en la parte occidental interior de Sydney, que ha sido una primera residencia para varias generaciones de inmigrantes. Se toman en consideración reclamaciones de derechos y formas de capital como posible base de la resistencia a la gentrificación y la mercantilización de la vivienda, y para su potencial para promover una participación generalizada más igualitaria; además, plantea si hay algún sentido en las proclamaciones

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de un derecho territorial. La conclusión es que la interacción entre derechos y formas de capital está mediatizada por el intercambio y la contestación. Estos conceptos se utilizarán para examinar algunas de las formas sociales, políticas y económicas para promover reclamaciones de derechos culturales y la primacía del valor de uso de la vivienda.

Palabras clave

Vivienda; gentrificación; deuda; capital; derechos sociales

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1. Introduction

This work grows out of several years of research and observation of a multicultural neighbourhood centred on Marrickville Road in Sydney. The local area is well served by public transport and is located about six kilometres from the city centre: an "inner suburb" by Sydney standards. In the 1930s it included a full range of civic, health, commercial and industrial functions, and was connected to the rest of the city by trams and trains. Much of that fabric remains intact, though now there are few manufacturing jobs and people reach more distant workplaces, hospitals and universities by bus or car.[1] In the era following the Second World War, Australia was a destination for large numbers of immigrants, who gravitated to places like Marrickville that were accessible to factories, and where other members of their own nationalities were living. Greeks, Italians and Portuguese were followed by Lebanese and Vietnamese. Many of those immigrants of two or three generations ago have moved on, but the restaurants, shops and travel agents along Marrickville Road still reflect those diverse nationalities. The initial research documented the ethnic or religious markers on food outlets along about three kilometres of the shopping strip along Marrickville Road. This work and other observation lead to several papers on the relations between culture, law, religion, identity and community relations as revealed through gastronomy (the social, cultural and legal regulation of eating) and informal legal interactions on the street (Mohr and Hosen 2013, 2017, 2018).

The present work is based on continuing observation of the area over the six years since the first survey was done. It responds to the loss of diversity being experienced due to the current gentrification of that area. The cost of housing is increasing so that incoming migrants and low wage earners, once the main occupants, are being excluded. This displacement, and the urban renewal strategies to be discussed in section 3, are related to the economic shift away from manufacturing, to more white collar and "creative" industries.[2] The study area is about one third of the way along Sydney's traditional manufacturing corridor, where factories were built, throughout the twentieth century, from the inner south of the city progressively further towards the south-west. The immigrants who had been brought in to work in these factories made their homes in residential areas along the same corridor. As white collar and creative workers seek to live closer to the central business district (CBD) and nearby "creative hubs", they move in to the closer of these areas, which are also traditionally well served by public transport links to the city.

Gentrification is a world-wide phenomenon "where wealthier people displace poorer people, and diversity is replaced by social and cultural homogeneity" (Lees *et al.* 2016, p. 9). Commentary on these processes also refer to "unaffordable housing", to which policy responses range from tinkering with tax regimes to legislation or funding to support social housing. The underlying dynamic behind these problems worldwide is

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[1] Sydney's extensive tram network was torn up in the 1950s and '60s. The first new light rail line to have been built since runs within half a kilometre of Marrickville Road. While the local hospital on Marrickville Road closed in about 1990, one of Sydney's largest hospitals, as well as three universities, lie between Marrickville and the CBD.

[2] Marrickville is now home to the second greatest number of university teachers of all Sydney suburbs (Wade 2018).

the increasing "financialisation" of land transactions, with banks extending greater credit for housing as the main driver for increasing prices (Ryan-Collins *et al.* 2017). While rising housing costs are an international phenomenon, localised cases of gentrification occur when this macro-economic activity is focussed in particular neighbourhoods, due to various combinations of economic opportunity (Silicone Valley), land speculation (London) and proximity to otherwise scarce public transport and services (inner Sydney). Frequently this is facilitated by government or its agencies in accumulating or privatising land (Zorrozaurre district of Bilbao), or providing new and improved transport services (Hong Kong developments by the state-owned metro company MTR).

In the broadest terms, this financialisation process can be seen as a shift in focus from the use value to the economic value of housing. Housing is no longer priced, and prized, as a place to live, but as an investment. Land is accumulated for speculative purposes. Henri Lefebvre (2009, pp. 15, 22) first identified this shift some 50 years ago, seeing the "urbanism of the developers (promoteurs)" as a force for consumerism and turning the city itself into a site of exchange value. Against this pressure, he proposed a "right to the city" to promote creative activity as a force to destroy the ideology of consumerism so that everyday life could itself could become a productive "œuvre, appropriation [by the working class], use value (and not exchange value)" (Lefebvre 2009, p. 134).

Lefebvre's "right to the city" responded to the then-nascent commodification of the city with a utopian impulse to revolutionise urban life. Yet Lefebvre anticipated that these rights, like others throughout history, having arisen in customary or revolutionary actions, had the potential to progress with struggle over time into more formal rights, codified and "engraved on the façades of buildings" (Lefebvre 2009, pp. 106-7). The right to the city has gained renewed attention in the twenty-first century (Mitchell 2003, Harvey 2008). More piecemeal approaches have emerged in response to specific threats of urban renewal and gentrification, proposing a right to stay put (Hartman 1984, cited in Newman and Wyly 2006), and a right to place (Samara 2014). Arguing for a right to stay put, Newman and Wyly (2006) have noted the importance of social capital for residents in an area. Hubbard and Lees (2018) have shown that a right to stay put, or at least to return to a redeveloped community, has been formally proposed as a political program by the Mayor of London, and has begun to be recognised in formal legal decisions.

"Autochthonous capital" has also been identified as a claim, particularly of long term or intergenerational residents (Tissot 2010, Aunis *et al.* 2016). As will be seen below, certain newcomers may also come to claim the capital of attachment. Mechanisms may include newcomers utilising their existing cultural capital to insert themselves into traditional or autochthonous networks (Malié 2016), or performing continuing acts of community-building amongst themselves (Blokland 2017). Attachments to place may be contested, as in the case of gentrification, between communities with roots in a place and others based on routes to or through a place (to use Blokland's terminology). While autochthonous or social capital may support claims to place, they can also be lost if residents do not have the economic or political means to resist relocation.

This paper considers claims to various rights and forms of capital as a possible foundation of resistance to gentrification and the commodification of housing, and for

their potential to promote egalitarian participation in urban life more generally. It asks whether there is any sense in which residents of a neighbourhood can assert a right to place. Would such a claim be based on culture, proximity or history? Is there any legal basis to such a claim? In conclusion, the interaction between rights and forms of capital is seen to be mediated by exchange and contestation. These concepts will be used to examine some of the social, political and economic means for promoting claims to cultural rights and the primacy of housing's use value.

2. Place, culture and law

The notion of "place" is used here to refer to geographical locations with social bonds and associations. Places are defined subjectively, according to people's familiarity and attachments. There is also a sense in which they are collective associations. Places are inhabited (in a broad sense) by communities rather than individuals. We cannot draw clear boundaries around places (though they may have centres and focal points). Attachments to place are integral to group membership, and being part of a group means you have an attachment to places identified with that group: meeting places, homes, public spaces, landmarks.

Places are fundamental to culture. Stories, histories, celebrations, commemorations, and material culture (architecture, graffiti) all contribute to making places. Conversely, places reinforce cultures and legal regimes. Law inheres in places. Australian indigenous culture has a particularly well established formal relationship between law and place. Certain places are specific to particular moieties or clans. They have their own origin stories and those stories are embedded in the law. Places can also be also central to the law of European cultures. Court houses, legal precincts and parliaments are places invested with the power and significance of formal state law. The oak tree at Gernika is the ancient site and symbol of the foral law of the Basques, defining a powerful place of law within (and perhaps in tension with) the bounded jurisdictional space of official maps (Mohr 2006).

Formal law anchored in the nation-state claims exclusive jurisdiction over a geographical area. This is the foundation and the curse of colonialism. Before we explore rights to place any further, the issue of colonial occupation needs to be distinguished. The rights of indigenous peoples to self-determination, and their rights to continuing self-rule, are based in international law and specific declarations of rights. The illegal occupation of Australia, for example, based on the fiction or – less euphemistically, the lie – of *terra nullius*, leaves little doubt that the First Nations peoples of Australia have quite specific legal rights that have been, and continue to be violated. This violation reaches from the nation's constitution to the daily lives of Aboriginal and Torres Strait Islander people. Claims to self-determination in other parts of the world, on the part of cultural, linguistic or national groups, are similarly based on formal legal and historical rights which are not the subject of this paper.

Urban neighbourhoods, the key focus of this inquiry, have their own markers and prompts for the informal law of the local community: informal rules that apply to particular places, places specific to particular groups and activities, and so on. Our study of Marrickville Road discovered local versions of informal law (Mohr and Hosen 2017). The mix of cultures in the multicultural main street that we studied gave rise to patterns

of local practices that were distinct from those prescribed by the formal law. The various cultures that have come to inhabit this area have brought their own informal laws. These remembered and enacted legal relations interact with a diverse range of others to form an informal and fluid local legal regime, inscribed in space. This was seen in the informal rules of smoking at specific parts of outdoor cafés, and expected behaviour of cars and pedestrians at street crossings. The old Greek men's use of the tables at outdoor cafes is quite distinct from that of the hipsters or young families. Expectations of the interaction between pedestrians and drivers on the road may differ from other areas, where the formal laws and majority culture are more hegemonic. Daily interactions between the users of a place – those who live, work, shop or eat in an area – form regularities that lie in between formal rules and local customs.

> In this process laws, both formal and informal, carve out their own space, make room for actions, regularity and regulation, in a process that is less polite and less conscious than accommodation, yet more civil than competition or conflict. (Mohr and Hosen 2017, pp. 83-4)

Informal laws are inscribed in places, enacted by bodies, and reiterated in social relations. The spaces that we live in, work in, and use every day are not just the empty vessels of instrumental individual activities: movement, nourishment, sleep. They are the theatre of communities which are constantly made and remade, mixed and remixed. The street is a book of informal law.

Post-colonial and global cities are rich sites for studying the interactions of different groups' attachments to place. Doreen Massey (1991) elaborated a finely nuanced description of the spatial connections and attachments in the street where she lived in London. With immigrants from many parts of the world, there was a strong sense of a local community, which was also very diverse, and connected back to the source countries of the migrants. Boundaries around areas, divisions between *us* and *them*, have little purchase in any real place. Each place, she concluded, "is the focus of a distinct mixture of wider and more local social relations".

This has been the conclusion, too, of research in Australian cities. In a study of an ethnically diverse street in Melbourne, Ian Woodcock (2016) identified the tensions between progressive and conservative senses of place. He found this typified by Massey on one hand and, on the other, Raymond Williams' description of a bus journey through the rural working class Welsh landscape of his childhood. In Woodcock's observation and interviews we see some of the ways these tensions are negotiated. At the level of representation and performance, there are public demonstrations of xenophobia and intolerance, of inclusiveness and solidarity. Often these are orchestrated by "outsiders" for whom multicultural neighbourhoods provide a setting, backdrop, or photo opportunity for their demonstrations. For the "insiders", there are particular locales where one group or another gathers. *Out* and *in* are more finely graded in this context. One person interviewed gave the example of certain Lebanese cafés, where outsiders might feel uncomfortable or unwelcome. Yet this interviewee commented that local politicians – members of parliament or city councillors – may "pop in" if they know someone there. Woodcock comments that these "third places", public or semi-public venues, "such as ethnic cafés in urban streets, can allow the adventurous and the politically minded to convert social distance into social capital" (Woodcock 2016, p. 119).

We can summarise here the key points of contact between formal and informal law and places that for the basis for the following discussion. An urban neighbourhood carries its own law in the fabric of its streets, shops and cafes. It is not just an administrative district. The legal places of local and informal law are distinct from the spatial jurisdiction of formal state law. State law has clearly marked and known boundaries within which its rule applies. All persons within that jurisdiction are held to be equally subject to its law. Even though there may be some rights specific to citizens which may not apply to aliens, the theoretical legal subject of liberal law is an individual, on a par with other individuals. This is quite different from the subjective, social and informal laws applying to places. To clarify this point from a geographical perspective: the uniform *space* of formal law covers all the area within jurisdictional boundaries. The places of informal law carry their law with them, as a law which is continually practised and soluble (Belley 1996).

The following two sections deal in turn with Capital, including the interactions between symbolic or social and economic capital, and Rights, from property rights to rights to place. A concluding section discusses the contested relations between these categories as they apply to gentrifying urban communities.

3. Capital

We have just seen that Woodcock identified the political relevance of the social capital accumulated by generations of inhabitants, and the facility with which locals can negotiate the social interactions of a multicultural neighbourhood. This form of social capital attached to place has been termed "autochthonous capital". In the following discussion of forms of capital, it is important not to lose sight of the origin of the term in economics. In coining the terms "cultural" and "social" capital, Pierre Bourdieu (1986) had clearly in mind that "all capital is accumulated labor" which can be converted into economic capital. Ultimately, capital is a source of power (Calhoun 1993, p. 69). We now consider the economic capital of housing before returning to the *soft* forms of social and autochthonous capital, and the ways these forms of capital are negotiated or converted.

The neighbourhood in which we live may be moulded by economic, social and political factors. It is not a free choice. Nor is it one that we change, like a shirt, from day to day. It is a choice absolutely constrained by political economy. The operations of markets and the flows of surplus capital shape cities and our opportunities within them. In recent economic developments we see "capital switching" into new areas of opportunity, specifically from manufacturing to urban development and housing. These changes to the urban fabric and housing have dramatic impacts on communities, families and individuals. Loretta Lees and her co-authors (2016, p. 57) trace the flow of capital after the global financial crisis into real estate, leading to "the 'hyper-commodification' of urban land and other basic social necessities like housing, transport access, public space and other public goods".[3]

This is most apparent in the global cities of the Pacific Rim, in Asia, Australia and the Americas. From Chile in the 1970s to Hong Kong and Sydney today, rapid capital

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[3] Gentrification is a contemporary issue that reaches far beyond the Pacific Rim. See, for example, Cavia *et al.* 2008.

switching out of manufacturing and finance into urban real estate has disrupted communities and produced the most unaffordable housing in the world.[4] It is an exaggeration to say that Sydney is a forest of cranes, though in some parts of the city this is literally true. In late 2016 there were 258 cranes on residential building sites in Sydney (RLB 2016a), compared with approximately 190 in the whole of the United States (RLB 2016b). Joint initiatives between the state government, developers, builders and transport corporations (Kembrey 2015) are turning former factory sites, public space and areas of public and affordable housing (Saulwick 2016) into transport corridors and high density apartment complexes (Department of Planning and Environment 2017).

House prices in the area we have been studying since 2012 have risen by about 60% in a five year period that was otherwise characterised by slow growth in wages and other forms of inflation. This has seen the demise of cheap restaurants (Pakistani, Chinese, Pacific Islander), an Asian food convenience store and a mini-market with Halal butchery, replaced by accountancy firms and hipster cafés. Even in this microcosm, the social impact of gentrification and real estate speculation is tangible. In other parts of Sydney whole public housing estates have been sold to private landlords or are slated for demolition and redevelopment. Opposition to the sale of the Sirius public housing block in Millers Point, between the CBD and the harbour, has become a *cause célèbre* among architects, artists and public housing advocates. A large public housing estate in Waterloo, four kilometers south of Sydney's CBD, is to be "redeveloped" in conjunction with the construction of a metro line which will be operated by Hong Kong's entrepreneurial MTR. Since Waterloo adjoins Redfern, the rapidly gentrifying focal point of Sydney's Aboriginal population (Latimore 2018), many of the residents are Indigenous Australians. Elderly residents interviewed for a newspaper article about the estate were Scottish, Russian Jewish and Croatian immigrants, from the boom period of Australia's migration program. They referred to other, Chinese, Vietnamese, Lebanese, and Indonesian residents who also make up this diverse neighbourhood. These residents are concerned about losing the homes and community they have shared for up to 40 years (Visentin 2017).

The mass displacement by demolition that is occurring in Millers Point and Waterloo is a particularly brutal form of gentrification, engineered by government. Gentrification often leads to more gradual displacement, whether government action or house-by-house in the private market. The changes in our study area of Sydney are a text-book case of the more traditional form of gentrification, where a formerly working class and/or immigrant neighbourhood becomes attractive to higher income families or individuals. The original residents are displaced due to the rising price of housing, if they rent, or are negatively impacted by rising rates (local land taxes). Beyond economic pressures, however, there are other displacement pressures arising from loss of neighbours, loss of appropriate shops, where they speak languages or sell products specific to a particular community (e.g. the Halal mini-market of our study area), and a general loss of a sense of place or belonging (Marcuse 1985, p. 107). Lees *et al.* (2016, p. 49) call this "phenomenological di*splace*ment" (italics in original), and note that in

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[4] Hong Kong and Sydney are the least affordable housing markets out of 400 surveyed in Australia, Canada, China (Hong Kong), Ireland, Japan, New Zealand, Singapore, the UK and USA (Demographia 2017). On Chile, see Lees *et al.* 2016, p. 59.

addition to all the other social and cultural pressures, even the "rhetoric of social mix or urban renaissance (…) increases the alienation [of working-class and poor residents] from the very place they have been attached to". Influxes of capital to housing in particular locations, particularly those accessible to the central areas of global cities, mean existing residents may be uprooted and have their attachments broken, either rapidly through eviction, or slowly, as their neighbourhood becomes less familiar, less comfortable and less affordable.

The discussion above highlights the relationships between capital and government in determining where people can live, with what neighbours, with access to which jobs and services. Government takes many forms in these scenarios: planning regulator, infrastructure planner or provider, and land-owner. Capital, too, comes in various guises: as noted in introducing this section, there are economic and social forms of capital. Economic capital feeds into house and land prices from various sources.

The role of international capital in the context of the Pacific Rim was noted above. Yet it is not confined to that region: the footloose economic capital of international investors can attach itself to any site where land values are appreciating or where new – and always more expensive – housing is to be built. International and local investment stimulate each other, by driving up prices and making real estate investment attractive. Local investment in Australia is driven by increasing economic inequality and a taxation regime that favours investment in real estate through capital gains, superannuation and other tax concessions. Local small investors as well as major players take advantage of low interest rates and hedge against stagnating wages (when they have that capacity) to move capital from cash or securities into mortgaged real estate. In the years up to 2017 the proportion of sales and loans to investors increased rapidly in comparison to owner-occupiers of housing in Australia. Fundamental to this shift is the availability of bank finance.

The role of banks is central to explaining how house and land prices have risen rapidly, even as wage growth has remained subdued. This has been particularly marked in Australia and the United Kingdom, where house price to disposable income ratios increased over 30 years by about 40% in Australia and a little less in the UK (Ryan-Collins *et al.* 2017, p.114). This disconnect from the available money supply and the real economy is attributed to the increased financialisation of land and housing. That is to say, banks and other financial institutions have multiplied the instruments (bonds, mortgages, derivatives) as well as increasing the proportion of their business in housing finance. This moved more capital into housing, increasing house prices. Over the 30 year period in which housing affordability deteriorated so sharply in the UK, domestic mortgage lending expanded from 20% to 60% of GDP. This does not only apply to the UK or Australia: another study of seventeen advanced economies found that mortgage loans as a proportion of all bank lending doubled from 30% in 1900 to 60% just over a hundred years later. As Ryan-Collins and colleagues (2017, p. 111) have pointed out, "when a commercial bank makes a loan it does not 'recycle' money from elsewhere in the economy, rather it creates new money and purchasing power". This increases the money supply and inflates house and land prices even while it does nothing to stimulate the "real economy": hence, there is no flow-on to jobs and wages. These processes of

financialisation illustrate and amplify the commodification of housing that concerned Lefebvre fifty years ago ("l'idéologie de la consommation" – Lefebvre 2009, p. 134).

Social forms of capital are relevant to housing and a right to place, so we now consider the relation between social and economic capital in the city. In Marx's formulation economic capital is a claim on future labour (Marx 1973, p. 367). Maurizio Lazzarato has thus highlighted the link between debt and powerlessness: "Credit money expresses the 'power' of capital whereas commodity money expresses the 'powerlessness' of wage-earners" (Lazzarato 2015, p. 125). While mortgagees may be powerless in the sense that their future labour has already been committed, another form of powerlessness emerges when we consider forms of social capital.

For Pierre Bourdieu, social and cultural capital are accumulated in the self and in social networks as the fruits of labour. The self accumulates cultural capital through familial social standing (intergenerational labour) and through care of the self in such forms as education. Social capital is accumulated through the membership of groups, as a result of networking, "an unceasing effort of sociability, a continuous series of exchanges in which recognition is endlessly affirmed and reaffirmed" (Bourdieu 1986, p. 8). Autochthonous capital is a form of social capital that has been accumulated through social networks *in place*, possibly over a number of generations. This conception of capital extends the forms of capital associated with Bourdieu's work beyond economic and cultural capital. First identified empirically in studies of working class towns in Britain by Elias and Scotson, Noël Retière (cited in Tissot 2010) called this phenomenon in a Breton town "capital d'autochtonie", a form of social capital. This is the influence through local connections and knowledge gained by being "a local", *être d'ici*. It is the ability to parley one's origins in a place into political influence, particularly in the political and social structures (Tissot 2010).

More recent studies have identified greater complexity associated with internal migration, so that urban dwellers who have relocated to the country, or upper middle class people gentrifying working class areas, have become almost "more local than the locals", defending local heritage through local produce and farmers' markets (Malié 2016) as well as the built form and working class associations of inner urban areas (Tissot 2010). Blokland, too, has identified subtle differences in the forms of community between old and new inhabitants of a neighbourhood. Established residents have "roots" from associations over years or generations, while newcomers "have routes; their narratives of place and their performances of temporarily local identities construct a community too, but one of a very different type – at least in the eyes of a sociologist" (Blokland 2017, 1).

Autochthonous capital cannot be radically separated from economic capital or, specifically, from property rights. Sibylle Gollac (2013) has shown that autochthonous capital in a Breton village is inherited, with the family property, by the male heirs. Women have less access to the property or the symbolic capital that comes with it, and are consequently less able to wield the associated power, and so are more likely to leave for other areas. A similar point can be made about people renting, rather than owning their home or other real estate. Lacking the permanent right to a home in a specific location, they are vulnerable to displacement by eviction or rising rents. If in-coming economic capital and the commodification of housing and land displaces people and

communities, then they are deprived of the autochthonous capital or the "public familiarity" (Blokland 2017, 132) that they relied upon to negotiate life in familiar surroundings. The capital accumulated as a result of years or generations of social labour has effectively been appropriated or, if it is not acquired by a new owner, simply destroyed. So if financial capital in the form of debt is a claim on future labour, displacement is the appropriation or destruction of the social capital accumulated through past labour.

4. Rights

Rights enter this dynamic relationship of people and places in the most formal and determinate way through property rights. The key right to place recognised in formal civil or common law is the right to possession, based in property law.[5] This right is exclusive (by strict definition) rather than inclusive; it is regressive rather than progressive (in the sense that it concentrates privilege); and it is individualistic rather than communal. The fate of the renter without tenure of possession is in the hands of the owner of the title to the property.[6] These rights are at the foundation of liberal legal regimes, the formal law of most western countries, by which control and access to land and other things is attached inalienably and exclusively to legal persons. This is the outcome, attributed by Weber to bureaucratisation and the market economy, resulting in "ever-increasing integration of all individuals and all fact-situations into one compulsory institution which today, at least, rests in principle on formal 'legal equality'" (Weber 1978, p. 698) In the gentrifying neighbourhood, it freezes over the soluble law (Belley 1996) of groups and places with the hard law of individuals and things.

While property is the founding right of formal, liberal law, we may still try to excavate and identify other rights that might attach to the internormative legal regimes of association with place and cultures. At another end of the spectrum of formal law, international law theoretically protects peoples from illegal invasion. Yet as we have seen in the case of Australia, this law is applied by the victors in colonial operations: failing any other defence, land is declared *terra nullius*. While this doctrine was formally overturned in Australian law some 200 years after occupation, its effects had already been felt and continue to justify dispossession and domination. In the absence of any treaty or ceding of the land by its original inhabitants, owners and custodians, the very foundation of property in Australian land can be seen as illegitimate. This was expressed forcefully at a recent forum in Sydney: "No matter how much you paid for your house in the inner west [of Sydney], you'll never (…) own it".[7] The United Nations Declaration on the Rights of Indigenous Peoples is another international instrument which proves

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[5] There are some common law use rights, but these are increasingly a dead letter. Dardot and Laval identify an international tendency of the Common Law, through neoliberal interpretations, to recognise nothing more than rights to property, contract and profit. (Dardot and Laval 2014, p. 287).

[6] This can be mitigated by tenancy protection laws, which in Australia are extremely weak; see Choice *et al.* 2017.

[7] Frank Panucci, speech given at First Nations Peoples: Growing up in Sydney's Inner West (Inner West Council, FILEF and Australian Heritage Festival, Leichhardt Library, Sydney), 19 April 2018 (oral presentation).

incapable of defending Indigenous Australians' rights from the victors' law of triumphalist and oppressive governments.[8]

These deep-seated historical violations of rights shake confidence in the mechanisms for protecting them. But are there any justifications for rights claims at all? This well-worn question can be approached in a more fine-grained way if we turn to discussion of rights at a neighbourhood level. Here we ask the more specific question of whether there are rights to remain in a place. Then we will move on to consider the possible interactions between claims to rights and to capital, and how those may play out in practice.

As noted in the introduction, various writers and activist organisations have proposed a right to stay put, a right to place and a right to the city. The "right to stay put" was first proposed in the 1980s by Hartman, and has been a point of reference in more recent studies of resistance to gentrification.

> Those who are forced to leave gentrifying neighbourhoods are torn from rich local social networks of information and co-operation (the 'social capital' much beloved by policy-makers); they are thrown into an ever more competitive housing market shaped by increasingly difficult trade-offs between affordability, overcrowding and commuting accessibility to jobs and services. (Newman and Wyly 2006, p. 51)

After a spate of compulsory acquisitions of housing estates to prepare for the 2012 London Olympics, objections drew on arguments, variously, for a right to remain, a right to return (to the same estate after redevelopment), a right to housing, and a right to community. Hubbard and Lees (2018) point out that in the course of this struggle, there has been a gradual embedding and increasing recognition of such rights. Politically this was seen in the 2016 pre-election pledge of future mayor Sadiq Khan urging "full rights of return". Legally, a public inquiry successfully raised issues related to the right to community, which were recognised to some extent in the Secretary for State's reasons for opposing the compulsory purchase orders.[9] These reasons referred to Art. 8 of the ECHR (respect for private and family life), and to the requirements for social equality. This was based on "the suggestion (…) that black and ethnic minority residents would be 'disproportionately affected' by the CPO, and that it would have a negative impact on their ability to retain their cultural ties" and would adversely affect the children's education (Hubbard and Lees 2018, p. 16).

In defence of the right to remain or the right to community, we see an important nexus with "social capital". This could be seen as a right to capital, by analogy with a property right. In this formulation, one can imagine a class suit for compensation for loss of social capital, if it could be quantified and converted to exchange value. Yet convertibility between forms of capital has a highly specific logic under capitalism. Economic capital continues to operate, in more and more abstract ways, to convert labour into capital on

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[8] The UN Declaration on the Rights of Indigenous Peoples (2007) includes certain rights linked to land and culture, which constitute the basis of rights to place. Art. 8. 2 (b), Arts. 27-28, Art. 32. Australia is consistently in breach of obligations, including massive incarceration rates of Indigenous people (27% vs 2% of the population), failure to recompense families torn apart in the *Stolen Generations* policies (Cody and Nawaz 2017), and recent rejection of an Indigenous Referendum Council's recommendation (Uluru Statement) for a voice to parliament (Brennan 2017).

[9] Letter to Karen Jones, Southwark Council, from Dave Jones, Senior Planner, on behalf of the Secretary of State for Communities and Local Government, 16 September 2016, Ref: NPCU/ CPO/ A5840/ 74092, cited in Hubbard and Lees 2018.

financial terms. We saw this in the financialisation of housing and in the extension of credit driving up house prices at the expense of increasing commitments of future labour owed by mortgagees to banks. However, the imaginative thought experiment, just proposed, about a class action for loss of social capital quickly becomes laughably impossible. Of course a developer can appropriate the social capital of a vibrant and convivial neighbourhood! This is the business model of much of the financialisation of urban development, referred to by critics at the World Social Forum (Salvador da Bahía, 2018) as "urban extractivism" (see Global Platform for the Right to the City 2018).[10] Surely there is no way the disadvantaged who have been forced out could even get such a class action into a court, let alone win. So even though a right to stay put can be comprehended, by analogy with formal liberal law, as a right to capital, it is a strictly non-justiciable form of capital. This serves to illustrate how formal law is basic to the asymmetrical convertibility of forms of capital.[11]

Beyond the liberal assumptions of formal law founded on property and calibrated in finance, the other barrier to a recognition of rights to place comes from their collective nature.[12] A right to place would protect poor communities from pressures to move out of areas slated for demolition and widespread gentrification. Samara particularly targets "the ideology of concentrated poverty" as a justification for these assaults on disadvantaged groups.

> In this context, individualism, choice and mobility become mechanisms of dispossession that hinge to a great extent on dismantling stubborn concentrations of poverty — or what some might call poor and resilient communities. (Samara 2014)

Samara's work is a response to a 2010 report by the Right to the City Alliance designed and carried out by residents of public housing. That alliance of tenancy organisations across the United States was formed in 2007 and continues to do ground breaking work analysing public housing and the housing market from the renters' viewpoint. Samara's emphasis on ideology critique, as well as the name and methods of the alliance to which he refers, both bring to mind Lefebvre's pioneering work.

The right to the city, originally expounded by Lefebvre ("le droit à la ville"), has been elaborated in the United States by Don Mitchell. For Mitchell, the right to the city is to be defended against both the left's cynicism about "rights talk", and the repressive promotion of "orderly" and "civilised" conduct on a thoroughly bourgeois model. The latter is seen as an ideological ploy to exclude the homeless and dissenters from public space (Mitchell 2003, pp. 14-17). Rights, according to Mitchell, for all their limitations, provide a framework for defence of dissent and of powerless minorities: "they provide a set of instructions about the use of power (…) by becoming institutionalized – that is, by becoming practices backed up by force (as Marx recognised)" (Mitchell 2003, p. 27).

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[10] The term "urban extractivism" was attributed to Argentinian environmental lawyer Enrique Viale in 2015 (Frayssinet 2015).

[11] This asymmetrical convertibility of capital may address the paradox that Calhoun identified in Bourdieu's expansion of forms of capital beyond Marx's formulation: "Bourdieu adds to the account one can derive from Marx – for example, by arguing that a much wider range of labor is productive of capital than Marx suggested (…) [but] loses the capacity to clarify the nature of a social system which produces universal equivalents." (Calhoun 1993, p. 68).

[12] This problem is considered further in the concluding section.

Claims to a right to the city have criticised the ideologies and practices which curtail protests and enforce urban renewal, from Lefebvre's critique of Le Corbusier's "city-as-organism" (Lefebvre 2009, pp. 40, 50) to Mitchell's support for the rights of the homeless and Samara's critique of dispersion policies. The right to the city is now understood to entail struggles at the levels of both political economy (through control of the surplus production leading to urbanization) and personal self-realization:

> it is a right to change ourselves by changing the city. It is, moreover, a common rather than an individual right since this transformation inevitably depends upon the exercise of a collective power to reshape the processes of urbanization. (Harvey 2008, p. 23)

Dissident movements, such as the US Right to the City Alliance and Latin American Charters and Social Forums, embody Lefebvre's project of overcoming the ideology of the city by analysing its gaps and discontinuities, to infiltrate and appropriate them, in order to transform everyday life. The right to the city, then, is one of those rights which is still contested, and not yet inscribed in formal law (Lefebvre 2009, pp. 106-7). Harvey (2008, p. 40) sees the right to the city as "both working slogan and political ideal".

The United Nations Habitat program's adoption in 2004 of a World Charter on the Right to the City emphasised principles of sustainability, democracy, equity and social justice. This has given impetus to a range of initiatives, particularly in Latin America, which seek to elaborate on those collective rights.[13] Valerio Nitrato Izzo has linked the principles and intent of these Charter initiatives to a discourse in continental law seeking to broaden the constitutional rights of the person, linking them to human dignity and a "constitutionalism of needs", as elaborated by Stefano Rodotà (Nitrato Izzo 2017, p. 78) So while the initial announcement of a "right to the city" was underspecified and indeterminate, it has provided fertile ground to propose and promote the nexus of social, political and legal rights in the geographical context of the city (Nitrato Izzo 2017, p. 84).

From this very brief survey of a much deeper body of work, it seems that there can be collective rights based in place which emerge from practice. They are not enforced in formal law, but must often be asserted in the face of formal legal opposition, imposed by police and legal institutions. They derive from occupation and use of places, including social relations in space and the coding of informal law into places. In contrast to the representational spaces of the planners, lawyers and administrators, there is the lived and practised space of inhabitants, walkers and other users of places (Certeau 1984, Lefebvre 1991).

Rights to place are group rights since they grow out of and can only emerge from collective practice. These groups need not be homogeneous. As we have seen above in studies of Sydney, Melbourne and London, different groups inhabit places in their own ways, but over time they negotiate ways of being and acting in that space. This sees the emergence of new cultural and informal legal formations. Social relations within and between groups are developed and form the basis for new rights-bearing groups. Groups bear rights to place in the same sense that a militia bears arms. These rights are not written into any statute or convention, but only exist as enactment, as potential, as a

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[13] For example, the Mexico City Charter on the Right to the City (2010), the UN Habitat III conference in Quito (October 2016), and the World Social Forum in Salvador da Bahía (2018).

program of action. Yet, as we saw in the ruling on a right to community in London, they have the potential to infiltrate the formal law.

Rights to place grow out of traditional law and cultural continuity, and also from the everyday actions and interactions of persons and groups in particular spaces. These are constituted as places through use and various patterns of activity, as well as forms of marking and conventions, which come to establish informal laws. These fledgling legal regimes are the product and foundation of a right to place. They are supported and nourished by all sorts of cultural expressions, from customs and cuisine to street art and graffiti.

5. Capital vs. rights

To understand the possibilities of asserting or enacting rights to place, we need to consider their relationship to capital. To this point we have identified various forms of capital, and types of rights. In the contests over place, which are enacted in cities from Buenos Aires to Sydney, though with recent hopeful exceptions in London, individual property rights[14] tend to triumph over collective rights to place. Economic capital asserts its legally protected status in conflicts with social or autochthonous capital. In conclusion we look more closely at the complex interplay between these various interactions to try to identify the forms of struggle and the structural conditions within which they are contested.

At the outset, it is important to note that autochthonous capital is not postulated as a right, nor does it guarantee access to power. As a form of social capital it must be negotiated and practised, not simply cashed in. We also note that "being local" is a geographical category, not an ontological one. It may refer to a relatively brief historical period: one can be "from here" (*être d'ici*) by virtue of long or inter-generational habitation. But this tenure does not reach back into a deep era that justifies nationhood or jurisdiction. So one can become a local, i.e. be autochthonous in this limited sense, without needing to have been born into a particular race, religion or citizenship, or speaking a particular language. Here autochthony is distinct from indigeneity: indigenous peoples within a particular place clearly have autochthonous capital in addition to deeper claims.

The right to the city is consciously progressive and radical, but there is something deeply conservative about the capital associated with autochthony. Despite the capacity of newcomers (notably those already rich in cultural capital) to adopt its mantle, the notion that locals have greater access to power or influence than more recent arrivals has particularly disturbing overtones in a time of reactionary political movements directed against immigrants and refugees.

Economic capital is an asset which stands for a claim to future labour (and hence, power), whereas social and symbolic capital must be practised, and their potential *negotiated into* power. Economic capital as a recognised and, under liberal law, protected resource, trumps those other forms of capital. Let me illustrate by reference to housing and gentrification. When the poor sell to the rich, and so move out of a gentrifying neighbourhood, they lose the social capital accumulated through local contacts, and the

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[14] Property rights are individual in their attachment to legal persons, which may be natural or corporate.

(related) autochthonous capital derived from inhabiting that place. *A fortiori*, renters lose this capital when they are forced out of a gentrifying area by eviction, rising rents or other ways of making them feel unwelcome. This "unwelcoming" mechanism operates in part by devaluing their social capital through loss of local contacts and businesses, and then seizing it altogether through displacement. Social capital can only be converted into political capital through struggle, not pay-outs. The logic of gentrification trades on the poor selling or ceding to the rich: social capital is destroyed in the process of this exchange.

Economic capital enters this relationship in other ways. As noted earlier, housing loans have become the dominant destination for bank credit, fueling rapid price rises (Ryan-Collins *et al.* 2017). This is seen in the increasing proportion of investment in housing, including finance capital funds (Right to the City 2014a and 2014b), and housing as a speculative investment where premises remain vacant (Cashmore 2015). When exchange value trumps use value, all claims to housing as a social right are lost. When upwardly mobile people or those on higher incomes buy into a gentrifying area, it can be seen that collective claims to a social right to housing is traded for individual debt.

Lazzarato (2015) has identified the Faustian bargain which exchanges rights for debt. This can be seen most starkly in the exchange of student debt for a rights claim to education. The social right to education has been destroyed in its conversion to "access to credit, in other words, the right to contract debt" (Lazzarato 2015, p. 66). Just as social capital cannot be exchanged for economic capital without destroying the basis on which it was accumulated, social rights cannot be traded for capital without their destruction. Any semblance of a right to housing has been overwhelmed by massive access to credit. Indeed, housing itself as use value – a place to live – has been rendered inaccessible by the credit that has fueled its conversion to exchange value. This is the result and the driver of the financialisation of housing, noted in the introduction. Housing unaffordability is a result of banks tipping more money, and a greater proportion of their loans, into land and housing, with direct impacts on house prices (Ryan-Collins *et al.* 2017).

Far from rights mitigating the depredations of capital, we see now that capital has trumped rights. Even though we still have certain formal rights, and nostalgia for various social rights, the erosion of those rights in practice shows their inadequate foundation in democratic sovereignty or the rule of law. Lazzarato turns this conventional political compact – the democratic nexus between the regulation of capital and citizenship – on its head. "[S]ocial debt is the consequence of the class struggle for control of the social state and of its functions of appropriation and distribution" (Lazzarato 2015, p. 118). Banking institutions and investors are the winners.

If rights are lost through class struggle then, conversely, they can only be protected and promoted by the same means. A right to place, like all other rights, as Lefebvre (2009, pp. 106-7) points out, can only exist if it is first claimed in practice, and can only continue through struggle. The right to the city is not an existing right, inscribed in law, on the liberal model. Its defence has been rendered more urgent by increasingly unaffordable housing and homelessness (as we see most clearly in Pan-American struggles). A right to place must be more than just a right to stay put, based on the value of social capital. It

must be based on the full range of legal, political and cultural practices that are mustered by communities in place.

People have economic, social, cultural, familial and legal attachments to place. The legal attachments are not just those of liberal law, that guarantee property rights to legal persons. They derive, instead, from the mutual constitution of people, places and laws, remembering that law may be recorded in places as well as in texts. As is evident from Australian Indigenous law, a sense of belonging to (or in) a place exists as a foundation of societies and their law, whether or not that place is owned in the narrow proprietorial sense.

A collective right to the land was recognised as recently as 1992 in Australia, in response to the struggles of First Nations peoples who continue to fight, against ferocious opposition, to deepen and broaden those rights. Charter rights to the city, linked to important advances in the theory and recognition of a broader range of rights, make increasingly coherent claims in Latin America. Formal legal processes in London have begun to respond to strident political and legal struggles arising out of displacement and compulsory purchases for urban development, with nascent recognition of a right to community, linked to formal commitments to human rights and equality.

Rights to place, based on a broader understanding of Lefebvre's right to the city, are of critical importance. Like other historical rights, they can only be conceived and nurtured in struggle. Out of those struggles we are beginning to see signs of recognition in theoretical work, political declarations and legal decisions. Despite – even because of – the routine violation of those rights, and their increasing importance in response to the financialisation of housing and urban fabric, their defence and development continue around the world. This project is advanced through political struggles and emerging legal claims which reconfigure rights to place beyond individual rights to property, to advance collective rights attaching people to places and to each other.

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