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Encounters with law and critical urban studies:

Reflections on Amin's telescopic urbanism

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In recent years we have seen a plethora of adjectival urbanisms proliferate critical urban studies – assemblage, concentrated, accelerated, austerity, and so om. Ash Amin's 'telescopic urbanism' is a new entrant to this debate which attempts to examine and intervene in the current global urban condition.

Ash Amin argues that the city has been looked through the wrong end of the binoculars (hence 'telescopic urbanism') since too much focus is laid on the business potential and economic role of the city rather than on the human potential of those living in slums and squatter settlements. Amin makes a 'welfarist' argument that the city has to become 'once again as a provisioning and indivisible commons'. On this humanitarian basis he makes two substantive points – one that there has to be a re-inscription of a range of rights around the city to – infrastructure, housing and the basics of human survival; two – that development for the urban poor is not just empowerment, rather the freedom of choice or capability to broker for change. In both cases the shift in focus of the telescope from the business consultancy city to the informal city would entail a completely different approach – a political imperative based on human rights to radically transform the lives of the urban poor.

Ash Amin's thesis on Telescopic Urbanism presents us with many points of entry into the debates around 'right to the city'. I offer below a number of interventions in these debates to question how these rights have become synonymous with binaries of state-citizen, urban poor-middle classes, city-slum, centre-periphery, structure- agency, which continue to plague critical urban studies. One consequence of this is that despite a burgeoning scholarship on governmentality, critical urban studies has not taken into account the role of law in obstructing or facilitating the struggles for right to the city and urban commons. I argue that we need to think more carefully about the ways that encounters with law in the everyday lives of the urban poor destabilise these binaries and produce more fluid relations between the public-private spaces of rights that will have consequences for any welfarist or humanitarian objectives.

Rights as a neoliberal logics
Amin is right is highlighting the nature of gargantuan social engineering and political initiative required in giving rights to the urban poor within the indivisible commons of the city. These ideas however are not new – indeed since the 19th century, massive

projects of social engineering were aimed to provide housing to the poor in London, Manchester and other industrialized cities in the west. Later these were tested at a large scale in the global south during the 1970s, 80s and 90s but were heavily criticized for not achieving its stated intentions. Thus it is not rights per se that are denied to the urban poor, rather how these rights are framed by the state that marks the spaces of the urban poor as exceptional from others in the city and therefore prime sites of social engineering. Within these spaces of exception (Agamben, 2005), universality of law is abandoned in order to produce a special set of acts, regulations, and programmes specifically to monitor and govern the spaces of the urban poor *as if* that were the norm. Social engineering projects therefore are part of this exceptionality that reduces the urban poor to a 'population' (Chatterjee 2004) which needs to be first recognised as legal citizens of the state in order to receive any rights.

What then is the scope for a human rights imperative for the urban poor? The first scholarly approach to this proposes that in the absence of formal rights, active citizens can formulate their own solutions that mimic state interventions. Appadurai (2001) optimistically presents this as a form of 'deep democracy', citing the collaboration between Mumbai NGOs and slum women to deliver urban basic services. He notes that these provide a way for slum women to set precedents and create new 'legal' solutions on their own terms. While these proposals are seductive, I have argued elsewhere that claims of 'deep democracy' through community innovation and gendered empowerment paradigm, run the risk of mobilizing a 'traditionalist' discourse, where women's cultural responsibility over domestic sanitation is extended to the public realm of slum neighbourhoods (Datta 2012). Models of community managed infrastructure often mask deep injustices and violations of local rights to participation and empowerment on the basis of gender, caste, religion and other differences. They are also usually the only route to sanitation and are therefore more survivalist and less democratic at a grassroots level.

The second approach that is currently acquiring increased currency among government institutions, funding agencies, NGOs, and development scholars is the formal inclusion of the urban poor within infrastructure – housing, water, sanitation, electricity. This is based upon a conceptualisation of rights through a 'willingness to pay' route (Bakker, 2005; Dutta, Chander, & Srivastava, 2005), which argues that squatters are agreeable to pay for infrastructure and that small improvements in infrastructure technologies would make it more affordable to them (McFarlane 2008). While 'deep democracy' is not free of the dangers of reflecting private gendered divisions of labour in the public realm, the willingness to pay discourse subsumes the 'right to the city' within neoliberal governance. Throughout the global south, local municipalities have subcontracted out infrastructure facilities to the urban poor which means those living in informal or illegal settlements often pay more for water or sanitation than the rest of the city. The result is that much of these public facilities lie

unused while squatters return to informal infrastructure because they find communal facilities expensive, inadequate, unmaintained and often not conducive to the temporal demands of their everyday lives. For example, a recent report (NIUA, 2003) in Delhi found that although large amounts of money have been invested in toilet complexes in squatter settlements, nearly 60 percent of the urban poor continue to defecate in the open.

Encounters with law and right to the city

If right to the city have been appropriated through survivalist or neoliberal logics, what then is the future for urban justice and democracy? In a recent essay in CITY, Peter Marcuse (2010) calls to 'expose, propose and politicise' the right to the city. In light of the transformation of sovereign power in the global south through a rule of law, I argue that it is important to consider the right to the city not always as seized, occupied and staked *against* the state and the rule of law, rather realized precisely through a deeper engagement with the rule of law and legal urban geographies. This is in a context of what Comaroff and Comaroff (2006) have identified as an increased 'culture of legality' pervading the postcolonial state, where the dynamics between right to the city and rule of law have become an important space of politics both for the state and for the urban poor. By this, I mean the ways that the state and corporate interests are able to use existing laws or frame new laws to their advantage in denying the poor any right to the city; have made law itself an important arena of politics for the urban poor. Across the global south, informal settlements are making way for malls, gated housing and office complexes. The state's 'fetishism of law' (Comaroff & Comaroff, 2006, p. viii) in urban life, has seen lawfulness replace welfarism as an ethical position. In this context we can no longer see law as tangential to the issue of rights. It has become imperative to ask what law means in everyday life since it is the violence and force of law that has become the most potent tool of the business consultancy city against the informal/illegal city. This violence includes not just the violence of exclusionary property laws and their enforcement by the state and judiciary but also the violence enacted against the right to lead ordinary urban lives.

The urban poor know that conformity to law does not necessarily secure them with right to the city. Yet they continue to debate the use of law in their lives, attempting to work with law from its peripheries in order to chart more inclusive urban citizenships. Thus although the urban poor now find themselves increasingly subordinated to and subsumed within the regulatory frameworks of formal and legal mechanisms in the city, precisely because of this, the meanings and consequences of being 'legal' have become important in their lives. Most urban poor living on the borders of law/illegality realize that their struggles for legitimacy cannot now be fully realized through active resistance or political organisation, but that these have to be made possible through explicit engagements with formal and legal processes. Thus law for the urban poor is

now 'a resource for seeking certain rights, although a resource whose use is fraught with uncertainty and danger' (Das, 2004, p. 162).

Rethinking rights through encounters with law in everyday life means rethinking some of the binaries that run deep in critical urban studies between – state and citizen, rich and poor, governmentality and agency and political and civil society. I suggest that once we begin to understand rights as generated from the contexts where encounters with law takes shape, we will begin to see how the right to the city is intimately linked to the legal geographies of the city. Law itself then can become a political terrain, part of the political imperative of right to the city. Turning the lens of the telescope towards the right to everyday life allows us to complicate the discourses and practices of rights in critical urban studies and consider both the controlling and liberating potential of law for the urban poor in providing access to infrastructure and housing.

Differentiated rights in law
It should be clear by now that I am arguing for more complex and messy articulations of rights that is not universal, rather contextual and differentiated. This does not mean that all rights should be realised via law. Rather that we need to break away from the continuing tradition of seeing the urban poor as a homogeneous mass united in their common demands and realising these through resistance and social action. We will need to transform the current infantilising of the urban poor to instead see them as active agents within legal urban landscapes framing their rights and citizenships through active engagements with formal legal structures. We need to find a different theoretical and critical lens through which to understand the consequences of lack of rights on different social groups in different spaces and at different times. Universality cannot work in contexts of huge historical, social, political and ecological diversity. We need to consider more carefully the possibilities of differentiated rights and citizenships within and without the boundaries of law and legality.

Unlike what Marcuse (and most urban scholars) suggests, the urban poor understand their multiple exclusions from the city through their differentiated experiences across caste, gender, class and urban identities. Much of the claims that they make in terms of housing, infrastructure, and resettlement are based upon assertions of entitlements from the state, focusing on the specific marginalities of their legal and subjective identities within urban, political, and social contexts. Their politics of entitlements draw upon forms of historicized power that have produced uneven social hierarchies in wider society. The intersections between personal and legal subjecthoods enables the urban poor to chart differentiated notions of right to the city that are based upon socially, culturally and historically differentiated marginalisations from cities. From their perspective, there is no universal slum dweller – rather who they are as urban poor is made from the intersections between caste, religious, class, sexuality and gendered affiliations.

Thus in order to understand the trajectories of urban citizenship for the poor, we need to first accept that a welfarist and universal approach to rights might not empower the urban poor universally. For example, who amongst the urban poor would benefit more from rights to housing or infrastructure? Would it have gendered, religious, ethnic consequences? How would access to public infrastructure and sanitation differentially empower social groups within slums and squatter settlements?

Intimate spaces of the illegal city

One of the most important consequences of differentiating rights across identity affiliations means examining how rights are linked to gendered social power within the intimate spaces of the home. This is because the urban poor relate to the issue of 'rights' in very different ways across public and private spaces. Law itself articulates very different identities in the public and private realm. For example in India public identities of gender, caste and tribal affiliations are legislated, yet within the private realm, family law is prescribed through religious identities. It is from the interstices of the contradictions between public/private law and legal/subjective identities in everyday life that the right to the city is articulated (Datta 2012). The different anxieties over bodily transgressions related to access to water and defecation, produce particular gender performances across public and private spaces in order to claim these rights through 'appropriate' subjectivities. We only need to talk to those living in slums to be told repeatedly how the one-room squatter home hinders partner intimacies and leads to domestic violence and abuse. In other words, access to the 'technocratic' right to urban infrastructure and housing is intimately linked to more subtle and complex articulations of gendered relationships within the home and neighbourhood. I argue that critical urban studies should foreground such questions of intimacies within private spaces and link these to the experiences (and hopes) of being legitimate urban citizens. This would be a very different approach from asserting the empowerment of slum women through community infrastructure, but it will provide more 'real' ways of understanding the consequences of marginalization, illegality and urban exclusion.

This presents us with the challenge of rethinking the 'intimate' as part of a 'public' politics in the city. We know from feminist notions of citizenship (Lister 1997, Mouffe 1992) that the private realm is a crucial site of political agency and citizenship activity. I argue that it is in this private and intimate sphere that much of the engagements with the rule of law and the state are articulated. Focusing on internal divisions amongst the urban poor and the realm of the home encourages us to avoid a simplistic moral division between 'the state' on one side, and 'the urban poor' on the other, but allows us to investigate how both state and subaltern citizens are scripted within a violence of law in everyday life. Examining how the gender relationships within the home are tied to the wider more public politics around right to the city avoids the prevalent romantic

tendency of conceptualizing squatters as organic social groups united by their shared struggles and aspirations *against* the state.

Conclusions

My aim in this review piece has been to extend and complicate the conceptualisation of right to the city particularly as it relates to housing and infrastructure for the urban poor. I have argued that these rights cannot be realised only through top down political imperatives or gargantuan social engineering models – urban studies should be only too familiar with the pitfalls of similar models in the past decades. Neither can they simply be a matter of subaltern resistance and social organisation among the urban poor against the state.

I present instead a 'third way' that is becoming increasingly common in the global south particularly in the context of a rising culture of legality enforced by the state. I argue that for much of the urban poor, the politics around right to the city is often focussed on a politics of entitlement that is based on concrete and symbolic encounters with law in urban spaces. A progressive urban studies approach should examine how these entitlements are produced in discourse and practice and imbibe them in future interventions in cities. Urban poor's encounters with law may range from violent demolitions of slums to slum surveys by municipal officers, to petty harassment by the police, to reporting rapes and domestic violence. Consequently the cultural and political contexts in which law is encountered and negotiated produce highly localized and contradictory understandings of rights and entitlements among the poor. Negotiations with law do not necessarily mean that the urban poor conflate rule of law with justice or citizenship. Far from it, they recognize that the rule of law often works to their disadvantage and that the state often uses the law against them. However, these encounters change the ways that the urban poor rethink their approaches, aspirations and futures in the city with respect to state, law and urban citizenship. The challenge of critical urban studies is to engage with these changing aspirations among the urban poor and respond to this through robust theoretical, methodological and analytical models which will ultimately inform more inclusive urban development practices and interventions.

I would further argue that it is not enough to focus on housing and infrastructure as rights to the urban commons. Rather, that rights to water, sanitation, electricity and rest of the urban commons are intimately linked to subjective and differentiated rights which extend from the public to the private realm. The lack of access to infrastructure strikes at the very heart of the right to leading private and ordinary lives in the city. The lack of water contravenes the rights to personal hygiene, which is then used by the state to frame the urban poor as the 'dirt' of cities. The lack of sanitation exposes gendered bodies to the public gaze and produces a number of bodily violations and transgressions across public-private domains. The lack of a home violates the rights to

family intimacy and privacy. Put another way, exclusion from the city and its urban commons transforms the relations between a public right to the city and a more private and intimate right to gendered freedom and capacity in everyday life. Since the enforcement of a rule of law produces a variety of anxieties around the transience of home and family life, local politics among the urban poor becomes precisely about the reworking of power in those spaces from where formal rights to the city could be claimed. The future of progressive urban studies will be to reverse its continued silencing of the private and intimate city and bridge the divisive boundaries it has created between state-citizen, public-private, city-slum and centre-periphery.

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