HUMAN RIGHTS IN URBAN SPACE
A CRITICAL PERSPECTIVE

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Abstract: This essay explores the relationship between law and the city, with a specific focus on the reformulation of rights within the urban space, reviewing some classifications of citizenship and democracy defined in the light of their state dimension in order to assess how such theorizations can also be applied to the urban dimension. To this end, it will be necessary preliminarily to investigate the transformations that the public space (physical and symbolic) – that is, the reference framework for the configuration of rights and subjectivities – is undergoing in an urban context.

Keywords: City, Human rights, Territory, Urban space, Neoliberalism.

1. Rights from states to cities

In the political-philosophical and sociological realms, the rise in the importance of urban space has been famously tied to the new role that the city itself has acquired in the context of globalisation and the connected crisis of States and national sovereignty (Sassen, 2006).[1] Urban space has thus taken on a role as the 'new centre' of power, replacing the State and becoming the main place, as well as providing the main perspective[2], for the formulation, design and testing of contemporary policies.[3]

Given this change, the need to reconfigure a dimension that has long had major significance for the law has recently become increasingly pressing: that is, the "spatial" dimension, which regards the relationship – mutually constitutive – between law and territory, which has seen various changes over time.[4] We need only consider that the relationship between law and cities was for a long time one of the main expressions of the connection between law and space, at least until the Late Middle Ages. But the advent of the modern State profoundly influenced the way territoriality was understood. The city dimension was swept aside and replaced by that of the State. So much so that from the modern age onward, the territory of the State became the only territory relevant for the purposes of law, possibly with the sole addition of foreign territories of further State interest (seas, lands to be discovered and conquered, colonies, and so on).

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[1] A different version of this essay was published in M.G. Bernardini and O. Giolo, *Abitare i diritti. Per una critica del rapporto tra giustizia e spazi urbani*, Pacini, Pisa, 2021.

[2] On the city as a "perspective point", Labriola 2016.

[3] In this sense, today "utopia is embodied by the city" (Augè, 2007, p. 32). Cf. also Labriola (2016).

[4] On the "birth" of territory – as a historical, geographical and political question – see the well-known book by Stuart Elden, 2013. For considerations on the evolution of the relationship between law and territory, I refer the reader to Verdolini, 2018.

In the past few centuries, therefore, territory and the associated conception of space have been theorised about and represented as falling almost exclusively within the legal jurisdiction of the State – subject to planning and regulation solely for the sake of the sovereign State. Starting from the modern age, the very notion of 'citizenship', which had come into being with reference to the urban context, became associated with State and nation, that is, fundamentally connected with the territory of the State, and no longer the city (Costa, 1999, p. 4.)[5]. A semantic short-circuit of no little significance, which was rhetorically resolved, however, with the expression "national citizenship".

A further development in the relationship between law and territory took place starting from the second half of the twentieth century, as a result of the building of a new political and legal order founded on the international charters of human rights, with the United Nations as its core. A new conception of the relationship between law and territory was thus gaining ground in its international dimension, with the emergence of the rights of persons as subjects of law in the international community, within international jurisdiction: all these elements contributed in turn to further changing the notion of citizenship, by giving rise to a conception that freed it from national confines and connected it to the global territory.

However, the reconfiguration of the relationship between law and territory in its international dimension came to an abrupt halt in the early twenty-first century as the processes of globalisation took root. As mentioned earlier, these processes led to a superseding of the notion of law and territory as conceived at both the State and international levels, giving rise on the one hand to a "global law" (Ferrarese, 2000; Cassese, 2009, Klabbers e Palombella, 2019), and, on the other hand, to a rediscovery of the local dimension of space (Bauman, 1998). Thus began a complex process of "de- and re-territorialization" (Chignola, 2020, p. 529; Middel-Naumann, 2010), which saw the connection between law and territory once again finding a foothold in the city, as a space capable of translating global demands at a local level; this has disrupted the territorial foundation of many legal categories and institutions, starting from citizenship and rights.

The latter, for example, as is well known, are the product of a very long process of theorisation that led, however, to the first proclamations and actual positivisation in an essentially State framework[6]: rights were born and asserted as prerogatives of (national) citizens "against" and "through" the State, as was underscored by Norberto Bobbio (Bobbio, 1990). By reinforcing the original 'short circuit' on the notion of citizenship they have progressively enriched its meaning vis-à-vis first the State and then the international community.

[5] The literature on this point is very extensive. Allow me to refer here, by way of example, Margiotta (2014) Bellamy (2008), Benhabib (2004; also 2005), La Torre (2022).

[6] The reference is obviously to the political frameworks in the United States and France at the end of the eighteenth century, at the time of the first declarations of rights, as well as European States at the beginning of the nineteenth century, during the codification movement, with the associated positivisation of rights. For an overview of the processes leading to the affirmation of rights, see Facchi, 2013.

The absolute novelty of the present time, therefore, regards the possibility/necessity of theorising about rights as expectations people have not only in their relationship with the State and/or international political and legal community but also, and first and foremost, as inhabitants of a city.

As is understandable, this poses significant problems that cannot be resolved where the city is seen exclusively as a local arm of the State. Nor can the relationship between the law and the city still be interpreted in simplistic terms as a subsidiary relationship compared to that between the law and the State. The latter, as mentioned, no longer occupies the role it once did: globalisation has redesigned the territory, proposing a bicephalous representation comprising a global horizon and its opposite, a local one. The intermediate State level as well as the international order that is (was) founded on the community of States have been rhetorically – and effectively – removed, neutralised.

Therefore, we need to understand what has today become the "hub" of rights by examining, on the one hand, the coherence the city may or may not express in respect of the fundamental principles underlying the rights themselves – equality first and foremost – and, on the other hand, investigating the legal implications that may be expressed by the city, as viewed from a human rights perspective.

To date, many disciplines have in fact addressed similar questions and transformations, with a particular focus on the inclusive or excluding aspects of the contemporary city[7]: from urban planning to anthropology, from sociology to architecture, and from computer engineering to aesthetics. Among them, however, the legal sphere seems to have remained at the margins of reflection, almost confined there, as if irrelevant when it comes to thematising the contemporary city. If anything, the law is sometimes brought up in its "mere" regulatory, or even punitive, dimension, fully in line with the assumptions of neoliberal orthodoxy: the aim on the one hand is to govern people in the city, for example by tackling issues of social marginalisation from a security standpoint – through the repression of poverty, segregation of differences, surveillance and control over mobility; and, on the other hand, to offer legal coverage for market investments in the city – by regulating the administrative and urban management of assets, property, investments, building and contracts. Not coincidentally, the two areas of law most heavily involved in today's reflection on the city are criminal law and administrative law.[8]

Here, however, I will seek to focus on the relationship between law and city from a possibly different perspective. I shall look into some of the reconfigurations in the legal realm that appear closely dependent on what is widely described as the "spatial turn" (Middel-Naumann, 2010)[9] and dwell in particular on the reformulation of rights in the urban space, as expectations directed no longer against and in the State, but rather *against and in the city*.

[7] For a survey Deppisch and Yilmaz (2021).
[8] Regarding this point, see the analysis of the impact of the new urban practices on administrative law in Di Lascio-Giglioni, 2017.
[9] Cf Warf e Arias 2014.

I will begin by reviewing some classifications of citizenship and democracy defined in the light of their state dimension in order to assess how such theorisations can also be applied to the urban dimension. I will then address the relationship between individuals, rights and the urban space in an attempt to understand what legal and political subjectivities are recognisable today in the city.

2. Citizenship, democracy and the city: theoretical tensions

In order to investigate the relationship between rights and city in a systematic manner, it is probably useful to rely on the classifications of rights that have made it possible up to now to understand and lend form to the contemporary notions of citizenship and democracy with reference to their state-national connotation.

In respect of the so-called classes of rights, as is well known, some important points of reflection were put forward in the past, from a sociological perspective, by Thomas Marshall (Marshall, 1950), who proposed a formulation of the notion of citizenship oriented towards equality, as an inclusive criterion, no longer simply denoting a person's belonging to a State but also qualifying their entitlement to all fundamental rights. As was summarised by Danilo Zolo (2000, pp. 11-12), according to Thomas Marshall, civil citizenship was the first to be affirmed and attributed to individuals a series of rights of freedom: liberty of the person, freedom of speech, thought and faith, the right to own property and to conclude contracts, and the right to justice. Political citizenship developed in the course of the nineteenth century and reflected the political demands of the lower classes. It consisted in the right of citizens to participate in the exercise of political power as members of bodies invested with authority or as electors of the members such bodies. Universal suffrage in elections to parliament and local government councils was the central expression of this second aspect of citizenship. Social citizenship, finally, was established in the twentieth century and consists in the right to a level of education, welfare, and social security according to the standards prevailing within the political community. The institutions connected with this aspect of citizenship are the educational system and social services (health, housing, pensions, insurance, etc.) (Zolo, 2000, p. 12).

It is interesting to note the fact that Marshall himself pointed out, in his work, the moment in which citizenship became a national institution, that is, when freedom became "universal", with the abolition of serf status (Marshall, 1950, p. 18): previously, "in the towns, the terms liberty and citizenship were interchangeable". Following this change in the relationship between individual and territory (or between individual and land even) the physical space of citizenship came to coincide with the territory of the State; therefore, the physical space of Marshallian dimensions was represented by the State, which, through its territorial ramifications (including cities), became the guarantor of the exercise of fundamental rights.[10]

[10] Marshall in fact pointed out: "[i]n the medieval towns, on the other hand, examples of genuine and equal citizenship can be found. But its specific rights and duties were strict1y local, whereas the citizenship whose history I wish to trace is, by definition, national" (Marshall, 1950, p. 12).

Luigi Ferrajoli subsequently defined the dimensions of constitutional democracy from the standpoint of legal theory. He outlined its contents again on the basis of classes of fundamental rights and emphasised, in this case, the existing connection between the exercise of popular sovereignty and the effective enjoyment of rights.[11] The "four-dimensional" model of constitutional democracy is "structured in four dimensions corresponding, respectively, to the four aforesaid types of rights: political rights, civil rights, rights of freedom and social rights" (Ferrajoli, 2007, p. 21) and enables us to distinguish four forms of democracy – political, civil, liberal and social – all necessary to identify constitutional democracy.

The legal-theoretical model of constitutional democracy also implies the existence of a given territory in which it may find expression and the qualification as "constitutional" implicitly invokes the State dimension as the primary space; in this sense, the local territory and its administration can be understood as territorial ramifications of the state system, and as such must consistently operate within the legal-political framework outlined by the model itself.

What remains to be defined, therefore, is whether and in what way the city is actually interacting with these dimensions of citizenship and democracy, given that, as already noted, the State can no longer be considered as the geographical space, much less the political community of reference, of the exercise of rights. How might these dimensions develop in relation to a new territory that no longer represents a mere branch of State institutions, but rather constitutes the main space in which rights are exercised, hence the focal point of citizenship and democracy, much more today than in the past?

What are the implications of the application of these concepts and these dimensions in an urban, rather than State context[12]?

3. Rights in urban space: the crisis of the civil, political, and social city

From a rights perspective, the city – like citizenship and democracy – can express several dimensions. As regards the classes of civil, political, and social rights, it is possible, for example, to identify the dimensions of the civil, political, and social city; however, they have entered into a deep crisis due to the transition from the "constitutional city", existing within the legal and political framework of the constitutional State – likewise in the midst of a crisis – to the "neoliberal city" (Harvey, 2007).

[11] "The connection established here between democracy and law is thus specified as a connection between (dimensions of) democracy and (types of) fundamental rights" (Ferrajoli, 2007, p. 22).

[12] On this, the debate is very rich, especially in the last two decades and from different perspectives of analysis. Cf., for example, on the urban citizenship, Zocca Tomaz (2022); Monaco (2022); Gordon (2007); Baubock (2003); Bauböck and Orgad (2020); Holston (1998). On the relationship between democracy and the city cf also, for all, Beveridge and Koch (2023); Low (2009); Engin (2000).

As is well known, the dimension of the "civil" city involves the possession and exercise of rights of liberty: in this respect, the urban space may be regarded as the place of expression of freedom. The "free" city was once also the city of the free, in that it determined the free status of its citizens.[13] Today, by contrast, all cities are free by virtue of their belonging to a State territory in which fundamental rights are constitutionally recognised: the cities are free because people are free. Today, unlike in the past, therefore, it is the freedom of individuals, constitutionally affirmed, that qualifies the urban space as free, and not vice versa.

However, as I have already suggested, raising the question of freedom with reference to the urban space is highly problematic at present: affirming that today's city is free because we are all free does not at all mean that the urban space is freely accessible to all to an equal degree; on the contrary, recent history seems to have moved in exactly the opposite direction[14]. Local authorities have shown increasing determination in issuing prohibitions (that are often also *contra legem*) aimed at restricting the physical space of action of individuals: from bans on begging in historical city centres to the prohibition against opening ethnic establishments in some areas, to the prohibition against the opening of mosques and so on. Furthermore, as already mentioned, disruptive events such as international terrorism and then the pandemic have further compromised the exercise of many freedoms in general (of movement and demonstration, *in primis*) in States, among States and above all in the urban space. The prohibition against large gatherings, the control of points of access to the most crowded places, "curfews" for health reasons, and checks on documents are by now – in a potpourri of successive and partly overlapping measures issued by national, regional and local authorities – everyday practices, well tolerated by the population, which have profoundly impacted the way of conceiving what acting freely in the urban space means.

The political city, by contrast, refers to a dimension of the city that is experiencing another profound crisis, for two kinds of reasons. Firstly, because of what has just been described: the risks arising first from terrorism and then from the pandemic have led to

[13] On this point, it is worth mentioning what was observed by Marshall regarding English peasants who sought freedom by escaping into the free cities (Marshall, 1950, p. 18).

[14] These considerations presuppose a reflection on the transformations that the public sphere has undergone as a result of its adaptation to the space of the city. It should be noted first of all that the expression "public space" has always been used in the realms of legal philosophy and political philosophy as equivalent to that of "public sphere". In the context of the contemporary city – the global and neoliberal city – these two expressions tend no longer to correspond. For one main reason: the public space is increasingly understood as a physical rather than symbolic place, literally as a public urban space. The so-called "spatial turn" has probably contributed to redefining the meaning of this expression by calling attention to the space of the city, precisely, as a paradigmatic place. But this redefinition also reflects what many analyses have underscored regarding the crisis and depoliticization of the public sphere, in the context of societies dominated by the neoliberal paradigm: public institutions have lost relevance, law and politics have become subordinate to economics, political subjectivity has been surpassed by self-entrepreneurship (Brown, 2015; De Carolis, 2017). However, the dismantling of the public sphere did not initially affect the public space in its physical, frequentable, and accessible form. If anything, it led to a redefinition of its meanings, precisely: no longer necessarily political, but commercial, economic, or sustainable, regenerated, and so on.

a progressive reduction in the physical spaces of political participation: on the one hand, traditional gathering places have been closed, and on the other hand, it has become difficult to organise demonstrations and meetings due to the restrictions on access to streets and squares. Secondly, the differentiation between *statuses* that characterises subjectivity in the neoliberal conception (Giolo, 2020) has further disrupted the nexus between political rights and the city: as is well known, not all the inhabitants of a city can vote and be elected, and thus actively participate in the management of public affairs. As a result, there is an increasingly large presence of people who are formally excluded from the "political" life of the city. This creates further division, which evokes the vision of the *colonial city* (Mbembe, 2018), in which the dominant vote and are elected and the dominated can not even demand to exercise such rights. The number of inhabitants who can act politically in the urban space is thus decreasing,[15] resulting in a progressive distancing of the idea of city from that of participation and above all the creation of a gap between the dimension of political (state) democracy and the urban variation on the theme.[16]

Finally, the difficulties of the city with respect to its social dimension are probably the best known and most extensively investigated: a "hostile" city that excludes, marginalises, and generates vulnerability represents the most negative contemporary image of urban space (Ciaramelli, 2020). Such a portrayal is consistent, moreover, with the crisis of social rights, which have been severely curtailed over the years due to the weakening of the drive towards equality and solidarity in the legal and political realms (Casadei, 2013; Zullo, 2013; Ansuàtegui Roig, 2014). Similarly, the growing differentiation in the access to services – increasingly dependent on an individual's financial situation – is the consequence of the undermining of the principle of universality of rights.

The crisis of the social city is indeed at the core of the fragmentation of subjectivity and the concomitant dramatic hierarchisation of city spaces, aggravated by the increasing distance between the centre and outskirts, where the distribution of the different classes of the population across the territory is determined by income,[17] with highly significant political repercussions. The much abused and redundant topic of security has been dominating political debates for decades, it monopolises municipal electoral campaigns and distracts public opinion from an examination of the issues lying at the origin of the problems, at times very real, that weigh upon the city's residents. Urban conflict has thus in many cases replaced social conflict: the battles and demands tied to social issues (work above all) have shifted to urban issues (security and exclusive access to neighbourhoods) and this has radically changed the substance of political debate. The main concern of a city's inhabitants seems to be to defend their individual priority of access to spaces and the services connected to them, whereas the collective dimension becomes relevant

[15] Other more optimistic interpretations see the emergence, in this context, of new political actors and new forms of participation, cf. for example Sassen (2006 and also 2001).
[16] In this case, the obvious issue that arises is the attribution of the right to vote to migrants, which takes on particular relevance above all in relation to local elections and the need to offer recognition of the right of non-citizens to participate in the life of a city.
[17] For further insights on this subject, cf. Alietti, Agustoni (2017).

exclusively in a context of antagonism, when a precarious "we" is identified in opposition to "others" to be expelled.

The *neoliberal city* thus presents itself as a *city that is hostile to rights*. Yet the problem appears to have even deeper roots.

There arises the doubt that the relationship between rights and the city is problematic because rights tend to obtain recognition beyond the spatial dimension coinciding with the physical place in which an individual lives. If we think about it, rights attained the utmost importance when their recognition went beyond even the spatial dimension of the State from which they originated: the internationalisation of rights probably lent greater impetus to their implementation also on a local scale. There has obviously remained a large gap between the proclamations contained in legislation and actual enforcement, but this gap, besides being a constitutive element of the legal experience, does not seem destined to be closed in an urban rights framework. I shall attempt to explain the reasons for such scepticism in the paragraphs below.

4. The urban fragmentation of statutes

A first reason is tied to the *ratio personae*: that is, which individuals and entities are affected by this new relationship between law, rights, and urban spaces?

Such a question presupposes the need, from a legal perspective, to distinguish between the (physical) space of a territory and the (institutional) space of the law: two dimensions which, in the city – as in every other place – end up overlapping, despite not coinciding.

The non-convergence between territory and legal space means that these two different dimensions of the city are not inhabited by the same people, and that the latter do not have the same possibility of accessing one or the other.[18]

Here lies the first legally relevant problem of the so-called "right to the city" (Lefebvre, 1968), which – in legal terms, precisely – is much more complex than it might rhetorically seem to be.[19]

Who, indeed, may claim this right? And by claiming it what are they asking for?

That is, who has the right to inhabit the legal space of the city? Anyone who inhabits the urban physical space?

These two conditions do not in fact coincide automatically.

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[18] "The jurisdictional boundary does more than separate territory; it also separates types of people: native from foreign, urbanites from country folk, citizen from alien, slave from free." (Ford, 1999, p. 856).

[19] For an analysis of the legal significance of this expression, see Nitrato Izzo (2017, in particular 87 ff). Cf also Marcuse, 2009.

In the most recent period, in particular, the differentiation between them has become more pronounced, mostly because of the introduction of regulations by local governments, as has been the case in Italy in recent years. In this regard, residency, from a mere fact that can be checked and ascertained by the public authorities, has become an increasingly relevant legal institution defining a status, that of "resident", precisely, which today marks the boundary of a city's legal space, sometimes creating an abyss between physical space and legal space: not everyone who lives in a city is a legal resident, and those who do not have residency status enjoy the "right to the city" to a much lesser degree, not being able to claim the same rights vis-à-via local authorities.[20] From this point of view, residency today seems to be a defining element of citizenship when it comes to the space of the city: the citizens, in the urban space, are the residents, whereas those who do not have resident status end up resembling not so much a foreigner as someone who was once considered a stateless person, i.e. an individual without any form of "legal belonging to a space," that is, without recognition or protection. It should be stressed, in fact, that residency also works in the absence of citizenship. Contemporary cities are populated by residents who are not citizens of the State to which the city in question belongs: one might therefore argue that residency, all things considered, is an institution that comes close to citizenship, whereas, when it comes to the facts, its excluding nature is much more marked than its capacity for inclusion (Gorlani, 2020).

All things considered, the city has become a "fragmented space"[21] in which a "fragmentation of subjectivity" has occurred as a result of neoliberal reasoning. Legal and political subjectivity, in the urban context, are no longer unified: citizens are not residents, and inhabitants are often neither legal residents nor citizens. The new hierarchies of status act in such a pervasive manner as also to determine the *positions* that individuals occupy in the urban physical space, generating a strong relationship between status and areas of the city, social condition, and *urban position*. From this standpoint, what Achille Mbembe has highlighted regarding the planning of the contemporary city takes on an enlightening significance: it repeats the aforementioned model of the *colonial city* (Mbembe, 2018), with the division and allocation of urban spaces to useful or useless, excess, or superfluous segments of the population. The urban space thus becomes the physical and symbolic epicentre of the theorem of the world of the "great eviction" (Ivi, p. 45).

Not coincidentally, in the urban context the *status* of person (i.e. the reference status for entitlement to fundamental rights, on both an international and national level) is practically irrelevant: it does not allow access to any right, *except* in its emergency dimension (access to emergency departments, for example). In this respect, the irrelevance of the person in the city has produced a further consequence: in the (public) urban space,

[20] In Italy, for example, the criterion of residency is constantly used by municipal regulations to limit access to certain fundamental rights, first and foremost housing: only those who have been residents for a number of years can, for example, apply for public housing, while those who do not have this title are expressly excluded from calls for applications (again Gorlani, 2020).

[21] We increasingly live in divided, fragmented and conflict-prone cities, writes David Harvey (2007).

on the one hand, rights have been transformed into privileges, linked to citizen status and even more so to resident status; on the other hand, rights "taken seriously" – that is, to which all people are entitled – have been reduced to solely an emergency dimension. In the urban context, a person is no longer taken care of as such: what counts, in extreme cases, is the bare life to be saved, exactly as occurs in the middle of the Mediterranean, where there is no recognition of people claiming rights, only shipwrecked passengers to be saved. Everything is connected, one would be tempted to say: in the city as in the sea, with the demise of the public space and the public sphere, political life is reduced to biological life (Fassin, 2020). The space of rights in the city is thus shrinking, while the principle of universality – a foundation of the rights themselves (Ferrajoli, 2001) – is increasingly losing relevance, and in the oxymoron of the *global city* does not seem at present to have any possible translation.

The urban representation of rights – reductionist, fragmentary, limited to emergencies – only contributes to the resurgence of a conception of citizenship that is localistic and fragmentary, as in the Late Middle Ages,[22] and to the simultaneous reduction, as Sassen writes (2006, p. 408), in the number of public relations/interdependencies between people and the institutions, whereas the private relations between people and the market have increased exorbitantly.

Besides this distinction between subjectivities in relation to the statuses of citizen, resident, and inhabitant, we must not neglect to consider another (age-old) differentiation among the individuals who live in a city, one that depends not only on legal dictates but also and above all on the ideological legacy that the city itself, as a physical representation of a given conception of society, reiterates, thereby maintaining (physical) *forms* of discrimination to the detriment of groups of people traditionally oppressed because of their specific identities. In this case, the differentiation concerns the classic issue of the accessibility of spaces to individuals who are typically discriminated against – women, persons with disabilities, migrants, religious and cultural minorities and so on – who are formally entitled to fundamental rights but in actual fact encounter an "urban obstacle", as a result of which that entitlement is emptied of meaning. The city, built according to the needs and in the interests of the dominant groups, still today fails to recognise the needs of "unexpected subjects" (Lonzi, 1974), and has difficulty in translating them into a reconfiguration of spaces and places.

A paradigmatic case is that of women, who have for some time been holders of the same fundamental rights as men, but who still encounter a thousand obstacles when it comes to the city as a space to be experienced in its totality. Feminist thought (in the urban planning, sociological, and legal realms) on the city has demonstrated up to now that that there is a substantial incompatibility between the contemporary organisation of most women's lives and the design of urban spaces, which reflects patriarchal ideological

[22] Regarding such characteristics of medieval citizenship, see Costa (1999, p. 15), cf. Gravela (2019). The resurgence of medieval conceptions of citizenship seems to go hand and hand with the processes of refeudalisation of society promoted by neoliberal ideology and already highlighted by De Carolis (2017).

notions entrenched in legal, political, and also city planning practices, the reason why women remain prevalently confined within the domestic space.[23]

In fact, these differentiations at times overlap with those related to statuses (we need only consider the case of migrant women) and thus contribute to the hierarchisation of spaces, positions and subjectivity in the city.

5. Right to the city vs. rights against the city

Another reason underlying the difficult urban reconfiguration of rights is the (conceptual and political) confusion that has been generated by neoliberal ideology as regards the connection between law, power, and territory.

If we think about it, all contemporary rhetoric about the city seems to reproduce to some extent the false contrast between globalism (i.e. the primacy of the global territory) and sovereignty (i.e. the primacy of local/national territory). Neoliberalism has favoured the development of these two only apparently contrasting perspectives, which actually intimately collaborate: in fact, they cooperate in the aim of consolidating social hierarchies, on the one hand – in the global dimension – while favouring and promoting interaction between the affluent and the zealots of neoliberal orthodoxy; on the other hand – in the sovereign dimension – by confining and repressing those belonging to the poor population groups and those who oppose that conception of the world. Indeed, in the urban space, which represents the place where the effects of neoliberal policies manifest themselves most visibly (Aru-Puttilli, 2014, p. 10; Sager, 2011), these two spirits coexist, mutually supporting each other: the space of the upper stratum is usually connected to global communication and a vast network of exchanges, open to messages and experiences that embrace the whole world. At the opposite end of the scale, fragmented local networks, often ethnic based, rely on their identity as the most valuable resource for defending their interests and ultimately their very existence (Castell, 1989).[24]

The global city, rich and sustainable, forged by architectural design and technological experimentation, is accessible solely to the elites (which are in turn global), whilst the masses live in the spaces assigned to them by the "sovereign" city: urban areas without services, often the site of polluting industries, landfills, prisons, reception centres and so forth.

Therefore, just as neoliberal globalisation needs the (sovereign) backing of the police State, in the same manner the global and neoliberal city ends up functioning as a new centre of authoritarian, repressive urban power that manifests itself every time there are

[23] An interesting analysis of these topics in a gender perspective is contained in *Towards Habitat III. A gender perspective* in the journal "Territorio della ricerca su insediamenti e ambiente. International Journal of Urban Planning" (2016), in particular Prieto Perez (2016). Cf. Fenster (2005).

[24] Cf. Bauman, 2003. Bauman, again referencing Castell, notes that people live in places, while power governs through flows (Castell, 1989).

hierarchies to be reasserted, segregation and marginalisation policies to be implemented or reinforced (Sassen, 2006).

In particular, the contemporary city seems to operate as a form of arbitrary power, which acts according to its own rules, in clear conflict with what is established by constitutional principles or international legislation.

Consequently, the well-known expression "right to the city"[25], which has for some time encapsulated the demands concerning access to rights in the city, actually seems to refer, in practice, to the exercise of rights *against the city*, or against the centre of power that presently represents at an urban level what once concerned the national level. If rights were first claimed against the State (Bobbio, 1990), today they have to be able to act against the city, that is, against the current place of power, in order to control it: the power of the city needs to limited, constrained, and regulated, as occurred in the past for State power (Nitrato Izzo, 2017), the aim being to reassert a sort of "sphere of the undecidable"[26] in an urban context. A city cannot deprive its inhabitants of a home, health care, education, welfare services, or access to means of subsistence – on grounds of residence status, security, emergency, etc. – as these are fundamental rights enshrined in constitutions and international charters.[27]

In this sense, the tension between rights and the city paradigmatically expresses the tension underlying the relationship between rights and territory. The prominence given to the city in its local territorial dimension, related to the "spatial trap" (Heller, 2017), seems to have given rise to a "territorial principle"[28] that underpins the claims coming from city in total contradiction with what is established by national and international legal systems in respect of rights and freedom. The territory thus expresses a regressive potential when it comes to fundamental rights, leading to the triggering of identity-focused rhetoric of a localistic character centred on "forced sedentariness",[29] and increasingly aimed at the hierarchisation and marginalisation of those who do not correspond to given representations of subjectivity.

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[25] For a survey on the possible relationship between human rights and the city, I refer to Chueca (2016, 103); Kempir Reuter (2019); Grigolo (2019); Oomen, Durmuş, Miellet, Nijman, Roodenburg (2022).

[26] The reference is to Ferrajoli (2001).

[27] In this regard it should underscored that the mechanism of guaranteeing rights is to be found precisely at the national and international level and international level and can already be triggered "against the city", when necessary. A banal example: it is possible to challenge a measure issued by the mayor or municipal government by appealing to regional administrative courts or ordinary points, which are part of the organisation of the State and as such "external" to the city. In such cases, the spaces enter into conflict with each other, as a result of the conflict between the respective legislations and jurisdictions: and we much more frequently witness the intervention of the State jurisdiction to guarantee rights against discriminatory urban measures,[27] whereas the opposite represents virtuous but very rare exceptions.

[28] A positive reading of the territorial principle is contained in Magnaghi (2020). Here, by contrast, it is understood as a principle undermining the universalist basis of fundamental rights.

[29] (Augé, 2007).

The neoliberal city appears as a regressive city which reflects, once again, the tendency towards the "great regression" that has already largely impacted contemporary law and politics (Geiselberger, 2017).

When it comes to rights, therefore, the city demonstrates its finite and limited nature: it is necessary to debunk the myth of the city and reduce the enthusiasm for the urban space, exactly as we demythologised the ideology of the sovereign State at the time when rights came onto the legal scene. If the city becomes power, that power must be minimised, not enhanced.

This obviously does not mean underestimating the city's role in the implementation of human rights and fundamental freedoms: on the contrary, it means demanding that urban practices are consistent with the established constitutional and international norms in this area[30]. But if we are to move in that direction, it will be necessary to abandon the rhetoric of the city as a space capable of having meaning in itself, in the institutional and political void of neoliberal globalisation and explore the different declination that rights in relation to the city can (or should) manifest[31]. The "right to the city" acquires meaning if the city itself is seen as part of a rights-oriented national and international legal and political architecture and does not renounce the dimension of the universal.

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[30] The relationship (to be implemented) between human rights and the city has for some time been the subject of attention by several actors, institutional and non institutional. An interesting analysis of the legal issues involved in the translation of rights into urban space from the perspective of international human rights law can be found in *Human Rights, Rule of Law and the New Urban Agenda* (ONU, 2020, in https://unhabitat.org/human-rights-rule-of-law-and-the-new-urban-agenda). Cf. also: *Human rights in cities and other human settlements*, resolution adopted by the Human Rights Council on 23 June 2017 (in https://digitallibrary.un.org/record/1303019?ln=zh_CN&v=pdf); Human Rights Cities in the EU. A Framework for Reinforcing Rights Locally (2021, in https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-human-rights-cities-in-the-eu_en.pdf); *Gwangju Guiding Principles for a Human Rights City* (may 2014, in https://www.hlrn.org/img/documents/Gwangju%20Guiding%20Principles%20for%20Human%20Rights%20City%20adopted%20-%202014.pdf); *Towards a rights-based approach for an inclusive urban regeneration with nature-based solutions* (2021, in Urbinat, https://urbinat.eu/articles/human-rights-gender-towards-a-rights-based-approach-for-an-inclusive-urban-regeneration-with-nature-based-solutions/); the project *Human Rights City Network* (in https://humanrightscities.net).

[31] In this sense, in some analyses the practices of claiming rights in the city might suggest new declinations of rights in an urban key, also from a theoretical point of view; see for example Fernandez-Wulff and Yap, 2020.

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