

The 'Right to the City': Institutional Imperatives of a Developmental State

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Abstract

Under conditions of globalization large cities present unique challenges for poverty reduction and the realization of rights. The urbanization of poverty also underscores the imperative of downscaling the emerging debate about the developmental state to the city scale. The arguments in this article start from the proposition that a universal rights agenda can and should be fulfilled as an alternative to neoliberal aspirations, and that to achieve this development action will be needed on a series of different scales. The article is structured in three main parts. The first section explores the implications for the state of adopting a rights-based agenda in the urban context, giving particular emphasis to defining those rights whose meaning arises from settlement planning or management-based policies and interventions on the individual, household, neighbourhood and more macro-environmental scale (what we call 2nd, 3rd and 4th generation rights or the 'right to the city'). The second part of the article is dedicated to illustrating the particular nature of how rights to the city are blocked or achieved, using the experiences of the Greater Cape Town area. The final section of the article makes a more general case for a more radical rights-based agenda for cities.

Introduction

Under conditions of globalization large cities present unique challenges for poverty reduction and the realization of rights. The inexorable urbanization of society places the city at the core of the developmental agenda of the twenty-first century (Tannerfeldt and Ljung, 2006; UN-Habitat, 2006). The urbanization of poverty also underscores the imperative of downscaling the emerging debate about the developmental state to the city scale (Parnell, 2004). The arguments we make in this article start from the proposition that a universal rights agenda can and should be fulfilled as much at the city–region scale as it is at a national scale, or for migrants who move between places. Thus, a commitment to the roll-out of universal rights implies not only that all people should be afforded minimum rights, but that these rights should be protected by governments regardless of the scale or type of settlement that people occupy. Indeed, it is from recognition of locationally specific impediments to the realization of rights, and the multi-scalar nature of the state's actions that are necessary for the full realization of human rights, that the identification of an agenda for sustainable urban poverty reduction action emerges. This has long been accepted in the rural development literature, where substantive issues of land rights and access to small-scale farming, as well as the challenges of rural service provision, have been articulated as part of the rights-based agenda (Shepherd, 1998; Ellis, 2000). The specificity of the rights-based urban development agenda, however, lags behind that of the rural and there has been inadequate differentiation of governance imperatives facing middle- and low-income cities. Only more recently have enduring debates on urban poverty, including issues of land use management, housing, work,

network infrastructures, environmental protection and services been cast in an overtly rights-based frame (Friedmann, 2002). We probe the issue of the universal right to the city as the moral platform from which the developmental role of the state should be defined, and from which alternatives to neoliberal urban managerial positions should be articulated. Our focus is on large, fairly well-resourced places that nevertheless have very large concentrations of chronically poor people who are institutionally excluded from the government support structures that are necessary for their wellbeing. Cape Town is used as the empirical reference point.

Using the realization of rights as the litmus of urban poverty reduction changes the understanding of the nature and scale of government interventions that are required to achieve poverty reduction targets. The Millennium Development Goals (MDGs), with their diversified emphasis on varied aspects of poverty, including living in slums and without services, are a clumsy and very crude recognition of the link between poverty reduction and the different settlement-based expressions of the denial of human rights. If, however, the rights implied by the MDGs (especially goal 7 target 11 of slum eradication) are to be achieved in cities across the global South, it will only be possible if full consideration is given to the three overlapping concerns of this article: the role of the subnational state in urban poverty reduction; the imperative of government targeting the household and neighbourhood in addition to the individual in its roll-out of urban services; and the imperative of understanding the role of location and scale in the roll-out of settlement-based rights.

The article is structured in three main parts. In the first section we explore the implications for the state of adopting a rights-based agenda in the urban context. We give particular emphasis to defining those rights whose meaning arises from settlement planning or management-based policies and interventions, what we call 2nd and 3rd generation rights or the 'right to the city'. This emphasis on non-individual and public-good services is accompanied by an argument for a much more detailed understanding of the role of the subnational state at the city and city-regional scales, and a recognition that there are locational determinants of how rights are realized that make cities institutionally different from rural areas. The second part of the article is dedicated to illustrating the particular nature of how rights to the city are blocked or achieved, using the experiences of the Greater Cape Town area where poverty reduction and the realization of human rights have been high on the political agenda of the last decade.

The Cape Town case highlights why the implementation of a rights-based agenda in an urban context requires a specialized focus within the rubric of a developmental state programme. The focus is primarily on the contradictions of the post-apartheid land use management framework for the urban poor. The final section of the article returns to make a more general case, especially for cities in middle-income countries, to adopt a more radical rights-based agenda for cities. In defining this aspirational agenda, the core but not exclusive points relate to the importance of embracing universalism as the basic value of the developmental state at the subnational scale, and acknowledging the central place of progressive or developmental government in the fight against urban poverty and for universal human rights.

Putting human rights into an urban perspective

This article takes issue with two conventional reference points in the literature on urban poverty and calls for a wider but more nuanced understanding of what a rights-based approach to development might entail in urban settlement policy and practice. Our first objection is to the tendency of the urban poverty reduction literature to focus exclusively and simplistically on the realization of democratic not socio-economic rights. We argue that democratic deepening must be linked to rights-based advocacy to achieve better socio-economic outcomes in our cities. To some extent the exclusion of socio-economic

rights is the result of historically weak subnational state capacity to engage the complexity of sustainably addressing urban poverty issues, a situation compounded by neoliberalism, but it is also a product of the individualized understanding of how human rights are realized in an urban context (Parnell, 2007). Clearly the demand for political representation at the local or municipal level and the affirmation of the right to food, water and shelter are crucial for individual and household advancement in the city. But the preoccupation with these basic or 1st generation human rights drives international support for transparency in local government elections and for basic infrastructure provision, at the expense of defining a more nuanced and demanding agenda of urban transformation in which more complex rights can be addressed for increasingly large numbers of people who live in the cities of the South.¹

Few in apartheid South Africa would disagree that the primacy afforded to establishing democracy and a universal right to vote, including at the local level, was well placed. Similarly the post-democracy popular demand for basic services was (and is) unambiguous, not least because of the incomplete delivery by government on its promises of providing affordable services for all (McDonald, 2007). But the ongoing focus on electoral and participatory democracy as well as on protecting other individual rights (freedom from discrimination, freedom of expression, etc.) may marginalize new efforts to advance 2nd generation socio-economic rights. These are achieved through the sustained delivery of affordable urban services to households and neighbourhoods (not individuals), and through viable service administration and finances, not just through infrastructural investment. How this ongoing service delivery is achieved will vary greatly between urban and rural contexts. We identify a further gap in political commitment and action at the urban scale to provide 3rd generation rights — defined as including the right to the city or a safe environment, to mobility or to public spaces. While the right to freedom of movement, safety, environmental protection and economic opportunity are recognized in both the South African Constitution (RSA, 1996) and the International Declaration on Human Rights, the urban planning and enforcement mechanisms that protect or enable these rights are poorly understood. This is largely because these rights are exercised or denied collectively, not individually, and at various geographical scales across the city region (individual, house, property, neighbourhood, municipality and city region). What we term 3rd generation rights form part of the public good and are more easily claimed in places that are free of environmental risk and economic and social exclusion. Implementation of these 2nd and 3rd generation rights (one might add 4th generation rights to climate-secure cities) rests on robust and capable subnational structures — contrary to neoliberal imperatives for lean and fragmented institutional state arrangements. Embryonic post-colonial local state structures, unfunded decentralization and privatization all militate against strong urban government in the global South. Consequently, despite obvious wealth being concentrated in large urban areas, the poor are trapped in second-class strata of the city that might one day provide for universal 1st generation rights, but will never facilitate full urban citizenship.

The Northern literature on urban citizenship (Hill, 1994) is perhaps the most useful corpus for identifying how and why both the physical and spatial form and the governmentality of cities shape individual and group identities and status. Curiously, the notions of urban citizenship, with its assumptions of universality, have been little applied to the fundamental development questions of how cities of the South might be imagined or governed. This lacuna is made apparent by the absence of an articulated rights-based agenda for cities of the South. An important exception is Brazil where the right to the city has been enshrined in the constitution and law (Fernandes, 2006; Saule Jr., 2008). Brazil has also used this achievement to actively lobby in global forums for other countries and

1 There is another layer to the issue of a comprehensive approach to rights, which is the importance of adopting a multicultural lens to the question of rights and their localization in particular regions and countries. This argument has been fruitfully expounded by Bouventura de Sousa Santos (1999) and is supported by the authors.

Table 1 The right to the city

Rights	Focus
1st generation	The individual (e.g. the vote, health, education)
2nd generation	Household services like housing, water, energy and waste
3rd generation	Neighbourhood or city scale entitlements such as safety, social amenities, public transport, etc.
4th generation	Freedom from externally induced anthropogenic risk, such as war, economic volatility or climate change

cities to adopt the same legal approach. In South Africa, like most of the global South, the rights of urban people are of course recognized alongside everyone else in the country, but the collective right to the city is not a well-understood demand or aspiration. We suggest that the concept of the rights-based city offers innovative ways of advancing debate about the developmental state and places a more empowering agenda on the table in contrast to the neoliberal governmentality agenda.

The intangible area of 'rights-supporting place-making' holds the key to meaningful urban poverty reduction, especially in middle-income contexts. We argue that, especially for the chronically poor of the city, putting the emphasis on 3rd generation rights (that are generally realized through stronger state capacity to provide inclusive development planning and to enforce land use management), plus the economic and environmental regulations that advance the interests of the poor, is essential to a sustainable model of urban poverty reduction based on job creation and economic growth. A developmental state or effective pro-poor planning at the city scale provides a real alternative to local area or interest-based livelihood projects, the narrow extension of emergency support or even of grant-based social safety nets. In the pursuit of such an agenda we suggest that a narrow focus on good governance or municipal planning is inadequate to upholding 2nd, 3rd and 4th generation urban rights (Table 1). The right to the city is framed by a strong ethical base and (interlocking) actions to reduce inequality across the local, city, city-region, national and international scale. The notion that complementary and strategically articulated poverty reduction actions can and should take place at each scale to ensure the realization of the right to the city informs our Cape Town case studies.

The second issue in the international literature on urban poverty that we consider as problematic is intertwined with the focus on individuals and individual rights. It arises from the general lack of focus on the state and a developmental understanding of what government can and should do for the poor to secure their rights. This gap we ascribe to a tendency for donors and development scholars to engage in low-income countries, where the state has virtually no resources at its disposal, and so it is almost irrelevant to build state capacities to deliver economic opportunities to the poor or to redistribute from the rich. This marginalization of the state as a developmental player and the recent tendency to focus on what the poor can do for themselves (often promoted in part by the livelihoods and participatory literatures) leaves a very limited focus on government's part in the realization of rights. Insofar as the issue of the developmental state is addressed at all in cities, it is through a spotlight on nation states and national performance against poverty reduction indicators such as the MDGs (Maxwell, 2003). The obvious conclusion is that a developmental agenda for the subnational state must be defined before it can be embraced.

The tendency in the poverty literature to address either the macro-economic environment of fiscal policy, trade regimes and the unequal relations of production and/or micro-level livelihood dynamics is shifting as the role of state comes back into fashion (World Bank, 2000). Only very recently has the issue of the developmental role of the state assumed any prominence (Fritz and Menocal, 2007). Bringing the state back into

development debates is overdue for anyone interested in human rights, but to be effective it must be done in a manner that tackles the appropriate scale at which government can act to support rights realization. Acknowledging the importance of protecting 3rd and 4th generation settlement-based rights in poverty reduction is one way to put the spotlight not only on the developmental responsibilities of the state, but on the role of the subnational state. In practice a rights-based shift beyond urban neoliberalism implies not only a more clearly defined role for government in service supply and subsidy, but an increased emphasis on planning that encompasses the imperative of defining public good, regulatory reform, greater law enforcement at the city scale and fiscal policies that enable redistribution and cross-subsidization within cities.

As a result of the bifurcated spatial scales of poverty analysis, subnational policies and action that impact most directly on the rights of the chronically poor, especially in cities, are ignored. In particular, rights that are realized through household- and area-based interventions or subsidies rather than individualized grants have received much less attention in the fight against poverty. These non-individualized rights are typically guaranteed only by actions that do not derive solely from national government. Examples would include municipal rates rebates, water or electricity subsidies, pro-poor transport planning and costing, effective protection from environmental hazards and the creation of climate-resilient cities. In the North many of these public good interventions are provided to the poor for free, or at highly subsidized cost. But putting this kind of cross-subsidization into practice requires a highly developed state architecture and operating systems in which all residents are recognized, can be identified, enumerated, contacted and taxed or subsidized (Parnell, 2007). In addition, as soon as the realization of the public good or redistribution has to be implemented across bureaucratic boundaries and scales, an effective system of cooperative governance is required. Weak states do not easily or effectively engage beyond their narrow institutional parameters, and as a result the poor lose out, not least in service delivery and in government's ability to account for its policy commitments to all residents (Grindle, 2007).

Poverty reduction cannot be achieved without a strong commitment to building the institutions of government. Urban services demand some form of redistribution to facilitate access based on need not ability to pay, and providing services that support collective rights hinges on effective state capacity to facilitate the roll out of public good benefits. While some form of basic income grant allocated to individuals could, in theory, allow the poor to pay for their own and their household's consumption of essential services such as water or waste, in practice the state would still need to ensure that the services actually existed in poor areas, were affordable and that there were no barriers to service consumption. This level of urban management is rarely a national competency, but nor is it just the purview of local government.

Many urban services (e.g. water, waste management, energy) are almost by definition dependent on a larger footprint than the city boundary. Right-fulfilling settlement services, like waste removal, often depend on the differentiated roles of a multi-agency or multi-scalar state and so a sound framework of cooperative governance is necessary if urban services are to be delivered to all. The institutional complexities within government are especially characteristic of very large cities where the logistical challenges produced either by the scale of the population, or of the settlement, can generate technical challenges necessitating specialist multi-partner solutions.

The failure to recognize the complex institutional sites of subnational policy formation that frame everyday life and infrastructure means that the tools available for poverty reduction at the neighbourhood, city and regional scale are underdeveloped. The institutional lacuna is especially obvious in post-colonial contexts where local and provincial government are rather belated constructions, with limited fiscal and human capacity and with incomplete administrative systems at their disposal. In light of this, we believe it is misplaced to only focus critical analytical attention on the neoliberal tendencies of local states. Our argument is that a radical programme of subnational state construction that includes pro-poor administrative systems design within the bureaucracy

is necessary if a rights-based agenda is to be implemented. This is not an argument for a more efficient state, as per the neoliberal model. It is a recognition that achieving a rights-based agenda for all citizens depends on substantial state involvement alongside citizen engagement and oversight, and that for the state to roll out a rights-driven development agenda presupposes that there are adequate systems in place as well as the political commitment to see through their implementation (Tendler, 1997). We argue moreover that this level of institutional change in urban government is essential if cities of the South are to function resiliently and compete at all in a global economy.

Rights and the city – the Cape Town poverty reduction agenda

The achievement of a rights-based city will not happen with political will alone. Paradigmatic shifts and an institutional revolution in city management are required if an enabling environment for implementing the multi-generational rights of the urban poor are to be realized. Such shifts are unlikely to emerge in the absence of sustained political pressure and contestation from progressive interest groups. However, grassroots pressure that remains stuck in an oppositional mode without explicit propositional demands tied to concrete institutional reforms, such as the ones elaborated here, is unlikely to effectively displace neoliberalism in practice at the local scale. With this in mind we move to a consideration of the case of Cape Town where there is on the ground action to advance the agenda of developmental local government and the realization of human rights, although with limited direct engagement from progressive civil society groups.

Cape Town's is a flawed beauty, marked by extreme, enduring and highly concentrated poverty (City of Cape Town, 2006). For hundreds of households government has yet to deliver on its constitutional promise of universal rights for all (McDonald, 2007). What makes the Cape Town example interesting is that there is explicit and high-level commitment from all spheres of government (national, provincial and local) to poverty reduction and the realization of rights. It is also a place that enjoys relative affluence and thus there is the means to do something about poverty in the city. Within the South African context the Western Cape Province is the second wealthiest and within the province the Greater Cape Town city region is the dominant node of economic power.

Our examples of developmental transformation in the city draw from across the intergovernmental spectrum, and highlight the fact that it is not only local government that is responsible for urban poverty reduction measures or the realization of rights in the city. The illustrations we provide of rights-based action are not intended to suggest that officials in the city region are getting it all correct, for indeed there are dramatic slips between policy formulation and implementation (e.g. Miraftab, 2004; Smith, 2004) and inequality in the city is closely linked to global economic restructuring (Borel-Saladin and Crankshaw, 2009). No doubt there will also be a series of unintended consequences of well-intentioned rights-based programmes as they are rolled out in the city. What we seek to highlight here is how we might think of or imagine the institutions that are necessary for establishing a rights-based city in the South. Our broader contention is that this important line of elaboration is left unattended by an exclusive focus on the negative effects of neoliberal governmentality.

Municipal subsidies and the right to affordable services

Immediately following democratic elections in 1994 the state acted swiftly to remove overt race discrimination. Schools, the health system and welfare grants were deracialized in a massive and fairly costly exercise that saw a much greater proportion of

the fiscus dedicated to spending on social support. However Seekings and Nattrass (2006) show that, despite welfare reform, the national distributional regime shaped by economic policy, labour markets and industrial policies reinforced rather than eroded income inequality, including intra-racial inequality.

An expanded and strengthened grant-based safety net offers no solution to chronic poverty. This is not just an issue of affordability, though the projected cost of the current commitment on social grants is a major concern of the National Treasury. While poverty and inequality persist because of the macro-economic framework, there are many other, non-welfare, activities in which government action ostensibly targeted at the poor is either ineffective or remains discriminatory, thus precluding the poor from realizing their rights. The failure of the massive investment in housing to uplift the poor is one well documented example (Charlton and Kihato, 2006). Local government service provision and subsidy (for electricity, water and sanitation) is the other critical site of post-apartheid reconstruction and redistribution.

In local government there is a highly skewed legacy of state assistance based on race. Under the *de facto* welfare state that operated for whites, basic municipal services including water, electricity and rates were rebated or subsidized so that the needs of the poor were addressed (Parnell, 1988). The post-apartheid city challenge is to roll out these services (on which human rights depend) to all urban residents. In theory there is not a political obstacle to government providing service support for the poor, though there are major institutional barriers such as the outmoded and unreformed town planning schemes that mitigate against the roll-out of services on an equitable basis. There might be a fiscal problem, in that local government resources are more limited than those of national government, and the real costs of free water and electricity allocations have yet to be fully costed and their affordability confirmed (Savage, 2007). There are also significant institutional problems, in that there are major system blockages in reaching the urban poor with subsidized or free services. There are certainly political problems associated with the legitimacy of the state's action to restrict service consumption to the designated subsidized allocations, hence the repeated service boycotts and protests (Oldfield, 2007). It is, however, an error to conflate all of these issues, or to give primacy to political opposition to current service support practice. In this regard we part ways with Bond (2005), the Municipal Services Project and the one dimensional service protest tactics of many of the civics who perceive the progressive agenda only in contradistinction to macro-economic policy and the impact of neoliberalism's increasingly privatized service roll-out (McDonald and Pape, 2002).

The allocation of free basic services to all households is a constitutional right in South Africa. Yet, even if they wanted to, city governments are unable to roll out service subsidies to the poor because they lack the institutional capacity to do so. For example, in 2001 the City of Cape Town came face to face with the extent of institutional barriers in its efforts to apply a uniform service subsidy allocation to the city's poor through a programme of indigent support (City of Cape Town, 2002). Key barriers identified in its Indigent Policy (some of which were overcome, some of which remain) are summarized as follows:

- Major technical difficulties in the merger of the underlying billing systems when the 33 different local councils were unified into a metro structure only in 2000;
- Almost half of households are not on the city billing system — either because they were illegal, or because they were serviced in bulk allocations to informal settlements or they occupy public housing units or backyard shacks that are not formally serviced at all;
- There are no postal addresses for a large proportion of households;
- There were major historical differences in service subsidy support to 'whites', 'coloureds' and Africans that related not to their individual race classification, but to the housing types they continued to occupy;

- In order to ensure that there were sufficient funds to pay for the service support to the poor the city required affluent consumers to use large amounts of water and electricity. Yet the city was committed to a principle of sustainability and Cape Town is a water- and energy-scarce area where restrictions should be applied to unchecked consumption.

Cape Town's experience provides an opportunity to confront four of the underlying imperatives for the realization of 2nd generation settlement service-based rights in any large metropolitan area that is not currently institutionally equipped to redistribute to its citizens in a manner that affirms their rights to a safe and healthy environment.

Firstly, it is not possible to redistribute to residents who are invisible or unreachable. To paraphrase Scott (1998), you need to be 'seen by the state' before benefiting from it. Widespread reservations about the panoptic or surveillance tendencies of a controlling state that have dominated the development literature of the last decade (Ferguson, 1990; Escobar, 1995) have to be measured against the benefits to the poor of being visible to a redistributive and service-providing state. Clearly it is not either/or, but a tension between these tendencies that has to be negotiated in a rights-based progressive urban agenda. Appadurai's (2002) work on the ways in which SPARC (a Mumbai NGO) negotiates the power of enumeration in their politics of recognition with the local state is instructive. Secondly, having the political will to provide basic service support based on need, not ability to pay, without the requisite institutional mechanisms to deliver to the poor (e.g. a postal system or a technical device such as a pre-paid meter for allocating the resource to the target group) will have no impact. Thirdly, mechanisms must be found for targeting households and *erven*/stands/plots/building units as well as individuals in the efforts to provide services that are critical for the realization of human rights, including the rights of children who are generally targeted through other members of the household or the household itself (Leatt *et al.*, 2005). These varied layers of citizen identification should be integrated in cities' data and service management systems. This citizenship information platform needs to include what is taken for granted in Northern cities, such as the establishment of a comprehensive, rights-enabling, unitary land use management system. Implied in these assertions is the recognition that issues of urban informality and/or duality have to be tackled before 2nd and 3rd generation rights can be addressed and the right to the city becomes a reality for all.

Urban land use management and rights of the poor

Until de Soto's (2000) work created a flurry around the use of urban land as an asset for the poor, the critical role of the land market in realizing the rights of the poor was repeatedly overlooked (Durand-Lasserve and Royston, 2002). Most commonly the issue of urban land got muddled with housing supply or ignored, as vast swathes of the city developed 'informally' and generally without state-provided bulk or stand-connected services. Typically this informal development fell outside the previously colonial core and was often on the peri-urban fringe, where informal service arrangements now undermine the natural resource base (McGregor *et al.*, 2006). From a rights perspective the urban land question is far more complex than finding a site on which the poor can erect shelter or even making sure that secure land tenure ensures the improved bankability of the poor (de Soto, 2000). The poor, like all other residents, need access to land in the city not only for housing but also for transport, commercial and industrial development and public services. How and where land for the poor is accessed, at what price as well as how land use is enforced, is a central concern if rights to a safe, secure and economically viable urban future are to be taken seriously. There can be no institutional exclusion from any part of the land use management framework (from surveying through to enforcement) if the rights of the poor are to be embraced. Land

availability is even more serious when an intergenerational perspective on poverty reduction is adopted. What this means is that the debate about urban land has to extend beyond traditional (but important) issues of location, price and tenure and take on the entire urban land use management system; asking what is necessary for establishing a unitary land management system that works for all residents in ways that do not exclude or prejudice the poor.

Recent innovative work on managing traditional land in peri-urban systems has highlighted the complex and prejudicial regulatory environment that pertains to land in many African cities and has revealed how the post colonial legacy of urban land use management precludes the realization of, for example, gender-based rights (Rakodi and Leduka, 2004). That study also showed how parallel land use management and regulatory environments not only burden already stretched local government, but can trap the poor in the traditional or informal land system. The absence of a unitary system of land use management in Cape Town differs in fundamental respects to that of other African cities but, in the general sense that there are layers of formal and informal institutional barriers to the poor within the management of urban land use, it is by no means unique. There are at least three general ways in which the current operation of the land use management system in Cape Town precludes the realization of 2nd and 3rd generation rights for the poor: availability of land for development, land regulation and land use enforcement.

Availability of affordable land

Availability of secure, well-located and affordable land lies at the heart of the persistent impoverishment of the urban poor (Payne 2002). As a result of high land prices the low-income housing programme of the city has tended to concentrate on peripheral low-cost land that has reinforced rather than eroded the apartheid legacy of racial segregation and the undesirable location of land for the poor. In the absence of affordable land for development the poor of Cape Town have resorted to overcrowding, backyard shacking or land invasions and 25% of the population of Cape Town now live in irregular or unsatisfactory accommodation (Boraine *et al.*, 2006; City of Cape Town, 2006). It is these marginalized locations and the increasing informality that they represent that makes it virtually impossible for the state to effectively provide a full suite of settlement services, or to target its redistributive actions that centre on the house or stand rather than the individual.

While increasing land price produced by urban growth is a general problem encountered by the poor in cities across the world, there are additional factors that conspire to reduce land availability and escalate its price in Cape Town. The most obvious of these is that this city, built on the *fynbos* floral kingdom, is at the centre of an ecological hotspot that makes it a World Heritage site. Protection of the land on which rare plant and animal diversity is found is essential, but ecological sensitivity has effectively frozen for development large tracts of otherwise well-located land. A further response to the sprawl and the intense ecological pressures experienced in the city is the enforcement of an 'urban edge'. While no formal impact of the application of the edge policy has been undertaken, anecdotal evidence suggests that as a result land prices in the city have escalated more rapidly than anywhere else in the country (Walker, 2007). The understandable concern for environmental protection has apparently reduced available land for low-income housing, at least in its current single-dwelling low-rise form. Much less defensible is the reticence of state-owned enterprises such as Transnet and South African National Defence Force to release well-located sites. Further general price increases in land, that impact on the poor like everyone else, are attributed to major delays in land release caused by the overlapping environmental, heritage and planning procedures (Berrisford and Kihato, 2007). Still further cost-enhancing delays to development are generated by the tardiness of the city to put in place bulk services in advance of urban expansion (Davidson, 2007; Walker, 2007). This is not just a

consequence of weak forward planning (though Cape Town has no approved spatial development plan and the last formal structure plan dates from 1988), but is the result of snags in the intergovernmental land development process and also a consequence of inadequate financial management that necessitates putting off bulk capital investments until the last minute, incurring cost inflation against budget and eroding the quality of the product.

Land use regulation

Land availability and price is only one aspect of the problem. There is also the issue of institutionalized discrimination. There are, unsurprisingly, examples of the enduring impact of apartheid's discriminatory land use management practices across Cape Town. Historically African townships had no commercial zoning, as the Natives (Urban Areas) Act of 1923 precluded this so as to ensure that the black population funded their own urban development through municipal monopolies on retail and brewing. In addition by forcing black residents to shop in the white town the rates base of the white city was bolstered (Lemon, 1991; Parnell, 2002). In a massive effort to overcome this legacy in Cape Town, millions of Rands have been invested into developing commercial nodes in old black areas such as Khayelitsha. But building a large commercial node in a residential ghetto is not enough to integrate excluded areas: more has to be done on the city scale to level the playing fields of urban zoning so that the poor are not disadvantaged. The legal and institutional preconditions for equity thus rest on the creation of a single, transparent town planning scheme that defines and implements service standards, use and ownership rights.

Curiously, the post-apartheid application of the land use management system has not fundamentally overturned apartheid principles or practice. In many of the new areas of low-income development in Cape Town, including the flagship project of the integrated human settlement programme, the N2 Gateway, apartheid-style land development has continued to be applied more than 15 years after democracy. The Less Formal Establishment of Townships Act (113 of 1991) may have been a well-intentioned effort to facilitate the rapid release of land for the urban poor, but in its day-to-day operation it is a barrier to the long term realization of 2nd and 3rd generation rights of the poor of Cape Town, because it reinforces institutional discrimination and differential land development rules for poor areas of the city. This dual system of urban management is arguably apartheid in everything but name.

Despite private concerns of senior Cape Town housing officials, Act 113 is still widely used. The justification is that it 'fast tracks' land development for the poor, though even its speed is contested by many (Davidson, 2007; Walker, 2007; Wiseman, 2007). Once approved for an area it effectively negates all underlying zoning scheme requirements and bypasses the National Building Regulations and other construction standards. In our view it makes second-class suburbs — just like the Natives (Urban Areas) Act of 1923, which was also presented as a reform that could provide a cash-strapped local government an affordable means to resolve the housing crisis spawned by urbanization (Parnell, 2002). In fact, Act 113 has fewer protective clauses for the urban poor than the notorious 1923 legislation which formed a keystone of the overall system of urban segregation that is widely acknowledged to have eroded the urban rights of black South Africans (Hindson, 1987; Lemon, 1991). Despite apparent heart-searching within and outside government as to why the South African city has not been transformed from its apartheid structure, Act 113 and other regulatory tools of discriminatory land use management have yet to be reviewed, although there are clearly important debates to be had. Key issues include establishing built environment and service standards that the poor can afford, debating what level of state regulation is appropriate and would facilitate rather than block urban livelihoods, and balancing the needs and demands of this generation against those of future residents. The issue of informality lies at the core of this unspoken discussion of an alternative governance framework.

Failure to engage the emergent practices of government that are not highlighted by anti-neoliberal critique means that everyday practices which erode the rights of the poor persist and are entrenched. Under Act 113, for example, Cape Town Council has generally continued to provide land for public uses (like schools, clinics and sports fields) although it is under no legal obligation to do so, and has passed ownership and control for these portions of land on to the relevant departments in the city and province (Davidson, 2007); yet no critique of neoliberalism has objected or remarked on what this means, although there are two major problems from a rights-based perspective. Firstly, once the executive council of provincial government has signed off a 113 development proposal, the zoning schemes no longer legally apply and so political pressure can be applied (and has been, as in the case of the large-scale N2 Gateway pilot that has been the flagship integrated housing delivery project) to increase residential densities and decrease other land use allocations such as open spaces, religious sites, etc. Secondly, because the city's own zoning schemes no longer apply to the 113 development area, land is not required to be set aside for commercial use. This means not only that the poor are forced to undertake commercial activities informally, directly from their homes, but also that home-based commercial activity will be restricted by what neighbours tolerate, opportunities for expansion are limited by plot and house size and the business is unlikely to attract loans from the formal sector. More importantly, the higher bulk standards associated with commercial zoning are never applied in areas developed under Act 113. Thus, these neighbourhoods do not have stands that are appropriate (in size or service levels) for formal commercial activities, such as off-street parking or service connections that will enable refrigeration. The Act 113 areas are thus frozen from conception as dormitory areas and cannot evolve over time into mixed-use neighbourhoods and local residents will be forever forced to travel to formal commercial amenities elsewhere in the city while a neighbourhood culture of informality will be nurtured (Parnell and Boule, 2008).

Enforcement of land use

A further issue that stems from the practice of differential systems and principles of land use management in rich and poor sections of the city relates to the enforcement of land use standards and regulations. If the rights of everyone in the city are to be upheld, it is the role of the state to ensure that designated land uses are protected in ways that do not prejudice individuals or groups and in a manner that advances the livelihoods of the poor. With respect to this latter point, Amis (1995) has argued forcibly that it is more important that the state do nothing than that it act retrogressively and against the poor in enforcing standards and by-laws. In its most extreme form, this argument implies that informality and an absent disciplinary state is good for the poor (Roy, 2005). But what has been absent from these discussions about livelihood repression is the notion that consistent enforcement to protect the public good and to foster a financially and environmentally sustainable urban system is a critical component of the developmental agenda of the state, especially at the city scale.

The problem of enforcement in Cape Town is twofold. The uneven enforcement of land use regulations generates real problems for the realization of the right to a safe and environmentally protected city. One of the Council's most experienced and progressive housing officials, Basil Davidson (interview, 20 July 2007), notes that while in old white residential areas land use regulations are now less strictly enforced than they were under apartheid, they are still effective. Aside from white-collar offices being run from private homes and the odd illegal second dwelling in the form of high-quality granny cottages, the expectation of residents in elite areas once classified for occupation by whites is that antisocial land use can and should be stopped by a simple letter or phone call to the council. A similar pattern exists in many middle-class 'coloured areas', especially those characterized by home ownership. Here inspectors still visit building sites and can be expected to respond to complaints such as noise pollution or illegal commercial activity.

Formal commercial activities across Cape Town continue to be subjected to fairly rigorous inspection from health and safety offices. But, in the poorer old public housing sections of the city where the majority of the poor (African and coloured) population reside, the position on land use enforcement is very different, and intervention by the state is perceived as either illegitimate or irrelevant. Because the town scheme does not apply, whole neighbourhoods are under-regulated and policed.

Part of the problem in old African areas is that there was never any tradition of independent inspection. The council itself used to build its own houses, monitor renters and let the limited commercial spaces. The city's land use and environmental inspectorate would never try to force its own staff to apply the municipal regulations: it was assumed that they would be self-regulating. The problem now is that the rigid control of the city housing departments in old township areas has broken down (because of the sale of assets, restructuring and the change in focus to new housing delivery), so in poor quarters of the city that used to be regulated directly by housing departments, residents have no expectation that they can call on the state to enforce any land or environmental regulations. The ad hoc use of residential land for commercial and industrial purposes thus happens without regard for health and safety and the already under-capacitated enforcement officials are too scared to apply the municipal laws designed to protect citizens in those areas. Reports of municipal officials receiving serious threats when they try to apply the by-laws in poor areas are common. The most obvious examples of this are backyard shacks, but the presence of panel beaters, shebeens and other activities not normally considered conducive for healthy settlements are left unchallenged in most African areas.

One interesting side-effect of the differential culture of enforcement is that it is proving to be very hard to integrate low-income 'coloured' and African households because of the mismatch in what residents expect of the state with regard to enforcement of land use and what the groups will tolerate from their neighbours (Davidson, 2007). The issues of informality, enforcement and developing a unitary response to citizens' rights lie at the core of the reconstruction and developmental agenda of local government. Such a mundane agenda for local state effectiveness may not seem very radical compared to anti-neoliberal discourses that depict virtually all government actions as insensitive and exploitative towards the poor. However, we believe that by decentring neoliberalism as a primary and sole intellectual concern, we can in fact uncover a much larger strategic terrain for imagining and advancing more redistributive and inclusive practices of urban governance in the city.

Contesting neoliberalism through a rights agenda

The previous section demonstrated the potential of consolidating more empowering forms of local governance by paying closer attention to the underlying institutional and regulatory urban systems that secure those rights which underpin public interest goods as opposed to individual allocations. By placing certain expressions of neoliberal governmentality at the centre of analysis, strategic opportunities are being missed to ensure through effective regulation that the state plays a stronger redistributive and developmental role. The challenges associated with effective land use management, and avoiding the structural economic exclusion that stems from driving development in poor areas through Act 113, can only be recognized if the state is not treated as an uncontested and monolithic force intent on guaranteeing neoliberal outcomes, but as replete with contestation and contradiction (Larner, 2000; Leitner *et al.*, 2007) which presents a number of opportunities for advancing more radical policy and political projects if there is sufficient and strategic articulation with savvy actors within civil society who are alert to such opportunities (Pieterse, 2005). In the case of Brazil participatory budgeting systems allow such opportunities, often mediated by the 'PT', which allows social

movement activists and government officials to interact and engage outside of the formal participatory forums as well as inside those arenas of stylized contestation. In South Africa there are ample opportunities within the emergent and highly uneven local democratic systems to do the same but this territory remains underexplored in large measure, we argue, because the local state is too often written off as simply an extension of a national abdication to neoliberal policy imperatives.

At this point it is important to clarify our confidence in the role that regulatory reform can play as an element in a larger radical political project. We are assuming that a primary commitment to citizen empowerment through effective democratic processes and institutions is in place. Citizen empowerment is most likely to flourish if there is a simultaneous engagement with the state on the basis of the democratic autonomy of such organizations. Strategic and tactical engagement of civil society with the state can then identify when and how the interests of the poor can be embedded in the routine functioning of the state, especially insofar as the state delimits resource allocation, sequencing of public investment priorities and articulating a series of actions to achieve higher order developmental outcomes such as growth, economic inclusion and urban spatial restructuring. By contrast, citizen action that relies exclusively on an oppositional logic or a political stance of perpetual resistance is unlikely to achieve reforms in the mundane functioning of the state, which we have shown from the Cape Town experience to be a precondition for cumulative changes that can transform the political economy of opportunity and provide the institutional access to resources that enable the realization of anything other than the most basic 1st generation rights in cities.

It is precisely because the progressive agenda for citizenship empowerment lends itself to claims that need a city-wide perspective that it can benefit from a rights-based discourse of urban management. For example, arguments can be marshalled to demonstrate how a more radical and inclusive approach to urban land use and control is imperative because access to more strategic urban opportunities is good for overall long-term economic performance. Alternatively, organizations representing the urban poor could explore the importance of universal minimum infrastructure standards at the household, neighbourhood and city regional scale. Because these investments in the poor require redistribution, a city-wide approach is imperative. These examples of an alternative politics and claim-making do not come into view when the left is preoccupied with the manifestation of neoliberal managerialism as it expresses itself in very low levels of subsidy for basic services for the urban poor. It is not that the issues of service cost and access are not important, but we would argue that it is easier to drive home an urban rights-based agenda for more public investment and bigger subsidies in a context where state institutions work and have universal application for all residents of the city.

The Cape Town experience suggests that achieving rights-based city management necessitates radical local governance transformation that cannot only be achieved by protests of the urban poor. Specifically, negotiating land use reform requires a fine-grained engagement with the systems and procedures of the local state and state agencies that are rooted at regional and national scales. This implies building interest-based coalitions across diverse institutional sites, which include the state, the professions, non-governmental actors and even selective business interests. This is not the same as the partnership discourses characteristic of many neoliberal inspired urban management agendas. Rather, it invokes an appreciation of the necessity of strategic articulation (akin to the notion of Laclau and Mouffe, 2001) to advance a transformative agenda in an urban context sutured by capitalist modernity. What this suggests to us is the need for a propositional politics as opposed to a defensive one against the vicissitudes of neoliberalism.

In practical terms a propositional politics to advance a comprehensive rights-based agenda means building up the planning and institutional systems to ensure the effective provision of various public goods and services such as infrastructure (ideally through environmentally sustainable technologies), stable and sufficient income through wage employment (or at least some form of welfare grant), health (including environmental

health), education, housing and land, public space for assembly, culture and sport (Turok, 2006; Friedmann, 2007). Most of these public goods require an urban development framework that is both future-oriented (sensitive to different life-cycles) and city-regional in scope. Regionalism is important in achieving the right to the city because area-based and sectoral interventions can only be planned effectively in temporal (return-on-investment cycles) and spatial terms (e.g. environmental catchment territories for water-borne infrastructures) on the larger scale to arrive at meaningful calculations about affordability and long-term operational maintenance.

A rights-based city with a focus on poverty reduction and economic inclusion requires a fundamental conceptual and administrative transformation of the urban. Failure to recast the developmental focus of urban planning means it is virtually impossible to marshal a comprehensive rights-based policy agenda, rooted in a coalition of progressive forces, to address the underlying drivers of poverty and economic exclusion. The political implications of failing to adopt an urban rights agenda are explored more fully elsewhere (Pieterse, 2008). Suffice to note that while the basic needs of the poor may be provided, inequality will remain unchallenged and the poor will be institutionally, socially, economically and environmentally excluded from full urban citizenship.

Conclusion

This article has shown that the issue and implications of a full right-based agenda for the city is poorly understood, largely because of the dominance of support for or opposition to a particular brand of neoliberalism. Our empirical reference points from the Greater Cape Town region suggest that the issue of voting and basic service provision deflect from substantive issues of urban citizenship, especially the kind of rights, such as effective and equitable town planning, that can only be conferred by legitimate and resourced subnational government. Even in a city like Cape Town, where there is nominal commitment to the agenda of increased inclusion, the poor are marginalized institutionally and not everyone enjoys the same land use rights. Implementing a rights-based agenda at the subnational scale thus necessitates a radical critique of the instruments as well as values of the local state and will require a massive process of state rebuilding and institutional reform, without which everyday practices of urban management remain unchallenged and exclusionary.

The case we have presented is in no way unique. South Africa has an especially strong tradition of state-led development, including the notion of municipal engagement in social and economic advancement through 'developmental local government' (Parnell and Pieterse, 2002; van Donk *et al.*, 2007). However across those nations where there is even limited capacity and resources to address urban poverty issues, the issue of what can be done to improve the role of local government is a major area of innovation (Batley and Larbi, 2004). This focus on city government is part of a wider resurgence of interest in what the subnational state can do through better city scale planning for the poor in the achievement of a rights-based urban agenda.

Large cities with significant concentrations of poverty are a feature of middle-income countries. Megacities or large city regions are the key to emerging economies' global positioning. Johannesburg, São Paulo or Shanghai are typical examples (Segbers, 2007). These cities, while poor by the standards of London or Frankfurt, have some disposable income and face the imperatives of responding to poor communities. Making cities of the South work better purely in terms of becoming economic nodes in the global systems of trade, production and consumption is not going to help the poor in those city regions. But failing to make these emerging global nodes work for all their residents may hinder their global progress. Either way, a radical programme of urban citizenship is required. The fundamental assumptions of how government operates institutionally (across the

devolution of powers and functions, including legal, regulatory and enforcement functions and between departments and sectors) has to be challenged so that rich and poor are equally visible to the state and so that the state is empowered to achieve a transformatory rights-based agenda.

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Résumé

Dans un environnement mondialisé, les grandes villes présentent des problèmes particuliers de réduction de la pauvreté et de concrétisation des droits. De plus, l'urbanisation de la pauvreté met en avant la nécessité impérieuse de ramener au niveau de la ville l'échelle du débat naissant sur 'l'État en développement'. Les arguments partent ici de la proposition selon laquelle un programme de droits universels peut et devrait être réalisé en tant qu'alternative aux aspirations néolibérales et que, pour ce faire, il faudra des actions de développement sur une série d'échelles différentes. La première partie de l'article explore les implications, pour l'État, d'adopter un projet basé sur des droits dans le contexte urbain; ce faisant, elle souligne l'importance de définir ces droits dont la signification naît de politiques ou d'interventions sur l'aménagement de l'habitat ou basées sur la gestion, à la fois à l'échelon de l'individu, du foyer, du quartier et d'un environnement plus vaste (ce que nous appelons respectivement les droits de 2^{ème}, 3^{ème} et 4^{ème} génération ou 'droit à la ville'). La deuxième partie illustre la manière particulière dont les droits à la ville sont soit bloqués soit atteints, à partir des expériences de Greater Cape Town. La dernière partie défend plus généralement un programme pour les villes qui soit basé sur des droits et plus radical.