

City

analysis of urban trends, culture, theory, policy, action

ISSN: 1360-4813 (Print) 1470-3629 (Online) Journal homepage: <http://rsa.tandfonline.com/loi/ccit20>

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To cite this article: Phil Hubbard & Loretta Lees (2018) The right to community?, *City*, 22:1, 8-25, DOI: [10.1080/13604813.2018.1432178](https://doi.org/10.1080/13604813.2018.1432178)

To link to this article: <https://doi.org/10.1080/13604813.2018.1432178>



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Published online: 15 Mar 2018.



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The right to community?

Legal geographies of resistance on London's gentrification frontiers

Phil Hubbard  and Loretta Lees

Displacement is central to the process of gentrification, but the importance of law in both enacting and resisting such displacement is often overlooked. Noting the tensions between existential, embodied meanings of displacement (i.e. being removed from a place called home), and the formal legal definitions of displacement (i.e. the removal of the right to a property), this paper explores how the law is implicated in the struggle for London's remaining council estates, with processes of expropriation providing councils a means of displacing residents from these estates to allow for (private) redevelopment but also an opportunity for residents to assert their 'right to community'. Here, we focus on the implications of the UK Secretary of State's decision not to overturn the Planning Inspectorate's (2016) recommendation that Southwark Council should not be allowed to compulsorily purchase those homes on the Aylesbury Estate which residents had not already vacated via negotiation. This decision was reached on the basis that while tenants would be compensated financially for the loss of property, they would not be adequately compensated for losing their home. This is suggestive of an expanded notion of housing rights that encompasses a right to community—something that raises the possibility of the law actually aligning with the interests of council residents rather than supporting the politics of gentrification.

Key words: gentrification, displacement, resistance, right to the city, legal geographies, London

Introduction

Resistance has been a recurrent theme in gentrification studies (Annunziata and Rivas-Alonso, [forthcoming](#)), but exploration of how the law is used as a resource by those fighting for the 'right to remain' has been surprisingly limited. Instead, both critical urban scholars and the media alike have often focused on instances of squatting (e.g. Annunziata and Lees [2016](#); Martínez and Cattaneo [2016](#); NION [2010](#)), social and bodily resistance (e.g. Drissel [2011](#)) or

'everyday activism' (e.g. Chatterton and Pickerill [2010](#); Lees, Annunziata, and Rivas-Alonso, [forthcoming](#)). In many senses, this focus is understandable given grassroots organisations often lack the resources necessary to mount a legal challenge to processes of (state-sponsored) gentrification, and tactics of occupation and non-profit organising have often proved effective in terms of drawing attention to the plight of those living on gentrification frontiers (see [City 2016](#)). While the construction of temporary, autonomous and nomadic spaces of resistance is then an

important tactic for drawing attention to particular struggles for place, important legal battles being fought by residents and their supporters rarely get a mention even when there have been significant wins. Given Chester Hartman's (1984) influential writing on the different ways that a community might fight legally for their 'right to stay put', this is a significant omission.

The invocation of the 'right to stay put' is significant here given that, in recent years, responses to neoliberal urbanism and spatial injustice have frequently been framed in terms of the 'right to the city' (Aalbers and Gibb 2014). In Lefebvre's (1996, 158) original formation this involved both an abstract claim to city life, as well as a concrete claim to the facilities that should be shared by all urban dwellers, such as spaces of work, leisure, education, healthcare and accommodation. Developing this, Purcell (2002) argues that all those who inhabit cities should have the right to participate in the production of the city, suggesting it is not only 'keyworkers' like nurses, teachers and firefighters who should enjoy full rights to the city, but also those cleaners, security staff, and domestic workers who keep global cities running but whom appear relatively powerless compared with the corporate developers who routinely profit from 'accumulation through dispossession' (Harvey 2003). In this light, arguing for 'the right to the city' has been identified as a call to transform the power relations that underlie the production of space, fundamentally shifting control away from capital and towards citizens (Merrifield 2011).

But what is often forgotten in such debates is that, strictly speaking, rights to the city are legal in character: they only apply if they are upheld by some authority or other. These authorities have different jurisdictions, and can operate on different scales simultaneously, meaning that at times it is not clear which rights take precedence: for example, rights to freedom and self-expression are enshrined into international

treaties and agreements (e.g. the Universal Declaration of Human Rights, drawn up by the UN in 1948) but in Western democracies *municipal law* continues to play a crucial role in mediating and shaping these (Attoh 2011). Here, municipal law denotes the range of planning regulations, land use zoning instruments, environmental policies and building codes designed to ensure urban 'orderliness' (Hubbard 2015; Valverde 2016). These shape rights to the city in significant, but often unacknowledged, ways. For example, legally zoning the (modern) city into distinct areas reserved for retail, industrial and residential land uses places limits on the range of possible functions that a space might fulfil. Likewise, municipal law can reproduce or challenge the right to property through development control regulations that constrain the production of space by particular populations, ostensibly when this is in the wider urban interest (e.g. removing those squatting on land owned by others, or preventing particular forms of self-build which do not meet required standards). Likewise, forceful expropriation can be understood as an action that involves housing and land belonging to a particular group being taken for public use or benefit. In this context, the right to inhabit the city is guaranteed for all those who legally occupy land, but is a right frequently undermined with reference to the public good. Legal mechanisms are hence integral to the displacement of people from land that is deemed worthy of redevelopment, with the local 'entrepreneurial' state seemingly able to deploy legal powers with impunity as it pursues agonistic policies predicated on large-scale displacement and gentrification (Baeten and Listerborn 2015; Delaney 2004).

This implies that there is a need for a codification of urban rights in which the 'right to remain' becomes a central dimension of the contract between state and citizen, offering the latter some ability to resist attempts to overwrite individual rights to occupy, dwell and transform urban space. Lefebvre would have no doubt been uncomfortable with the

idea that the right to the city could ever be translated into enforceable legal rights given his conception favoured use over exchange (and hence customary over contractual law). As Purcell has argued:

‘For Lefebvre a right is not an end goal that we can reach when the state inscribes it into law. Instead for him a right is a beginning. It is a political opening statement, a point of departure from which we begin a generalized struggle for a thoroughgoing renewal of political life ... Instead he thinks of the right as a ‘cry and demand’ (Purcell 2013, 316–7)

There are then dangers in proposing that the right to the city could ever be formulated in legalistic terms, or translated into legally enforceable rights by state-centric institutions. This noted, there are many commentators who nonetheless believe that the right to the city idea can usefully drive legal and institutional reform in ways that begin to support broadly progressive agendas (e.g. Attoh 2011; Brown 2013; Butler 2012).

Whether one regards legal reform as a beginning or an end in terms of realising the right to the city depends on how one conceives of the role of the law in the exercise of state power (see Gill 2010; Jessop 2007). On the one hand, there is a view that there is a fundamental disconnect between progressive publics and the state, and that the law tends to support extractive, exclusionary and coercive state policies. This is certainly a key thematic in legal geographies, especially work addressing property relations in the capitalist city (e.g. Blomley 2010; Cunningham 2008), including several studies which directly trace the legal mechanisms supporting spatial exclusion and dispossession (e.g. Delaney 2004; Hodkinson and Essen 2015). Such analyses tend to present the law as an appendage of state power, detailing the distinctive legal practices and apparatus associated with statist institutions (legislatures, international organisations, administrative agencies, courts, the police, and so on). But within legal geography there is also an interest in non-state actors, events, and legal

expressions such as forms of ‘ordinary’ legal consciousness, customary laws and norms (Hubbard and Prior 2017). Lawyers interpret and weigh up these laws in different spatial contexts, sometimes reinforcing spatial norms, at other times altering them (Martin, Scherr, and City 2010). Arguably, this implies the need for analysis of how law is being applied to different situations, places or issues *in situ*, allowing publics and states to fuse and attach to one another in sometimes surprising ways (Cooper 2016). This requires consideration not of abstract principles but *law in action*: analysis not of law in general—as if it exists as a single entity—but study of the way that laws are enacted differently in different jurisdictions, sometimes clashing with laws enacted at other scales (Valverde 2016).

Recognising the law as a realm of competing interests, ideologies, and capacities (Delaney 2015), this paper explores how the law constructs differential or even contradictory rights to the city. It does this in relation to the legal processes enabling private developers and corporations to push London’s gentrification frontier into council estates by breaking up and displacing low income and working class communities. At first glance, legal processes such as stock transfer and compulsory purchase appear to act unilaterally in the interests of corporate developers wishing to develop housing to be sold at a market rate rather than provide ‘affordable’ or social housing (see Hodkinson and Essen 2015; Watt 2009). But this paper insists such processes are inevitably also a realm of contestation, providing a space where residents can present arguments about their right to stay put. While such legal challenges have (to date) been largely unsuccessful, costly and time-consuming, there have been some glimmers of light in recent legal adjudications, with emerging signs that the law might be able to align state and institutional power with what Delaney (2016, 269) terms ‘vectors of justice’, offering a means by which displacement might be legally resisted (see also Bryant and McGee 1983). In

discussing these possible alignments, we describe the way that rights to the city can be mobilised, suggesting that arguments for the right to housing need to be transformed into a more consequential legal claim to the right to community.

The London clearances

Against a backdrop of rising homelessness in the UK, and increasing demand for affordable housing in the capital, London's council estates are currently experiencing a 'new' wave of urban renewal (Lees 2014a). This state-led redevelopment, enabled by local (borough) councils, has been instigated by national and regional policies favouring the involvement of private finance in the upgrading of council estates. To 'kick-start and accelerate' that process, the Tory government has launched a £150 million Estate Regeneration Programme of loans to private developers for 'redeveloping existing estates' on 'a mixed tenure basis' (HCA 2014), continuing New Labour's mixed-community policy (see Bridge, Butler, and Lees 2011; Lees 2008). More recently, the Mayor of London's (2014, 59) Housing Strategy has similarly called for the 'vast development potential in London's existing affordable housing estates' to be unlocked through private redevelopment. While this means that state assets are being ceded to the private sector, this is defended with reference to the need to increase the overall housing supply via densification of those estates.

The London Assembly (2015, 14) estimated that 50 former council estates across London received planning permission for partial or complete demolition and redevelopment between 2005 and 2015, a figure that rises to 131 if one considers all council estates of more than 100 residents that have experienced decanting and demolition since the beginnings of New Labour's programme of 'urban renaissance'.¹ Though there are some significant differences between Conservative and New Labour's urban policies, this suggests estates

remain a significant focus for redevelopment. In December 2016 the Department for Communities and Local Government announced an additional £172 m of pump-priming funding for such schemes, arguing:

'Estate regeneration can transform neighbourhoods by delivering well designed housing and public space, a better quality of life and new opportunities for residents. It provides an opportunity both to improve housing for existing residents and to provide much needed new homes, particularly in urban areas, where estates have been built at relatively low densities. We believe estate regeneration has the potential to deliver thousands of net additional homes over the next 10 to 15 years' (DCLG 2016, 4)

However, recent policy missives acknowledge the need to engage with, and protect, existing estate residents, responding in part to concerns about the impact of estate redevelopment on existing communities. The DCLG's (2016) *Estate Regeneration National Strategy: Resident Engagement and Protection* demands 'more than legal' protections for council estate residents:

'It is a legal requirement for leaseholders to be compensated if their home is demolished. However, we expect that schemes will go further and offer leaseholders a package that enables them to stay on the estate or close by. We also expect leaseholders to be offered the option of an independent valuation of their property' (DCLG 2016, 5)

Later in the same year the GLA (2016) published its *Draft Good Practice Guide to Estate Regeneration*. Following Sadiq Khan's pre-election pledge to increase the proportion of London's homes that are affordable, this guide reiterates the many advantages that can be associated with estate regeneration—better quality homes and neighbourhoods, and also new and affordable homes—but notes the potentially disruptive effects of regeneration on existing communities and neighbourhoods, setting forth principles for resident-led regeneration:

‘The Mayor believes that for estate regeneration to be a success, there must be resident support for proposals, based on full and transparent consultation. These proposals should offer full rights to return for displaced tenants and a fair deal for leaseholders, and demolition should only be followed where it does not result in a loss of social housing, or where all other options have been exhausted’ (GLA 2016, 4)

This allusion to the *right to return* is important, suggesting that:

‘landlords should offer tenants who have to move off the estate while works are underway a full right to return to a property of a suitable size, at the same or similar level of rent, the same level of security of tenure and with the appropriate design features’ (GLA 2016, 12)

However, there are notable caveats here (such as the fact that local authorities are phasing out lifelong tenancies, and that they may not be able to offer similar housing because of changes to the housing mix), and until the final version of this report is published it is not clear how significant this guidance might ultimately be in combatting the significant population displacements associated with estate renewal (see Lees 2014b; LTF et al. 2014; see Figures 1 & 2).

The notion of ‘social cleansing’ has hence been invoked to describe estate renewal in London (see Lees 2014b).² This ‘domicide’ (Porteous and Smith 2001) involves both the short-term removal of tenants and leaseholders to allow for estate redevelopment, as well as the longer-term out-migration of residents for whom the estate begins to be less attractive and affordable as a place to live because of the influx of more affluent households (see also Elmer and Denning 2016; Hodkinson and Essen 2015; Watt 2016). This implicates estate regeneration within the wider processes of gentrification in the capital which, accompanied by austerity urbanism and welfare benefit reforms (e.g. the bedroom tax, the capping of local housing allowance, changes in eligibility for housing benefit for the under 35s and so on), are

breaking up working class communities which are often long-standing and characterised by forms of social and cultural capital that can compensate for a lack of economic prosperity (Lees 2008; Lees and White, *under review*). The latter is particularly emphasised in the campaigns led by some resident groups and estates against displacement, including those campaigns which have invoked the ‘right to stay put’ (see Lees and Ferreri 2016; LTF et al. 2014).

The legalities of displacement: compulsory purchase orders in London

Estate renewal is part of a process some have equated to a form of ‘accumulation by dispossession’ (Harvey 2003), given it involves a release of common and state-assets to the market that demands the direct displacement of some, or all, existing residents. Irrespective that redeveloped estates might retain significant amounts of social—but rarely council—housing, the redevelopment requires displacement so that existing housing can be demolished, refurbished or densified, with the payoff for the developers being the opportunity to develop speculative private housing aimed at upper middle class consumers. For some this signifies not just the dismantling of low income or working class communities, but the end of council estates as we know them:

‘The policy of demolishing London’s housing estates is ... the keystone in this Government’s crusade to dismantle the welfare state built by Labour after the Second World War ... To this end, not only must the greatest source of working-class housing in London be reduced to rubble and their often significantly lower quality replacements priced at a level few Londoners—let alone working-class Londoners—will be able to afford, but the very idea of council housing must become impossible to conceive again’ (Elmer and Denning 2016, 275)

Given the potentially far-reaching consequences of the ‘London clearances’, Hodkinson and Essen (2015) suggest there is

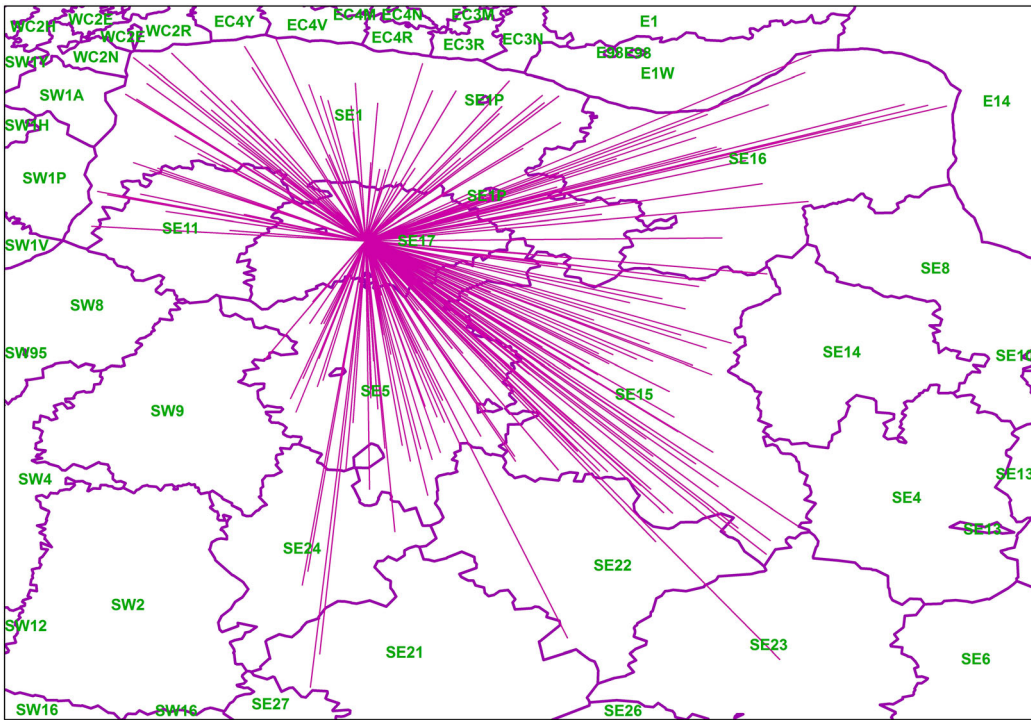


Figure 1 Council tenant displacement from the Aylesbury Estate (Source: Public Inquiry, Aylesbury Estate, London, Witness Statement Professor Loretta Lees, 29th April 2015)

surprisingly little written about the legal mechanisms through which this dispossession is occurring. However, as their analysis of the Myatts Field North Estate in Lambeth shows, there is a reliance on certain formal legal mechanisms to bring council estates within circuits of capital accumulation, with specific processes of compulsory purchase, tenure renegotiation and master-planning required to ensure the transition from a council or social housing association-run estate to a mixed tenure estate redeveloped and run by a private provider.

A key mechanism here is the Compulsory Purchase Order (a form of expropriation) (Lees and Ferreri 2016; Winter and Lloyd 2006). CPOs represent the main means through which a London borough can make an estate available for private sector redevelopment and densification (or, in the terms in which CPOs are usually framed, more ‘productive use’).³ Layard (forthcoming)

suggests CPOs are difficult and time consuming for local authorities to pursue: this said, they are also difficult to challenge. Davis and Thornley’s (2010) analysis of the use of CPOs in the regeneration near the 2012 Olympic site in the Lower Lea Valley area demonstrates this:

‘A public Inquiry was held in order to determine the CPO. This was a full year after the [*Olympic*] bid had been won. This provided the opportunity for objections to a CPO – which affected groups had a legal right to make – to be formally ‘heard’. The ultimate decision rested with the Secretary of State for Communities and Local Government. In a bid to minimise the number of representations at the hearing, the LDA accelerated its negotiation processes with land-owners, producing ‘a flurry of eleventh hour relocation deals’. By the time the hearing commenced, 90% of the land was in the LDA’s possession and 70% of the jobs on the

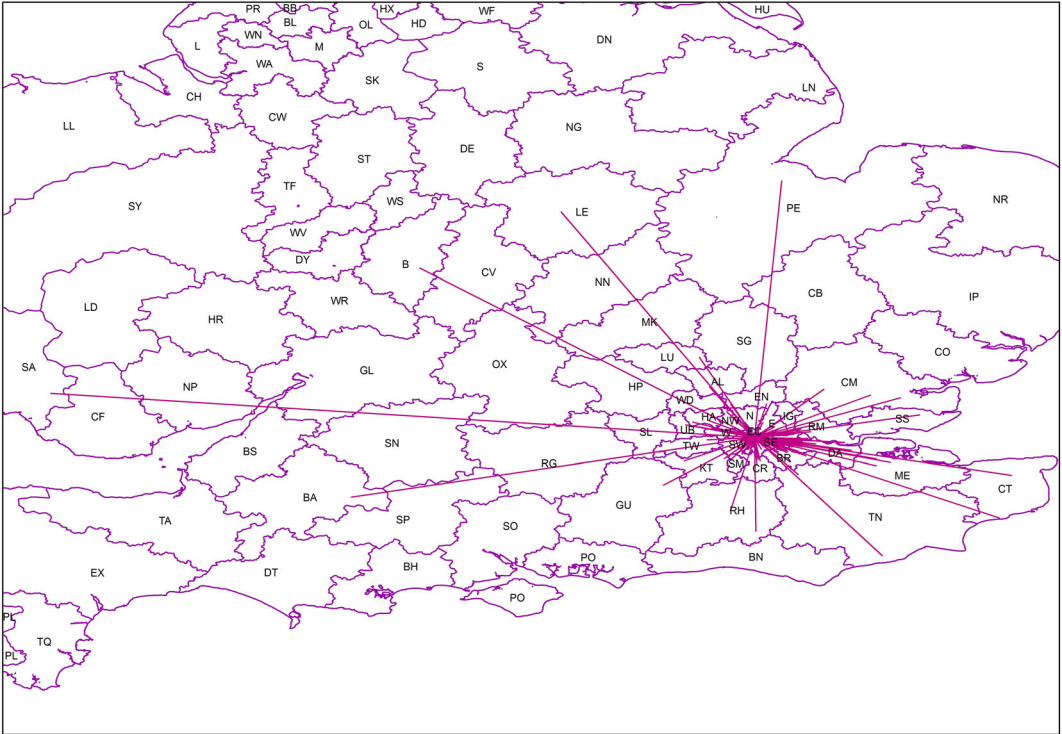


Figure 2 Leaseholder displacement from the Aylesbury Estate (Source: Public Inquiry, Aylesbury Estate, London, Witness Statement Professor Loretta Lees, 29th April 2015)

site safeguarded ... leaving a relatively small number of individuals objecting to the terms of relocation or to the CPO itself' (Davis and Thornley 2010, 93)

There were three legal challenges to the above CPO; all of which were unsuccessful. In each case the Judge decided that although there had been substantial interference to the claimant's human rights, the importance of the Olympics and its legacy was overwhelming.⁴ Those unable to overturn the CPO included 424 tenants on the Clays Lane Estate (Newham), the majority of whom were relocated to East London's outer boroughs (Waltham Forest and Barking & Dagenham), away from the more central locations they had previously resided in (Bernstock 2014; see also Hatcher 2012).

This suggests that although estate regeneration may begin from a position of *negotiation* between the local authority, developers and

existing tenants, leaseholders and freeholders, for individual residents, many things seem non-negotiable. So although the council has an obligation to ensure that a property owner is no better or worse off after a CPO (with home-loss payments typically set at 10% of the market value of a property), attempts to broker a fair deal, or exert the 'right to remain' seem destined to fail given the local state usually emerges victorious in 'facilitative' law disputes because of its vested 'authority' (Blandy and Wang 2013). This is something that sometimes appears inevitable in relation to CPOs:

'Legal and procedural rights of owners in a CPO process are a mirage: they evaporate upon arrival at the point they might be wielded. This is more than a procedural and practical problem. It is also a marker of the open-ness and non-materialisation of the law, for subjects stand in anticipation of a law that

is always deferred in a ‘zone of indistinction’ and made subject to the sovereign decision’ (Gray and Porter 2015, 383)

In short, the law seems tipped in favour of the private developers, whom the state assist in acquiring land (see also Thomas and Imrie 1989). The law appears to offer little right to remain: citizens that stand in the way of re-development are displaced by an effective suspension of the legal norms that ordinarily prioritise the right to property (see also Gray and Porter 2015, on Glasgow’s Commonwealth Games clearances).

This said, the CPOs surrounding sports mega-events could be considered as occurring in a state of exception, and at a moment when a strong claim is being made to a wider, if obscure, public interest. But in the context of London’s housing crisis, the *de facto* designation of all London’s council estates as brownfield public land (or ‘brownfield estates’)⁵ has consolidated the idea that CPOs are a legally defensible technique for displacing residents from occupied land in the interests of solving the capital’s housing crisis (via a strategy of densification that involves building at higher density on existing estates). Nationally, the number of CPOs served annually are relatively few—e.g. less than 80 in 2012—but nearly all of the estate redevelopment schemes in London pursued in the last decade or so have involved a compulsory purchase order, usually, and ironically, to displace those leaseholders who bought their property under the much-critiqued Right to Buy scheme. Indeed, only council estate freeholders or leaseholders have the statutory right to object to compulsory purchase, not council tenants: the latter are simply offered housing elsewhere.⁶

The now-demolished Heygate Estate in Southwark provides a notable example of the use of such CPO powers, being one of the first council estates in London to fight this ‘new’ form of urban renewal at a CPO public inquiry in 2013. This was the grand finale in a long-running campaign of resistance

to the redevelopment of the Heygate Estate and wider Elephant and Castle area (Lees 2014b; Lees and Ferreri 2016). When a CPO was served on Heygate leaseholders in 2012 they exercised their right to object. Their argument was two-fold: firstly, they objected to the unfair valuation of their properties (at half of the borough average price per square foot), which would mean they would be permanently priced out of central London, and, secondly, they argued the development proposals were not in the public interest, as they would create ‘a private gated high-rise citadel’. As Lees and Ferreri describe, the Public Inquiry ran over four days in February 2013 and involved the objectors and a range of expert witnesses⁷ who presented a broad critique of the redevelopment scheme:

‘The Public Inquiry reproduced the three modes of resistance and collective positions from which organizing and resistance had been articulated in and around the estate in its last three years: from exposing the ‘broken promises’ of the regeneration scheme, to making the process of enforced relocation visible to the general public, to raising the question of the wider repercussions and future displacements to be caused by the demolition of low-income public housing, not just in the neighbourhood, but also in the borough and London at large’ (Lees and Ferreri 2016, 21)

Criticisms of the future provision of ‘affordable housing’ on site, particularly the higher levels of rent compared to those previously available to council tenants, was declared by the Heygate CPO Planning Inspector, Wendy Fabian, as ‘a matter of wider social policy consideration, not unique to the Order Land [*the area of the Heygate Estate still inhabited*] or this CPO’ (Fabian 2013, 31). Nevertheless, the scheme was deemed compliant with the affordability levels defined by the Council and the GLA, and the CPO was confirmed. While ultimately unsuccessful, the Inquiry was arguably useful in terms of making the local authority provide a legal justification for its actions, and provided a useful

test bed for those who subsequently objected to the adjacent Aylesbury Estate CPOs.

The Aylesbury Estate CPO Public Inquiry: a winning precedent?

The Aylesbury Estate Public Inquiry was prompted by the Aylesbury Leaseholder's Action Group, consisting of eleven leaseholders in eight properties earmarked for demolition across four blocks which Southwark Council wanted to give to Notting Hill Housing Trust to be demolished and redeveloped.⁸ Ten qualifying objections and one non-qualifying objection to the CPO were received prior to the commencement of the inquiry which took place 30 April, 1–2 May, 12 May and 13–15 October 2015, overseen by the Planning Inspector, Lesley Coffey. Several additional objections were made at the inquiry. These related to the failure of the scheme to ensure that social rented housing would be provided; the deliverability of the scheme; the failure to explore refurbishment as an alternative to demolition; the lack of guarantees that the scheme would promote the social well-being of the area; the failure of the Acquiring Authority to carry out an Equality Impact Assessment in relation to the leaseholders; and the suggestion that the CPO breached the human rights of the leaseholders.⁹

Following the Inquiry, the inspector recommended the CPO should not be confirmed because, although the scheme was in accordance with the planning framework for the area, and there was no viable alternative to the scheme, overall there would be too many negative impacts meaning that 'a compelling case in the public interest [*bad*] not been proved'.¹⁰ The Secretary of State for Communities and Local Government's 2016 (initial) decision to confirm this recommendation hence represented a significant and surprising victory for the leaseholders and others involved.¹¹ The key reasons given by the Secretary of State for his decision were that there had been insufficient negotiation with remaining leaseholders; that Southwark

Council had not taken reasonable steps to acquire land interests by agreement; that there would be considerable economic, social and environmental disbenefits for the leaseholders who would remain on the land; that interference with the human rights of those with an interest in the relevant land was not sufficiently justified; and overall, that the test for a 'compelling case in the public interest' had not been met (as required by CPO policy guidance).

This decision stressed the importance of addressing human rights when individuals are affected by a CPO (i.e. Article 8 of the ECHR right to respect 'private and family life'). It also highlighted the increasing importance of Public Sector Equality Duty in England and Wales given the suggestion in the ruling that black and ethnic minority residents would be 'disproportionately affected' by the CPO, and that it would have a negative impact on their ability to retain their cultural ties.¹² Issues such as the 'dislocation from family life' and the potential to harm the education of affected children were also identified in the decision letter, indicating a much wider approach to assessing the impacts of a CPO than had been the case previously. In the Secretary of State's summation:

"The options for most leaseholders are either to leave the area, or to invest the majority of their savings in a new property. Article 8(1) ... is therefore clearly engaged. In relation to Article 8(2) (which permits interference which is proportionate when balanced against the protection of the rights and freedoms of others), the Secretary of State finds that the interference with residents' (in particular leaseholders') Article 8 rights is not demonstrably necessary or proportionate, taking into account the likelihood that if the scheme is approved, it will probably force many of those concerned to move from this area ... The likelihood that leaseholders will have to move away from the area will result in consequential impacts to family life and, for example, the dislocation from local family, the education of affected children and,

potentially, dislocation from their cultural heritage for some residents.’¹³

The letter went on to note ‘the lack of clear evidence regarding the ethnic and/or age make-up of those who now remain resident at the Estate and who are therefore actually affected by any decision to reject or confirm the Order’, but argued that given that ‘67% of the population living on the Estate were of BME origin’ it would be highly likely that there would be a disproportionate impact of the CPO on the elderly and children from these groups. It was argued that black residents would be especially affected if the Order were confirmed. The Secretary of State noted that:

‘white British culture is more widely-established across the UK, including at housing sites to which residents may be moved, whereas minority cultural centres are often less widespread, which is likely to make cultural integration harder for those of BME origin who are forced to move than those of a white British origin.’

The CPO decision was significant and it has raised Aylesbury residents’ (and residents on other council estates across London) expectations that they might be able to remain in their homes. The decision fell short of stating that there is an absolute ‘right to a community’ but its implications will clearly be a significant factor in future CPO decisions in London, not least where renewal threatens estates where BME residents are present in significant numbers (White and Morton 2016).

From the right to housing to the right to community?

The proposed redevelopment of the Aylesbury Estate is not untypical of the estate schemes ongoing in many parts of London which involve the forcible eviction of existing populations. Such displacements might normally be deemed indefensible were such redevelopment not deemed essential to

increase the overall amount of housing in the capital: in the case of the Aylesbury Estate, 2,758 homes are to be replaced by 4,900 units of a variety of sizes and tenures to allow for the development of a new ‘mixed community’. But with only 1,473 social housing units promised (i.e. not council housing and at a higher rent), and the majority sold at market-rate, this suggests that the social composition of the area will change considerably, and long-term out-migration and displacement will be inevitable. This displacement of leaseholders and tenants via agreement, and if necessary, a CPO, is something that is generally seen as being in the public interest given the demand for new housing in London, irrespective of the fact that what is being demolished is much sought-after and often structurally-sound council housing (Lees 2014a).

In campaigns against such removal, the right to the city appears to translate into a narrower but arguably more concrete claim, namely the right of residents to continue to occupy their homes. This right to housing is one that is much invoked in gentrification struggles. As Rolnick (2014, 294) argues,

‘a crucial point of convergence between different [*urban*] struggles ... is the central role of housing: displacements, evictions, threats on security of tenure of urban dwellers, the right to be an integral part of the decision-making process of defining the destiny of urban spaces and mostly the political links between ‘place’, ‘condition of inhabitants’ and citizenship rights are in the core of all ‘right to the city’ urban struggles.’

Alkhalili, Dajani, and De Leo (2014: 9) put it more succinctly, arguing that ‘the right to the city cannot be maintained if the right to housing is missing’.

In the face of the current housing crisis in England and Wales, there is now mounting legal and public pressure for the ‘right to housing’ to be enshrined in legislation: although the Housing Act 1966 suggests all citizens have a right to suitable housing, in

practice this translates merely to a right to some form of accommodation. However, in the case of the Aylesbury Estate, residents resisted the CPO not on the basis that they will lack accommodation per se but that they need a suitable living environment (see also Hartman 1998). This noted, the Aylesbury resistance has been a long struggle, and one that has involved the voluntary labour of many residents, advocates and supporters, as well as the use of crowdfunding to get expert legal advice. For leaseholders the Aylesbury CPO decision provides a basis for re-negotiation of compensation and a 'London market value promise' which means that they are ultimately given enough money (with no increase in mortgage or new service charges) to be able to afford to buy the same kind of property on the regenerated estate.¹⁴ Details of the amounts paid by Southwark for homes on the Aylesbury Estate were obtained by campaigners under FOI showing low offers being made and accepted under the threat of compulsory purchase. In September 2012, for example, Southwark council paid one leaseholder on the Aylesbury Estate just £75,000 for their large, 47 m², one-bedroom flat. In 2014 the council paid £147,500 for a four-bedroom, 97 m² maisonette. To put this in context, by January 2013, average house prices in London had already hit £400,000 and in 2017 a four-bed duplex in the Aylesbury's newly-built Harvard Gardens cost £795,000.

The fact that Aylesbury leaseholders fought for the *right to remain* is highly significant. In previous CPO public inquiries, the planning inspector has usually been happy to uphold the CPO if it appears no-one will become homeless.¹⁵ The Aylesbury decision suggests a potential shift, and an expanded notion of the right to housing being accepted: it implies it is not simply enough for people to be rehoused, but that they need to be rehoused in a suitable environment where they can rebuild a sense of community. This is akin to the widened conception of the right to housing argued

for by Marcuse and Madden (2016, 144), who suggest that 'the way forward is to acknowledge the limits of formal rights to housing under the current legal and political system while at the same time pressing for a sufficiently broad, activist conception of those rights' as only this approach can challenge 'residential commodification, alienation, oppression, and inequality'.

For Marcuse and Madden, this expanded or radical right to housing is hence one that recognises the right to a home and to a community, not just housing per se:

'People do not only live in homes. They live in neighborhoods and communities. They occupy buildings but also locations in a social fabric. A radical right to housing must affirm and protect this web of relations. It must propose new links between housing and other domains . . . the right to housing has to be apprehended in a much broader context' (Marcuse and Madden 2016, 145)

So while security of tenure is one of the most important elements of the human right to housing (Roisman 2013), if property is considered as a *bundle of rights*, one element of this should be the right to dwell. Blandy and Goodchild (1999) concur when they argue that the notion of a bundle of rights is 'the only interpretation that covers the situation of tenants, as well as those of owner-occupiers'. This given, while property and contract case law guides CPO processes, equally important is the right of the tenant or owner to a home and family life, albeit it will be down to the courts to determine the circumstances in which these rights take precedence.

The right to housing is then a discourse that potentially offers an eviscerated sense of what is at stake in the London clearances. As Baeten and Listerborn (2015) argue, the 'right to dwell' must be understood as a right to inhabit the abstract space comprising 'home' in a wider sense. As Davidson (2009, 231) points out, drawing on Lefebvre and Heidegger, the 'right to dwell' and the 'right to place' can 'be denigrated or destroyed

even if one stays in a particular space' (see also Davidson and Lees 2010). In this sense, displacement can occur even if a resident gets to remain on their redeveloped estate (e.g. if their home is refurbished and there is infill new build development around them) or if they get to move back to the footprint of the estate into a newly-built community (as per the vagaries of mixed communities policy). A focus on preventing displacement may not be enough to preserve their community and the social, economic, cultural, and psychological benefits that accrue to them from dwelling within this particular place. Imbroscio has developed this idea, proposing that the 'right to place' is a fundamental right, as important in democratic societies as the right to movement:

'People should have a right to live in the place-communities (i.e. communities rooted in geographic space, such as neighborhoods, cities, towns, or regions) that they *choose*, meaning that, above all, the preferences of individuals should determine this question, rather than a host of other factors standing largely beyond their control. Such a right to place would be constituted by a dual freedom, entailing not only the ability to enter and exit but also the ability to continue to live where one currently resides. It thus entails the freedom to go, and to go where one desires, but it also entails the freedom to simply stay put. Yet, while recognizing this dual freedom, the right to place would not privilege the freedom to stay put over the freedom of prospective newcomers to enter, for to do so would arbitrarily deny some full access to their preferred place communities' (Imbroscio 2004, 576)

Here, Imbroscio grapples, perhaps unsuccessfully, with the fundamental ambivalence of community as a concept, given it expresses both a sense of exclusivity as much as radical inclusivity. The key question is then whether the law (in context) can provide the tools for residents to remain within their community, and prevent displacement, without impinging on the rights of others to enter that community, or for that community to change over

time via different processes (including regeneration). The right to place, as proposed by Imbroscio, struggles to reconcile the need to be inclusive (i.e. by allowing freedom of entry) and its need to be somewhat exclusive (to keep such entry from being destructive).

The difficulty in reconciling inclusivity and exclusivity means that the right to place needs to be translated into bespoke policies or mechanisms that might allow for (some) new residential development or incursion whilst ensuring there is no increased 'displacement pressure' bought to bear on long term residents. According to Marcuse (1985), the latter refers not only to actual displacement but also to the anxieties, uncertainties, insecurities and temporalities that accompany any new development. One important such mechanism is the community land trust, which acquires and holds real estate in the community's interest. The CLT has long been regarded as a de-commodified alternative to gentrification (see Bunce, *forthcoming*; Lees, Slater, and Wyly 2008; LTF et al. 2014; Steele, *forthcoming*), although there are, to date, very few CLTs in London (one example is the East London Community Land Trust). Layard (*forthcoming*) accordingly proposes that in addition to efforts to keep land in collective or communal ownership, planning restrictions (such as limits on the construction of properties as second homes or Air BnB properties) might be used to try to protect distinctive places, albeit taking into account Tait and Inch's (2016, 189) argument that 'affective imageries of place and community that seek to mobilise the local are potentially powerful but deeply ambiguous political constructs'.

Heeding Tait and Inch's (2016) warning, it is important to stress that community remains a highly problematic concept, with generations of urban sociologists and geographers questioning the extent to which community can ever be synonymous with neighbourhood (for a summary, see Blokland 2017). Inevitably, not all who dwell on estates form affective ties with other estate residents, and in many cases it is

possible to talk about multiple communities rather than a singular one. But the inherent flexibility of the meaning of ‘community’, combined with the fact that it is sometimes regarded as spatially-bounded, means that it is a powerful construct that can be mobilised in legal struggles. Like many other key concepts in planning and environmental law—e.g. amenity, locality, purpose of use—community is vaguely defined in a legal sense (see Hubbard and Prior 2017 on *pliability* in municipal law). Following the precedent set by the first Aylesbury CPO Public Inquiry, where the planning inspector put considerable weight on residents’ expectation that they should remain in a situation where they could maintain meaningful ties with family and friends, it appears there is now a basis for other resident groups fighting eviction or dislocation to similarly invoke their ‘right to community’—even if the scale of the displacements involved are different. This suggests an emerging alignment of planning/environmental law with human rights/equalities law that provides multiple opportunities to align state power with what Delaney (2016, 269) terms ‘vectors of justice’ in the battle against gentrification and displacement.

Conclusion

In England and Wales, the Housing Act 1966 exists to ensure that every eligible citizen is provided with ‘suitable’ accommodation, but as the compulsory purchase of properties on council estates across London suggests, this right to suitable housing seldom equates to a right to remain within a suitable living environment. It is here that the 2016 CPO public inquiry victory for Aylesbury residents and their supporters is particularly significant, as it considers the loss of place rather than the loss of housing per se, and recognises the legal right to dwell as one that might be invoked in instances where a given ‘community’ is under threat (see also Darcy and Rogers 2014; Davidson 2009). It suggests

that while it might sometimes be necessary for residents fighting displacement to seek extra-legal solutions via direct action and ‘improper politics’ (see Watt 2009), there is significant room for those seeking spatial justice to invoke the language of rights to impose enforceable obligations on London boroughs to protect those spaces and populations under threat of displacement. Given the DCLG’s avowed intention to give local residents new rights in terms of how planning decisions are made¹⁶, to bid to buy community buildings and facilities that are important to them, and to run a local authority service where they believe they can do so differently and better, this may well be an opportune time for council estate residents in London—and other British cities—to assert their legal ‘right to community’ in their fight to stay put.

Our conclusion challenges the idea that the right to the city should be envisaged only as an embodied and social form of resistance rather than an institutionalised set of legal norms and practices. Following Lefebvre, many commentators on struggles against displacement have highlighted the potential of ‘differential spaces’ for challenging dominant socio-spatial orders via practices of habiting (i.e. occupying and producing space). We are not so naïve as to suggest that the law will always provide a viable alternative to this, nor that the legal institutionalisation of the ‘right to community’ will allow all vulnerable or working class populations to effectively oppose enforced displacement. Yet the counter position—that the law exists only to support the interests of the state, and that it will inevitably be used to support state-sponsored strategies of gentrification—is also untenable (see also Butler 2012; Cooper 2016). Taking a pluralistic perspective on the law as a realm of competing interests, ideologies, and capacities (Delaney 2016), we conclude that there is a need to think creatively about the ways that legal procedures, institutions and resources can work against, rather than in favour, of the politics of gentrification.

To date the literatures on ‘the right to the city’ and even on ‘legal geographies’ have been curiously placeless. They sometimes talk about law and rights in quite abstract and universalising ways (Glass, Woldoff, and Morrison 2014). But ‘rights’ are very different in, for example, England and Wales (which have no written constitution) than in the US (which does). And both these common law jurisdictions have different legal cultures compared with codified civil law countries. For example, England and Wales does not generally do codification, allowing case law and legal precedent, rather than detailed codes, to shape how law is interpreted. It is this in fact that makes ‘precedent’ meaningful in the Aylesbury case; in France or Italy subsequent rulings would not be bound by precedent as they are in English common law. There are also grounds for tenants to defend their claims in terms of administrative law constraints on government actions (which must be reasonable and proportionate), but strictly speaking these are not ‘rights’. As critical urbanists we need to be careful not to confuse administrative law claims about due process with a ‘right’ to anything. As the Aylesbury case shows there are also claims made on the basis of statutory duties on the state, for example, the legal duty on councils imposed by the 1966 Housing Act or public sector equalities duties associated with the 2010 Equality Act. This suggests there needs to be more care and attention paid to the different ways in which the jurisdictional context shapes opportunities for claims-making in courts and for much tighter use of the term ‘rights’—which is often used too loosely by geographers (and perhaps by activists also).

This failure to understand the place-specificity of the law means those resisting displacement are sometimes unable to formulate their legal claims in ways that will have traction. It also cuts against the grain of the fashion in geography and critical urban studies, where there is a tendency to universalise about the ‘right to the city’ without much sense of legal context. Hartman and

Robinson (2003, 474–480), for example, note the US does not recognise the basic right to housing, with significant differences in US and European legal systems and courts¹⁷. The ‘right to the city’ discourse is often too abstract and insensitive to geographic context to offer much practical guidance on the ways forward. We need a much more particular and necessarily grounded way forward that is attentive to context and the different avenues for claims-making which may be about human rights, the fairness of administrative procedures, or the legal duties of housing and service providers. To that end this paper is a call for more attention to be paid to the legal geographies of gentrification and displacement, for as Hartman and Robinson (2003, 485) assert: ‘tenants represented by counsel are far less likely to be evicted’.

Disclosure statement

No potential conflict of interest was reported by the authors.

Funding

This research was supported by the ESRC [grant number ES/N015053/1] Gentrification, displacement and the impacts of council estate renewal in twenty first century London.

Notes

- 1 This figure is based on the authors’ own research (PI: Lees, L., Cols: Hubbard, P. and Tate, N. ESRC 2017–2020. *Gentrification, Displacement, and the Impacts of Council Estate Renewal in C21st London [ES/N015053\1]*), involving Freedom of Information (FOI) requests to London boroughs coupled with use of borough planning records. This figure may itself be an underestimate given there is no centralised database of council assets including those disposed of via stock transfer since 1997.
- 2 See also <https://theconversation.com/camerons-sink-estate-strategy-comes-at-a-human-cost-53358>
- 3 A CPO with no objections is likely to be confirmed within a few months of it being made, one with objections can take 18 to 24 months. Under Section

- 17 of the Housing Act 1985 existing housing can be compulsorily acquired to provide new housing; under section 226(1)(a) of the Town and Country Planning Act 1990 property can be compulsorily acquired to secure its redevelopment if this will bring social, economic or environmental benefits.
- 4 *R (on the application of Neptune Wharf Ltd) v Secretary of State for Trade and Industry* [2007] 2 P&CR 20; *Smith v Secretary of State for Trade and Industry* [2007] EWHC 1013; *Sole v Secretary of State for Trade and Industry* [2007] EWHC 1527. In all cases judgments were informed by ODPM Circular 06/2004 which states that ‘An acquiring authority should be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in land affected. Regard should be had in particular to provisions of Article 1 of the first protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention’.
 - 5 The term ‘brownfield estate’ was first used in a report by estate agents Savills in April 2014 under the title *Regeneration and Intensification of Housing Supply on Local Authority Housing Estates in London*. In January 2016, Savills submitted their research report to the Cabinet Office, *Completing London’s Streets: How the regeneration and intensification of housing estates could increase London’s supply of homes and benefit residents*. In it they estimate that London has around 8,500 hectares of land currently occupied by local authority estates, and containing around 660,000 households. Of these, they recommend that 1,750 hectares be regenerated according to what they call their ‘Complete Streets’ model.
 - 6 There is however a statutory requirement for tenants to be consulted when the case for demolition is made by a local authority—see Douglas and Parkes (2016).
 - 7 These included the original architect of the Heygate Estate, Tim Tinker, as well as several academics including Michael Edwards, UCL-Bartlett; Loretta Lees, then at King’s College London; Mara Ferreri, then at Queen Mary University of London; and Paul McGann, London Metropolitan University.
 - 8 ALAG was supported by a handful of academics (Loretta Lees, now at Leicester University, plus architectural historians Ben Campkin and Jane Rendell, and engineering scientist Kate Crawford all at UCL), housing activists (including the 35% Campaign group), an ex-Conservative councillor, and eventually, on the last day, a pro bono lawyer (see Ferreri and Glucksberg 2016).
 - 9 In relation to the latter, the Court accepted that a CPO should not be confirmed unless the case in the public interest fairly reflects the necessary element of balance required in the application of Article 8 and Article 1 of the First Protocol to the ECHR (*London Borough of Bexley and Sainsbury’s v SoSE* [2001] EWHC Admin 323, paragraphs 33-48 and *Pascoe* [2006] EWHC paragraph 66).
 - 10 CPO Report to the Secretary of State for Communities and Local Government 29 January 2016 by Leslie Coffey on Application for the Confirmation of the London Borough of Southwark (Aylesbury Estate Site 1B-1C) Compulsory Purchase Order 2014 NPCU/CPO/A5840/74092.
 - 11 This initial ruling was, however, withdrawn in May 2017 (conceded by the Secretary of State due to a lack of logic) and a revised public inquiry is taking place in January and April 2018.
 - 12 This was also a decisive factor in *R (Harris) v London Borough of Haringey* (Court of Appeal, 5 May 2010) where the court held that the council, when granting planning permission, failed to discharge its duties under section 71(1) of the *Race Relations Act 1976* (now replaced by the *Equality Act 2020 Public Sector Equality Duty*) in terms of considering the potential effects of the scheme on Latin American traders or loss of housing by ethnic minorities (see Ricketts 2016).
 - 13 Letter to Karen Jones, Southwark Council, from Dave Jones, Senior Planner, on behalf of the Secretary of State for Communities and Local Government, 16 September 2016, Ref: NPCU/CPO/A5840/74092
 - 14 The GLA (2016) *Draft Good Practice Guide to Estate Regeneration* emphasises this ‘right to return’, with the document suggesting that residents should always be able to return to the communities they came from once estate redevelopment has been completed. However, while this guidance argues that this right to return should involve access to a suitable home, it is not clear who determines what a suitable home might be, or if the offer to tenants is ‘reasonable’.
 - 15 In the *Savoury v Secretary of State for Wales* (1976), tenants subjected to a CPO made a formal request to be rehoused in a new locality together, arguing that keeping the same neighbours constituted suitable accommodation. The Secretary of State for Wales ultimately offered half the tenants new homes in the same area, arguing that collective rehousing for all was unattainable. The definition of suitability therefore rests on the individual needs of tenants, rather than collective ones.
 - 16 See <https://www.gov.uk/government/publications/2010-to-2015-government-policy-localism/2010-to-2015-government-policy-localism>
 - 17 On housing rights see: https://www.equalityhumanrights.com/sites/default/files/human_rights_at_home.pdf and on social housing see <https://www.equalityhumanrights.com/en/advice-and-guidance/guidance-social-housing-providers>.

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