

Right to the city, human rights, and Canadian cities

By Sandeep Agrawal

Right to the city

The idea of the *right to the city*, as conceived by Henri Lefebvre¹, raises questions of how or whether human rights intersect with cities. Can rights be used to implement Lefebvre's notion? In Canada, federal and municipal governments are deploying human rights policies in combination with city planning to realize this right to the city.

A fundamental question here is whether a difference exists between the right to the city and human rights in the city? Much academic debate on Lefebvre's concept encompasses two inter-related principal ideas:

- The city is an *oeuvre*—in which all its citizens participate and make decisions that contribute to the production of urban space
- Spaces are produced by their inhabitants by physically appropriating them—accessing, occupying, and using them in everyday life.

Right to the city resists the power of capital and the state by calling city inhabitants to engage in direct struggle and urban politics to achieve access and occupancy in urban spaces.

Human rights

Human rights are the rights we each possess by virtue of being human, based on our inherent dignity and equal worth *as* human beings. These are the “highest moral rights, [as] they regulate the fundamental structures and practices of political life, and in ordinary circumstances, they take priority over other moral, legal and political claims.” This Universal Declaration of Human Rights (UDHR) of 1948 is the foundation of human rights law, inspiring an extensive body of legally-binding human rights laws.

I interpret the *right to the city* as several human rights—rights to expression, religion, life, liberty, equality, housing and property² — as they relate to city inhabitants in the form of political engagement, equitable services and the accommodation of diversity. An aspect of city life is the notion of a right to property,³ but Lefebvre rejects this idea, arguing that it undermines the right to appropriate and inhabit the city. However, he does acknowledge that the right to housing as the right to adequate housing and shelter is a necessary but insufficient condition for the right to the city.

Many planning scholars who resist the prevailing neo-liberal tendencies in planning have embraced Lefebvre's concept, while others point to gaps and disconnects within his ideas and between his concept and human rights. For instance, it critically overlooks practical guidance on what this right to the city entails or how it informs relations between urban dwellers and the state. Even while it significantly resists the privatization and homogeneity of public space, it is more useful as a rhetorical device than a policy-making or legal instrument. The concept remains vague, with undefined terminology: What is a “right”? What is meant by “the city”?

For Lefebvre, the right to the city was a “cry” to initiate a radical struggle against the state and capitalism, but it was not supported by law in any conventional sense. Thus, this concept diverges from codified, legally binding human rights. However, we can still adopt it by relying on current institutional frameworks and invoking moral and legislative policy that affects people, along with their spaces and

places. The judiciary can further facilitate this orientation by interpreting and applying human rights in the state's policies and practices. More recent scholarship⁴ interprets Lefebvre's later writing as a potential encouragement to finding a more transformative potential within existing legal rights framework.

Several countries, including Canada and some European nations, as well as the UN, champion the right to the city as part of a broader agenda for human rights.⁵ In Canada, both the *Charter* and provincial and territorial human rights legislation provide the basic mechanism and legal framework for this idea. The humane development of inclusive cities depends on these constitutional and quasi-constitutional guarantees and their inherent values⁶. The Canadian *Charter* and human rights legislation provide rights to individuals, but they are increasingly being viewed as "collective rights," such as the rights of Indigenous peoples or persons with disability—the convergence point in the contemporary interpretation of the *Charter* and the right to the city.

Rights are enduring legal protections that are granted to individual citizens by the liberal-democratic state. The state, however, conceives of rights as ends—that is, the struggle is over when a legal right is secured—which is antithetical to Lefebvre's conception of ongoing resistance to capitalism and the state. Fainstein's *Just City*⁷ supports political institutions and public policies despite their imperfections. She endorses, instead, reforms through existing political-economic processes and argues against the need for social unrest to achieve justice. The construction of cities makes justice possible for everyone, through "continued pressure on the existing democratic practice." Nonetheless, in neoliberal cities, social equity is largely disregarded in favour of growth.

The Charter and Canadian cities

The *Canadian Charter* delineates the rights and freedoms of people only in relation to government activities, versus human rights legislation, which encompasses both private and public acts. Specifically, *Charter* Section 15 guarantees equality before the law and the right to equal protection and benefit of the law without discrimination based on race, disability, and analogous grounds. Laws (including municipal government bylaws) inconsistent with the *Charter* may be declared invalid and may lead to the payment of damages or other remedies. Notably, these constitutional guarantees are not absolute. *Charter* Section 1 places "reasonable limits [on rights] prescribed by law as can be demonstrably justified in a free and democratic society."

Interactions between individuals and organizations (for example, between employers or landlords) are governed instead by human rights legislation, like the Alberta Human Rights Act or the Ontario Human Rights Code. Therefore, provincial and territorial human rights agencies deal with discrimination issues based on race, religion, age, or sexual orientation, and thus may vary by region. However, overlaps do occur when an act of government occurs in an employment context or when the federal, provincial, or municipal government provides services, facilities, or accommodations.

Canadian municipalities have made significant progress on the human rights front, enabled by either federal and provincial legislative changes, or due to government responses to court rulings. As well, the federal government now maintains a human rights-based approach to a national housing strategy. Human rights issues in municipalities have also evolved over the last decade, increasing in the last few years.

Two key factors affect planning at the municipal level:

1. Increasing challenges to municipal bylaws based on *Charter* Sections 2 (right to expression, religion, and peaceful assembly), 7 (right to life, liberty, and security) and/or 15 (right to equality) and to court decisions that favour protecting these rights—such as the right of the homeless to erect tents on public properties and improving working conditions of city sex workers.
2. New federal legislation or amendments to existing federal regulations, some emerging from court rulings that protect human and *Charter* rights—such as safe injection site locations, methadone clinics, and cannabis dispensaries.

These two factors have prompted municipalities to review, revise, or even rescind existing bylaws, create new land-use classes, or revise existing zoning bylaws to accommodate new resulting land uses.

Implications

Now more than ever before, human rights are a critical issue at the municipal level. Certainly, new federal legislation now shapes municipal planning in unprecedented ways, such as with the locations of safe injection sites and cannabis dispensaries within the municipal fold. However, these new issues follow perennial ones, like secondary suites, user characteristics, minimum separation distances, and keeping livestock within the city limits. Still, provincial and municipal governments continue to make significant human rights progress, as in these examples⁸:

- Alberta revised its human rights legislation to include age (in relation to the provision of goods, services, accommodation, or facilities), sexual orientation, and gender identity and expression as grounds of discrimination.
- Alberta municipalities amended their bylaws to align them with human rights legislation and the *Charter*: Calgary removed its prohibition on secondary suites in residential areas; Edmonton changed its group homes use-class, and a complete review of a zoning bylaw is currently in progress.
- In 2014, Ontario included human rights in its provincial policy statement, mandating that municipalities ensure their planning and policies adhere to the *Charter* and the province's human rights code.
- Many Ontario municipalities changed the definition of group homes and other supportive housing facilities, as well as the use of minimum separation distances.
- City of Toronto established equity, diversity, and human rights offices.

In closing, I wish to highlight that the Canadian state has taken the lead in guaranteeing its citizens the *right to the city* and all the related rights that attend this. Lefebvre challenged whether this was possible for a state to do. Concomitantly, the Canadian judiciary has further clarified, applied, and even expanded the scope of human rights as they relate to various aspects of city life. According to Qadeer⁹, even if rights exist in law, their actual realization depends on the institutionalization of equality in economic, social and cultural matters; entrenched institutional biases and power politics may still prevent any progress made in law. Hence, Lefebvre's perspective remains valid in its emphasis that the *right to the city* is the *ongoing pursuit* for better conditions for city dwellers. This continual struggle appears to yield better results when worked within the existing political and institutional structures.

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author of the book *Understanding India's New Approach to Spatial Planning and Development: A Salient Shift?*, published by Oxford University Press.

¹ Henri Lefebvre was a French intellectual who was inspired by critical theorists such as Marx, Hegel, Nietzsche, and Heidegger. Spanning over three decades, his writings offered a critique of existing society and presented an idea of new society, a possible world beyond capitalism, the state, and consumer society. For instance, Lefebvre, H. *Writings on cities* (E. Kofman & E. Lebas, Trans.). Cambridge, MA: Blackwell (1996).

² The right to property is constitutionally guaranteed in the USA, is included in the UDHR, and is also part of Alberta's *Bill of Rights* although not included in the Canadian *Charter of rights and freedoms*.

³ Multiple interpretations of right to property exist. According to UDHR, "right to property" means that everyone has the right to own a property and no one shall be arbitrarily deprived of their property.

⁴ Such as Huchzermeyer, M. The legal meaning of Lefebvre's the right to the city: addressing the gap between global campaign and scholarly debate. *GeoJournal*. 83 (2018). 631-644.

⁵ The right to the city exists in many forms within states' constitutions—a direct right, an embedded right as a component of other rights, and as an implied right (Oren, Alterman, and Zilbershatz, 2014). There also exist "quasi-rights," which are neither fully realized rights nor legally binding.

⁶ They find support in two other important documents: the 2006 European *Charter for the Safeguarding of Human Rights in the City* and the UNESCO–UN Habitat project of 2006, which focuses on city dwellers and their "collective rights" to welfare, governance, and efficient public services.

⁷ Fainstein, S. *Just City*. Cornell University Press (2011)

⁸ Agrawal has published a number of articles and reports on human rights and the city. Agrawal, S. Human rights 101 for planners. *Plan Canada*. (Summer, 2017). Agrawal, S. Balancing Municipal Planning with Human rights: A Case Study. *Canadian Journal of Urban Research*. 23:1 (2014). Pp 1-20. Agrawal, S. Human Rights and Alberta Municipalities. Report submitted to Alberta Human Rights Commission (2018).

⁹ Qadeer, M. *Multicultural Cities: Toronto, New York and Los Angeles*. Toronto: University of Toronto Press, 2016.