The Right to the City, Public Space, and Free Speech[1]

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Introduction

In January 2022, Salford Council in Greater Manchester granted permission to the property and investment business, Legal and General Investment Management, to build a new hotel and offices at Ralli Quays in Salford. Controversially, the plans include closing a 300-year-old riverside public footpath. Pedestrians would instead be diverted through a new walkway through the hotel site, but which would also be shut to the public between dawn and dusk (Richardson 2022). Campaigners soon mobilised to oppose the plans and to argue that people had a 'fundamental right' to walk along the river, which 'should not be sacrificed for private gain' (Pidd 2022). Their tactics included successfully canvassing for a public inquiry into the potential removal of Public Rights of Way along this section of the river by Ralli Quays.

This example exemplifies conflicts that often arise between residents, local authorities and business organisations around the changing nature of public space in cities and, in particular, about rights attached to public space. In particular, it highlights how public space owned and controlled by a local authority can be transformed into what some have termed as semi- or pseudo-public space, which is then owned and controlled by a private organisation. When this transformation occurs, other changes often follow in the public space under scrutiny, which can then cause concern for some living in nearby communities. Access to semi-public space might suddenly become more restricted than it used to be, and residents entering semi-public space will be subject to sometimes opaque rules of private surveillance installed by a business that now owns and controls the semi-public space in question (Roberts 2014).

The example of the riverside footpath at Ralli Quays also illustrates a wider set of debates over how people's changing rights in urban spaces are subject to ongoing debates and conflicts between different groups over how we might live our lives in cities. One prominent school of

[1] I would like to thank the external referee for their comments and feedback.

thought in this area has emerged from critical and radical approaches to human and social geography. Named as the 'right to the city' approach, this school argues that at an initial and basic level of understanding one can divide public space into its exchange-value element and its use-value element. Public space in cities will of course be judged as being of worth by some depending on its commercial exchange-value. Public officials and business, for instance, are aware of the income to be generated from housing projects located in or near public parks (see Crompton 2005: 216). Use-value of public space refers to how public space is employed by ordinary people to enrich their everyday lives. Use-value can of course focus on how people might invest in, say, housing projects in order to enrich their income streams, but use-value also points towards other activities that go beyond commercial interests. Indeed, everyday social life in cities, such as musical events, heritage, social networks, leisure, play, sport, romantic relationships, and political activities, frequently conflict with pure commercial and profit-making interests (Mitchell 2020: 100).

Right to the city scholars have also focused on conflicts over democratic rights in urban space. After all, ordinary public spaces in cities, like parks and other green spaces, or well-known public squares, can often not only serve as places of leisure but also of places of protest and places to exercise free speech. While the right to enter such places to practise and perform democracy is rarely legally enshrined as such, people nevertheless regularly believe they have a 'customary' right to do so, or that a particular city place, like a park, is a 'common' space for the popular entitlement to meet and protest in. To give one simple illustration of this point, there is no actual legal right for people to use Hyde Park in London as a place for demonstrations even if many do believe they nonetheless enjoy a customary right to do so (Barendt 2005: 277).

The 'right to the city' school of thought therefore explores these conflicts in urban public space, particularly conflicts and struggles around everyday and popular rights, such as popular expressions of free speech in urban spaces and urban parks, and how these conflicts are often against both commercial ventures in cities and what are perceived to be the excessive regulation of popular rights by governments and local authorities. I will discuss in more detail some of these issues below through a number of historical and contemporary examples. First, though, I start by explaining in a little more detail what might be meant by 'publicness' in the term, 'public space'.

The Publicness of Public Space

According to Mehta (2014), public space 'refers to the access and use of space rather its ownership' (Mehta 2014: 54). On this understanding, space might be privately owned, but publicly available, while space might be publicly owned but with access denied to the general public. In terms of the first type of public space, a private business or corporation might own a shopping centre in a city borough, but naturally allow the public to enter the space in question. In respect to the second type of public space, a local authority might own and control spaces that the public are not allow to enter, such as if a local authority owns land rented out to first-time farmers (Shrubsole 2020). Importantly, therefore, various degrees of publicness in a city, town or community can be identified depending on different laws (for example, state laws and by-laws), the arrangement of space (for example, the architectural design of space in a city), official and unofficial borders and territories of space (for example, the fences that designate a park or the unofficial territory of a community group), and the rights of different interests and groups to access, own and control urban space (Akkar 2005).

A related observation follows on from the points made above. Just because public space is owned and control by a private organisation, it does not follow that negative consequences will arise in how the public space in question is used by ordinary people. Similarly, it does not necessarily follow that harmful results will emerge if a public authority sells some of its public assets and spaces to the private sector. Sometimes, for example, there is a local need to adapt and develop policies to ensure land is available for new housing projects to cater for community needs around housing shortages (Christophers 2017: 70-71).

Still, the different types of publicness in public space have knock-on effects in how people might gather in public spaces to take part in events of demonstrations, protests, or other types of democracy and participation. As Mitchell and Staeheli (2005) observe, law is both geographically and jurisdictionally complex in how it regulates these democratic practices, 'with nested and sometimes overlapping hierarchies of territorial authority' (Mitchell and Staeheli 2005: 800) over different spaces in one place. For instance, and as was indicated in the Introduction, some areas in a specific urban place can be owned and controlled by a public authority, while another area might be owned by a private business. Areas in the same place

are, then, 'accountable to different political constituencies and bound by different rules and norms' (Mitchell and Staeheli 2005: 800). Indeed, Mitchell and Staeheli note that in America the authorities have since the 1950s attempted to shape dissent in cities into manageable *spatial* forms (Mitchell and Staeheli 2005: 799). To expound upon these points in more detail, we will now look in little more historical detail at the example of the right to assembly and free speech in public spaces. Following this discussion, we will then explore these matters in more contemporary times.

Examples of the Historical Right to Assembly, Public Space and Free Speech

The right to the city school of thought have applied these and other insights to explore historical spatial conflicts around free speech. According to Mitchell, for example, a new liberal approach to free speech in the USA emerged just after the First World War through the landmark case, *Abrams v. United States* (1919). This case was brought against five Russian immigrants who had thrown leaflets from a New York window denouncing the American invention in Russia after the Russian Revolution. They also called for a national strike and the cessation of munitions production. One of the men, Abrams, was convicted under the Espionage Act 1917 and sentenced to 20 years in jail and a $1,000 fine. The case went to the Supreme Court, which upheld the decision. However, one Supreme Court judge, Justice Oliver Wendell Holmes, dissented from the majority opinion. Famously, he claimed:

> (W)hen men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas – that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out…I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country…
>
> (*Abrams v. United States* 1919)

At its simplest, Holmes's approach suggests that free speech is similar to property insofar that a person's opinion is their individual property that they freely throw into a discursive marketplace in order to engage in a free trade in ideas through which truth can then be discovered. This type of free speech also caters for people's individual expressive self-fulfilment and sense of autonomy because it encourages people to articulate and voice their opinions and, in so doing, publicly convey elements of their subjectivity to others.

For Don Mitchell, however, Holmes also personified a new liberal take on public and political speech, and it was one that emerged in *response* to popular struggles for the right to use public space in American cities for democratic purposes. After all, the US had already encountered organised and militant actions during from 1906 to 1917 by organised anarcho-communist trade union the International Workers of the World (IWW) – otherwise known as the Wobblies – to appropriate public spaces in towns and cities to organise public speaking rallies as part of their recruitment and activist campaigns. So-called 'free speech' struggles would often ensue between the Wobblies and local officials over whether activists could have permits to set up these rallies in the first place (Rabban 1994). Holmes's judgement was therefore clearly aimed at giving *individuals*, not organised socio-political groups such as the Wobblies, the right to free speech. By invoking the rights of individuals, Holmes and subsequent American legal cases treated ideas as stand-alone commodities to be traded freely between people. But such an approach did not take seriously 'the relations of power that may govern entrance into the market in the first place' (Mitchell 2003: 63). Groups like the Wobblies did, though, base their free speech practices in a broader set of debates about unequal power relations in America. Holmes, on the other hand, suggested that for the 'marketplace of ideas' to operate, beliefs, ideologies and practices that 'threaten immediate interference with the lawful and pressing purposes of the law' should, if need be, be subject to state regulation. If socio-political groups like the Wobblies gain vivid listeners to a radical cause, then they might be perceived by the courts to be acting in a 'threatening' and uncivil manner in 'the marketplace of ideas'.

A similar way of tackling popular expressions of free speech was evident in the UK, although it was arguably noticeable a number of years before Holmes. In fact, Holmes's phrase, 'free trade in ideas', had its roots in John Stuart Mill's famous essay, 'On Liberty'. According to Mill, the 'liberty of thought and expression' should be founded on four principles: (i) the recognition that an opinion could be fallible; (ii) the necessity for the collision of different opinions to establish truth; (iii) that prejudice should be eliminated; (iv) and that dogma should

also be eliminated. For Mill, this approach suggests that free speech is similar to property insofar that a person's opinion is their individual property that they freely throw into a discursive marketplace in order to engage in a free trade in ideas through which truth can then be discovered. This type of free speech also caters for people's individual expressive self-fulfilment and sense of autonomy because it encourages people to articulate and voice their opinions and, in so doing, publicly convey elements of their subjectivity to others.

On closer inspection, however, Mill has a more discriminating theory of free speech. According to Mill, one should strive to enhance one's 'higher pleasures' when engage in the liberty of thought and discussion. Ideally, this is a person who is educated to standards to achieve personal autonomy to reflect upon their 'self-regarding' actions. Such a person will then be able to avoid those 'lower pleasures' associated with custom and a 'herd' mentality. Those unfortunate to wallow in the quagmire of custom and lower pleasures are more likely to ask themselves: 'what is suitable to my position? what is usually done by persons of my station and pecuniary circumstances?' Mill shuns these 'herd-like' questions in favour of those associated with pursuing higher pleasures: 'what do I prefer? or, what would suit my character and disposition? or, what would allow the best and highest in me to have fair play, and enable it to grow and thrive?' (Mill 1998: 68). Problematically, though, Mill appears to be suggesting that one should not reflect on their social environment when debating and discussing ideas, but, instead, should reflect on what might develop one's own individual character. Of course, and reading between the lines, what Mill is really getting at is that those from the 'lower classes' will not have the necessary educational resources to engage in the sort of debate and discussion that Mill favours. Such types will therefore almost always only be concerned with furthering their 'lower pleasures'.

Interestingly, Mill wrote these words a few years after the decline of the Chartist movement, which, as noted, was the largest left-wing political movement in the UK. In 1836, the London Working Men's Association (LWMA) was formed and by early 1837 they had drafted an address to Parliament known as the 'The People's Charter'. Six points – universal suffrage, no property qualifications to stand for Parliament, annual parliaments, equal representation, payment of MPs, and vote by ballot – provided the content for the charter. But in their actual activism across the UK, Chartists would speak publicly in city and town spaces and at mass demonstrations for the need to build not only political equality but also economic equality. For Chartists, then, free speech was an instrument for ordinary people to discuss their whole social

environment and social life. Chartists were able to elicit such discussions not only through their command of public space, but also through their own creative media outputs. Chartist newspapers, such as *The Star*, had sales into their thousands. Yet, Mill was dismissive of these types of working-class expressions of free speech. Elsewhere, for example, Mill observed:

> The institutions for lectures and discussion, the collective deliberations on questions of common interest, the trades unions, the political agitation, all serve to awaken public spirit, to diffuse variety of ideas among the mass, and to excite thought and reflection in the more intelligent (Mill 1985: 124).

But the opposition that Mill nurtures between seemingly 'neutral' higher pleasures and common lower pleasures was in fact a common one among many 'enlightened' thinkers during this time.

Unlike other countries, English modern law did not have legally binding constitutional statements protecting free speech principles like freedom of the press. Common law codes did however arise based on individual legal cases and rulings made by judges (Barendt 2005: 39-40). It is important of course to underline the point that these rulings were often made in response to conflicts and struggles around free speech issues in cities.

Speakers' Corner in Hyde Park, London, is an interesting illustration of these observations. The north-east corner of Hyde Park had from the twelfth-century up until 1783 been a place of public execution. Tyburn hanging tree attracted hundreds of spectators to its execution days. By the seventeenth and eighteenth centuries, however, there are reports stating that many in the crowd were sympathetic towards the condemned, believing felons were about to be strung up for petty crimes against private property. Often, a criminal's 'last dying speech' would be the spark that led the crowd to riot in favour of the condemned (Linebaugh 1991). After 1783, Hyde Park was still known as a place where people could regularly meet to discuss, campaign and demonstrate for greater social and political rights. In 1821, for example, radical agitators rioted in Hyde Park for greater political rights, while in 1855 a huge demonstration in Hyde Park by the left-wing political movement, the Chartists, included debates and discussions on the need for greater political *and* economic rights for ordinary people. Between 1866 and 1867, the Reform League held a number of highly charged demonstrations in Hyde Park on the question of extending the franchise to greater numbers of the British population. By 1872, then, regular meetings were being held across London's parks, but with the most sustained and

largest assemblies being in Hyde Park, with the explicit aim to gain the right to practise 'free speech' within its boundaries (Roberts 2000).

In response to this activism, the government passed the 1872 *Parks Regulation Act*, which gave ordinary people the 'right' to exercise 'public address' in the Royal Parks of London. It is possible to gain a sense of what was meant by 'public address' through Regulation 14 of the First Schedule of the 1872 Act, which stated: 'No person shall commit any act in violation of public decency, or use profane, indecent, or obscene language to the annoyance of other persons using a park'. Each royal park also now had an associated set of Rules, which set out how the 1872 Act would be interpreted within a particular Royal Park. Rule 15 of the Hyde Park Rules was particularly notable here because it reinforced this image of being 'decent' by stating: 'No idle or disorderly person, rogue of vagabond, or person in an unclean or verminous condition, shall loiter or remain in the Park or lie upon or occupy the ground or any of the seats thereof, and it shall remain lawful for any park keeper to exclude or remove from the Park any person committing any breach of this Rule'.

The image encapsulated within these Regulations and Rules is thereby one that constructs an image of an ever-present threat of 'indecent' and 'verminous' people contaminating Hyde Park and using 'obscene language', particularly for the purposes of giving a 'public address'. The way that the 1872 Act potentially and negatively framed people entering Hyde Park for the purposes of public discussion did not go unnoticed by politicians of the day. One MP, Vernon Harcourt, Harcourt attacked the implicit division embedded in the 1872 Act between 'respectable' and unrespectable' people entering Hyde Park. Harcourt in particular mocked the Bill's 'fear of roughs' from entering Hyde Park. Sarcastically, he asked if a 'rough' was somebody who 'habitually broke the law or was disposed to break it'. If this indeed was the case, then there were plenty of 'roughs' in the higher classes who habitually broke the law (Hansard, 22 February, 1872). After 1872, successive speakers and regulars continued to expand the rights and entitlements of free speech at Hyde Park. Speakers' Corner therefore usefully highlights how struggles over the right to use this specific public park as a place for free speech eventually became recognised as a common democratic practice. But how has the relationship between urban space and free speech changed in our more contemporary times?

Examples of the Contemporary Right to Assembly, Public Space and Free Speech

Mitchell notes that in the case of America, regulating *spaces* of free speech, and not just the speech itself, became the focus of attention of American authorities. Indeed, and as we shall see shortly, this is also true of UK authorities as well. But what does Mitchell mean here? From 1945 onwards, as Mitchell explains elsewhere, US courts began to spatially regulate political discussions by mapping out what were seen by the authorities and courts to be 'legitimate' forums for the time, place and manner in which people might exercise free speech. Town halls, for example, were often thought by authorities to be acceptable venues to exercise free speech in cities rather than the more 'unconstrained' spaces in urban streets and parks (Mitchell and Staeheli 2007: 799). By 1983, the US Supreme Court divided public space into three distinct forums for assembly and speech. 'Traditional' forums such as highways and parks were still recognised as places for people to assembly within and exercise free speech rights. But the Supreme Court also now said there were 'limited' and 'non-traditional forums' like schools, which the government and authorities might sometimes open up for people to exercise their free speech rights within. Finally, the Supreme Court claimed there were and are also non-public forums' based mainly on government property such as airports, prisons and military bases in which people had no rights for assembly and free speech (McCarthy and McPhail 2006).

There have been challenges in the US to this definition of public space – for example, some protestors have challenged the Supreme Court ruling that one cannot exercise certain democratic rights at an airport (on which see Barendt 2005: 282-3) – but the basic idea that there are some public spaces in the UK cities that one no longer has a right to assemble within is notable in a roundabout way in Britain. Certainly, there is a right enshrined at least since 1998 through a legal ruling, *DPP v. Jones*, that certain activities on public highways like talking, playing, collecting donations, handing out leaflets, singing, listening, queuing, taking a photograph, and freedom of expression are protected as long as they do not cause a nuisance. Yet, they are not automatically granted once land is privately owned (Layard 2010). If you carry out such an activity without permission from the property owner then you could be liable to be charged with trespass. Those people and companies that privately own and control public space are not legally bound by Articles 10 and 11 – freedom of expression and freedom of

assembly – under the 1998 Human Rights Act. So, if a private landlord refused to grant permission to protest on privately owned land, this cannot be challenged under the Human Rights Act (Drucker and Gumpert 2015).

It is here that we return to the point made in the Introduction concerning the commercialisation and privatisation of public space. One estimation suggests that since 1979 around 2 million hectares of public land worth about £400 billion, and which equates to about 10 percent of Britain, has been sold off (Christophers 2018: 249). Major cities have therefore increasingly privatized their public space through the likes of new shopping centres and private housing schemes. These mass consumer-driven places therefore transform what was once public space into quasi-public space operated by private companies along profit driven motives. Manchester's Piccadilly Gardens, for example, is a well-known place in the city for demonstrators to gather during marches and protests. This public square has now however been transferred over to Legal and General. With the blessing of Manchester's city council, Legal and General have a 150-year lease to redevelop the shopping area of Piccadilly Gardens (Gimson 2017). Such developments can, in turn, limit people's ability to gain access to these local public spaces for social or political activity, debate and discussion. In 2003 case, *Appleby and Others v. UK*, a local man in Washington, Tyne and Wear, set up a stall in a shopping centre to collect petitions against developments on surrounding green spaces. The shopping centre had been privatized in 1987 and security removed the man. He took his case to the European Court to argue he had lost hist free assembly in this semi-public space. But his case was not upheld (Bottomley and Moore 2007).

Again, it should be reiterated that just because a distinctive public space has been privatised, it does follow that there will automatically be negative consequences to one's rights. There are many examples of ordinary people in their communities working productively with both public and private bodies to embolden a sense of inclusivity (see Jones 2019, Part 4). Anyhow, commercialisation of public space also often opens up opportunities for ordinary people to redefine what the 'public' is, or at least should be for them. Campaigns against commercialisation always have the potential to mobilise people into new protest groups who can then 'resist', or at least 'dissent' against, business, state or local authority conceptions of publicness (see Parson 2015).

It should also be borne in mind that there are of course numerous other ways and means that public space is regulated today. Different pieces of public order and anti-terrorism legislation in recent years have for example both changed the nature of how the police and authorities can regulate public space and given extra powers to the authorities to 'zone' public spaces and behaviour therein for the purposes of detecting crime. The Terrorism Act 2000, for instance, gave police new powers to zone areas in cities and towns in order to conduct stop and search policies (see Roberts 2008). Different anti-social behaviour acts have also been passed, which once again have ramifications on governing and policing public space. The 2003 Anti-Social Behaviour Act empowered the police to legally remove a 'public assembly' of two people from a place if it appears that the two people in question are likely to cause 'serious public disorder, serious damage to property or serious disruption to the life of the community'. More recently, the Anti-social Behaviour, Crime and Policing Act 2014 introduced a new policy initiative called 'Public Spaces Protection Orders' (PSPOs). Simply stated, PSPOs can be introduced in a public area if a local authority has reasonable grounds to suspect that anti-social behaviour in the respective public area is having a detrimental impact on the quality of local life. PSPOs can then target, through appropriate restrictions, certain behaviour which is thought to having detrimental impact (see Local Government Association 2018). Since their inception, however, PSPOs have been subject to various criticisms. For instance, local authorities now require far less evidence than under previous legislation to show that harm is being caused to individuals or to the 'quality of life' of a community by the behaviour of others. Yet, 'quality of life' is not defined, nor does the 2014 Act clearly explain many of its other terms to justify the imposition of PSPOs, such as specific 'anti-social behaviour' is 'likely' to be 'persistent'. Overall, so critics continue, 'the legal test for a PSPO permits the criminalisation of behaviour in cases where traditional thresholds for criminalisation have not been established' (Brown 2017: 549).

Controversies around the legal regulation of public space also occurred during the pandemic. The Conservative Party under Boris Johnson introduced the Coronavirus Act 2020 to help the authorities tackle various social issues associated with the virus. But like many previous pieces of legislation that legally altered notions of public space, critics argued that the 2020 Act gave police new powers of discretion to detain those they suspected of being infectious and to force people to be tested for the virus. Problematically, evidence suggested that people of colour were more likely to be detained under the Act (Runswick 2020).

Conclusion

The famous French social geographer, Henri Lefebvre, once said that those who wish to expand rights for all in city spaces often seek to critique 'centres of decision-making, wealth, power, of information and knowledge' in order to campaign for and facilitate a number of concrete rights such as, 'the right to meetings and gathering' in urban spaces...The right to the city therefore signifies a gathering together instead of a fragmentation. It does not abolish confrontations and struggles' (Lefebvre 1996: 195). For Lefebvre, the right to the city is thus built on the emergence of a plethora of rights and entitlements that go beyond abstract liberal rights as embodied in generic statements like 'the rights of man'. Instead, the right to the city emerges from popular culture and popular experiences of living in the city and takes account of the daily realities that people endure in urban life, such as social divisions, poverty, racism, and exclusions from forms of housing. But the right to the city' approach also focuses on how different people come together not only to socialise in their communities through social and cultural events, but also how they come together politically to advocate and campaign for greater urban rights. Accordingly, as David Harvey argues, to transform our lives in cities for the better therefore implies working with others and 'exercising collective power to reshape the processes of urbanization' (Harvey 2008: 23).

In my opinion, 'the right to the city' approach is useful because it immediately draws attention to the contested nature of free speech and how it is used and fought over by different social groups in urban public spaces. It also alerts us to the point that what at first appears to be an inclusive definition of free speech, such as the marketplace of ideas approach, often, on closer inspection, is in fact founded on a set of exclusionary practices that even if only implicitly denigrate the contribution and practice of free speech from ordinary people.

But if the 'right to the city' also points towards people gaining the necessary resources to work collectively to change how cities are made and remade, 'and to do so in a fundamental and radical way' (Harvey 2012: 5), to what extent can this be achieved in cities parcelled into distinct spaces for commercialised purposes? After all, and at least since the 1980s, we have seen the rise 'of fortified fragments, gated communities and privatized public spaces kept under constant surveillance' (Harvey 2008: 32). Under these circumstances, is it the case that we can all enter as equals programmes and schemes of government-sponsored community

participation? Or is it the case that social divisions in cities will lead to new calls for the 'right to the city'?

Undoubtedly, recent years have seen new social movements emerge that have occupied public spaces in our cities in order to engage in protest, demonstrations and free speech about social ills of the day. One need only think of the worldwide Occupy movement in 2011 campaigning against global inequalities, or relatively recent popular political movements across Europe such as Syriza in Greece and Podemos in Spain, or the Extinction Rebellion in 2019 campaigning most notably in London for environmental issues. Many of these groups gather and meet in well-known urban parks and urban public squares. For example, the Occupy movement began life in Zuccotti Park in New York, while groups attached to Syriza in Greece and Podemos in Spain would debate, discuss and demonstrate in urban public squares, while Extinction Rebellion chose to hold an assembly at Speakers' Corner, Hyde Park. Such examples demonstrate that the relationship between the right to the city, public space and free speech is very much alive today.

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