



Layard, A. (2020). Researching Urban Law. *German Law Journal*, 21(7), 1446 - 1463. <https://doi.org/10.1017/glj.2020.85>

Publisher's PDF, also known as Version of record

License (if available):
CC BY

Link to published version (if available):
[10.1017/glj.2020.85](https://doi.org/10.1017/glj.2020.85)

[Link to publication record in Explore Bristol Research](#)
PDF-document

This is the final published version of the article (version of record). It first appeared online via Cambridge University Press at <https://doi.org/10.1017/glj.2020.85>. Please refer to any applicable terms of use of the publisher.

University of Bristol - Explore Bristol Research

General rights

This document is made available in accordance with publisher policies. Please cite only the published version using the reference above. Full terms of use are available: <http://www.bristol.ac.uk/red/research-policy/pure/user-guides/ebr-terms/>

ARTICLE

Researching Urban Law

Antonia Layard*

(Received 09 September 2020; accepted 13 September 2020)

Abstract

This Article considers the development of urban law. It suggests that urban law is socio-legal in its exploration of law's role in the production of the city and urban life, enabling the study of the city as a distinctive legal entity. Addressing the question “why urban law?,” this Article considers similar debates in geography and urban policy before developing three arguments for studying urban law: (i) urbanism is a vibrant field of scholarly research; (ii) socio-legal research can take an explicitly normative focus in pursuit of improving urban quality; and (iii) at a city scale we can investigate governance concepts of territory, sovereignty and jurisdiction. One of the difficulties with urban law is finding the right level of analysis, covering sufficient legal and empirical detail whilst also making the city legible at an urban scale. Although this tension produces imperfect compromises, accepting the limitations means that we can begin the shared task of developing an intellectual infrastructure, a grammar, for the study of urban law.

Keywords: Urban law; socio-legal studies; law and society

A. Introduction

The extent of urban life is extraordinary. Half of humanity, 3.5 billion people, now live in cities with numbers expected to rise to over sixty percent by 2030.¹ Employment opportunities, cultural diversity and connections attract people to urban areas, producing both increased density and sprawl. Yet cities are not just the sum of their populations—they have distinctive social, spatial, cultural, political, military, and economic characteristics. Writing in 1931, Chicago sociologist Lewis Wirth highlighted the capacity of cities for soft governance:

The influences which cities exert upon the social life of man are greater than the ratio of the urban population would indicate, for the city is not only in ever larger degrees the dwelling-place and the workshop of modern man, but it is the initiating and controlling center of economic, political, and cultural life that has drawn the most remote parts of the world into its orbit and woven diverse areas, peoples, and activities into a cosmos.²

*Antonia Layard is a Professor of Law at University of Bristol Law School. Antonia.layard@bristol.ac.uk. Note of thanks by the author: I am grateful to the Socio-Legal Studies Association for funding the seminar *Socio-Legal Studies in Germany and the UK: Theory and Methods* at Humboldt University in Berlin, in September 2019. I am particularly grateful to Christian Boulanger, Naomi Creutzfeldt, and Jen Hendry for their expertise and warm invitation. I am also very thankful for the insightful comments from the three reviewers and the scholarly editorial team at the German Law Journal, who were a delight to work with. Lastly, my work in urban law has been immensely improved by the collegiality and research support extended by the Fordham Urban Law Network, led by Nestor M. Davidson.

¹United Nations Department of Economic and Social Affairs, *The World's Cities in 2016*, UN iLIBRARY (2016), https://www.un-ilibrary.org/population-and-demography/the-world-s-cities-in-2016_8519891f-en (last visited Apr. 7, 2020).

²Louis Wirth, *Urbanism as a Way of Life*, 44 AM. J. SOC. 1, 2 (1938).

Urbanism, for Wirth, is a way of life, a collective endeavor, a “complex of traits which makes up the characteristic mode of life in cities.”³

And yet despite the acknowledged significance of cities to modern society, or urbanism as a process, urban law remains under-developed as a field of study. Although scholars investigate housing, environmental, protest, or economic development law in cities, there is—so far—a relative lack of scholarship examining how cities produce regulation, rules, and policies and, correspondingly, how regulation, rules, and policies co-produce cities. Drawing on a wide range of legal methodologies—socio-legal, comparative, or doctrinal analysis—urban law can study the city as a distinctive legal entity.

Urban law is most identifiable as a cohesive sub-discipline in the United States. Here, scholars analyze both individual legal aspects of housing, zoning or planning, licensing, sustainability, consumer protection, poverty, race, and data law, as well as relationships between national and state government. Even in America, however, Nestor Davidson, Director of Fordham’s Urban Law Center, calls for “a renewed appreciation of urban law as a distinctive enterprise,” registering a decline in forty years of scholarship since Fordham’s *Urban Law Journal* was launched.⁴

This apparent absence of scholarship raises an academic question: How should we understand urban law? In Europe, there are few programmatic academic investigations, with the notable exception of Jean Bernard Auby’s pathbreaking *Droit de la Ville*, praised as “le seul manuel dédié à cet objet,” synthesizing materials for lawyers and non-lawyers alike.⁵ International lawyers, including Helmut Philipp Aust in Germany, have raised questions about how cities are beginning to assert themselves as internationally relevant actors through addressing climate change law or human rights implementation.⁶ European criminologists have long studied the city and its effects, suggesting that “to understand crime has been in many ways to understand the city.”⁷ Legal and critical theorists have tilted the lens, with Andreas Philippopoulos-Mihalopoulos crafting an understanding of the city as a lawscape—embodying mutuality, and grasped as “the ever receding horizon of prior invitation by the one (the law/the city) to be conditioned by the other (the city/the law)”⁸, capturing the interaction between law and urban living. Other than these interventions, however, European urban law is still largely underdeveloped. To adapt the words of James Baldwin, one of America’s most famous expatriates, European cities have “a sense of the mysterious and inexorable limits of life,” but we have still to inculcate a sufficiently American “sense of life’s possibilities.”⁹

When studying cities, we often see urban analyses couched in disciplinary specialties. Geologists see rock formations, healthcare experts identify the scope for pandemic transmissions, economists and political geographers focus on financial flows, engineers appreciate load risks, historians track past lives and events, while social scientists observe urban cultures and politics. Few, so far, have looked for the legal gridlines that structure the city, producing relationships between cities and citizens, states, and national parliaments. Legal frameworks govern housing, transportation, and infrastructure, regulatory provisions and practices are critical to understanding policing, cultural innovation, and promotion of sustainable development. While urban studies

³*Id.* at 4–7.

⁴Nestor Davidson, *What is Urban Law Today? An Introductory Essay in Honor of the Fortieth Anniversary of the Fordham Urban Law Journal*, 40 *FORDHAM URB. L.J.* 1579, 1579 (2016).

⁵JEAN-BERNARD AUBY, *DROIT DE LA VILLE: DU FONCTIONNEMENT JURIDIQUE DES VILLES AU DROIT À LA VILLE* 348 (2016); Julien Betaille, *Jean-Bernard Auby, Droit de la ville – Du fonctionnement juridique des villes au droit à la Ville*, 38 *REVUE JURIDIQUE DE L’ENVIRONNEMENT* 385, 385 (2013).

⁶H.P. Aust, *Shining Cities on the Hill? The Global City, Climate Change, and International Law*, 26 *EUR. J. INT. L.* 255, 278 (2015).

⁷ROWLAND ATKINSON & GARETH MILLINGTON, *URBAN CRIMINOLOGY: THE CITY, DISORDER, HARM AND SOCIAL CONTROL* 1 (2018).

⁸ANDREAS PHILIPPOPOULOS-MIHALOPOULOS, *LAW AND THE CITY* 10 (2007).

⁹JAMES BALDWIN, *NOBODY KNOWS MY NAME* 12 (2013).

have long been driven by debates about the appropriate level of analysis, balancing micro with macro, case studies, and theory, legal analysis is often beyond this cross-disciplinary boundary. By drawing regulation, rules, and policies into urban studies, urban law can contribute to these cross-disciplinary debates, asking how cities are legally co-produced, managing themselves, their residents—both human and otherwise—as well as their landscapes, financial flows, and reputations.

For socio-legal scholars, studying the city enables us to ask questions in action, that leitmotif of law in society work. We can focus on both processes and perspectives, understanding law as an ongoing dynamic activity, full of compromise, negotiation, and meaning-making. Urban lawyers can borrow from urban anthropologists who investigate modern urban life not only “in the city,” but also “of the city.”¹⁰ The city is more than a background location for fieldwork; the urban becomes the research question: How is urban life created, governed, and experienced? To understand the city from a socio-legal perspective, we do of course need to be open to the difficulties of being comprehensive, avoiding reduction where possible, whilst also acknowledging the need to retain legibility. It is not a simple task to study urban law, but it is one that is both timely and inviting.

B. Socio-Legal Studies and Methodology

Is urban law a socio-legal form of study? To answer this question, we need a working definition. For some scholars, socio-legal studies foregrounds society. Susan Silbey, argues, for example, that socio-legal studies require “a doubling of the social, both the subject and the method.”¹¹ Other formulations understand socio-legal studies as the multidisciplinary studies of law and legal institutions. Such a framing puts law at the center—not “law first” necessarily—but identifying law and legal institutions as the subject of study, noting that “law” here can include rules, customs, norms, and practices because socio-legal scholars rarely confine their analysis to legislation, case law, or other formal sources. In this characterization, socio-legal studies can include doctrinal legal analyses, understanding the legal landscape to ground other empirical research or providing a basis from which to argue for reform.¹²

This broader formulation of socio-legal studies suggests that even when legal analytical methods predominate, if it is society rather than “law in books” that is under the microscope, it is the shift of subject—from law to society—that confers socio-legal significance to the research.¹³ We are altering our focus, as Carrie MenkelMeadows explains, from the formalism of jurisprudence—“what” is law—or doctrinal studies of law—“what is” the law—to instead concerning ourselves with “what does law do?”¹⁴ So urban socio-legal studies investigate what urban law does, how it creates urban structures, policies, and practices, which themselves contribute to spatial, social, economic, cultural, and historical factors to produce the city itself.

¹⁰RIVKE JAFFE & ANOUK DE KONING, INTRODUCING URBAN ANTHROPOLOGY (2015).

¹¹Susan S. Silbey, *What Makes a Social Science of Law? Doubling the Social in Socio-Legal Studies*, in *EXPLORING THE ‘SOCIO’ OF SOCIO-LEGAL STUD.* 20–36 (Dermot Feenan ed., 2013), 20.

¹²Sarah Blandy, *Socio-legal Approaches to Property Law Research*, in *RESEARCHING PROPERTY L.* 24–42 (Susan Bright & Sarah Blandy eds., 2016).

¹³Lawrence M. Friedman, *The Law and Society Movement*, 38 *STAN. L. REV.* 763 (1986); Joel F. Handler, *Postmodernism, Protest, and the New Social Movements*, in *THE PRESIDENTIAL ADDRESS* 697 (1992); David Nelken, *Law in Action or Living Law? Back to the Beginning in Sociology of Law*, 4 *CAMBRIDGE UNIVERSITY PRESS* 157 (1984); Susan S. Silbey, *Everyday Life and the Constitution of Legality*, in *THE BLACKWELL COMPANION TO THE SOCIOLOGY OF CULTURE* 332 (2007); Mariana Valverde, “Which Side Are You On?” *Uses of the Everyday in Socio-legal Scholarship*, 26 *POL. & L. ANTHROPOLOGY REV.* 86, 86–98 (2003).

¹⁴Carrie Menkel-Meadow, *Uses and abuses of socio-legal studies*, in *ROUTLEDGE HANDBOOK OF SOCIO-LEGAL THEORY AND METHODS* 35–57, 39 (Naomi Creutzfeldt, Marc Mason, & Kirsten McConnachie eds., 1 ed. 2019).

I. Qualitative Research

To investigate the interaction between law and society, methodologies and methods are articulated through a research design. Empirical socio-legal researchers use both qualitative and quantitative methods to empirically test their theories and hypotheses. Qualitative socio-legal research is predominantly naturalistic, ethnographic, and/or participatory, looking for evidence of meaning-making. Here, methodologies draw primarily from social science and humanities research, including, increasingly, anthropology. Many legal scholars would also argue that legal research, insofar as it draws on legislation, case law, and policy documents, is itself empirical, being concerned with observation or experience rather than theory or pure logic. Lisa Webley explains the connection, suggesting that “[m]any common law practitioners are unaware that they undertake qualitative empirical legal research on a regular basis—the case-based method of establishing the law through analysis of precedent is in fact a form of qualitative research using documents as source material.”¹⁵

We can use qualitative research, defined broadly to include doctrinal, comparative, and law-in-context approaches, to investigate cities encompassing the many, the diverse, and the outsiders. As Hendrik Hartog explained in *Pigs and Positivism*, customs, histories, people, buildings, sightlines, and even pigs can make up a city.¹⁶ When an 1819 judgment prohibited the animals from running freely in the streets of New York, preferring judicial reasoning to established custom, this “creation of a modern bureaucracy, the transformation of relatively self-sufficient artisans and mechanics into a working class, and the growth of a commercial rural agriculture dedicated to feeding urban residents” combined to present a coherent articulation of nineteenth century urban modernity.¹⁷ For Hartog, it enabled the city to be “derived imaginatively” from the judgment prohibiting the pigs.¹⁸ Analyzing the judgment is a form of qualitative research, making meaning from the decision to better understand urban governance, reading decisions for both their ratio and for their absences, in this case the legal customs, everyday practices, and the perspectives of excluded participants, in this case, the pigs.

We must, as Andreas Philippopoulos-Mihalopoulos explains, be careful of our vantage points and blind spots in urban law.¹⁹ We all experience “the city” differently, not least due to race, gender, age, or additional needs with racism, gender vulnerability, and ableist infrastructures often built into the fabric of cities. One famous story concerns the decision by Robert Moses to design bridges on parkways running through Long Island to be too low to allow regular use by buses, thereby preventing the two-thirds of New Yorkers who did not have access to a car from visiting the State’s beaches.²⁰ In his biography of Moses, Robert Caro suggests that was a conscious decision, embedding political decisions in concrete rather than relying on legal restrictions:

Mr. Moses did this because he knew that something might happen after he was dead and gone. He wrote legislation [clauses prohibiting the use of pathways by “buses or other commercial vehicles”] but he knew you could change the legislation. You can’t change a bridge after it’s up. And the result of this is that a bus from New York couldn’t use the parkways if we wanted it to.²¹

¹⁵Lisa Webley, *Qualitative Approaches to Empirical Legal Research*, in THE OXFORD HANDBOOK OF EMPIRICAL LEGAL RESEARCH 927, 927 (Peter Cane & Herbert M. Kritzer eds., 2010).

¹⁶Hendrik Hartog, *Pigs and Positivism*, 4 WIS. L. REV. 899 (1985).

¹⁷*Id.* at 912.

¹⁸*Id.* at 911–12.

¹⁹PHILIPPOPOULOS-MIHALOPOULOS, *supra* note 8.

²⁰See also, Langdon Winner, *Do Artifacts Have Politics?*, 109 DAEDALUS 121, 121–36 (1980).

²¹ROBERT A. CARO, THE POWER BROKER: ROBERT MOSES AND THE FALL OF NEW YORK 952 (2015).

In this New York context, anyone lacking access to a car could not rely on buses to use the roads. The rules permitting Moses to determine the height of bridges despite their discriminatory effect, provided a physical legacy still felt today, illustrating how rules can be built into the urban infrastructure itself. Pouring Moses' decision-making into concrete made the prejudiced assumptions about who should leave the city to visit the beach both spatially difficult and expensive to alter. Similarly, the protection of statues of men involved in slavery or oppression by heritage bodies has caused huge pain and unhappiness to urban residents, prompting extra-legal responses to administrative procedures of officials.²² By recognizing these interrelationships, using qualitative research methods including close reading of texts, interviews, participant observations, and site visits, socio-legal scholars can investigate urban law as an ongoing dynamic activity—identifying how legal provisions, practices, customs, bridges, statues or pigs order the city.

II. Quantitative Research

Legal quantitative research does not differ significantly from quantitative research in other disciplines. Socio-legal scholars still design their projects, collect and code data, conduct analyses, and present results. The biggest difficulty in empirical legal research, as Andrew Epstein and Lee Martin suggest, is a lack of statistical understanding in their readership, communicating “complex statistical results to a community lacking in statistical training.”²³ As with qualitative research, quantitative analyses can be exploratory, explanatory, and/or descriptive. Socio-legal scholars can add to this sustained interrogation of categories, which is premised on legal definitions that underpin the data.

One area where legal definitions and quantitative assessments interact is in indicators, an increasingly hot topic in comparative law, with possible implications for urban law. An indicator has been defined as “a named collection of rank-ordered data that purports to represent the past or projected performance of different units.”²⁴ The critical aspect here is that the data are “generated through a process that simplifies raw data about a complex social phenomenon” and are, “in this simplified and processed form, . . . capable of being used to compare particular units of analysis (such as countries or institutions or corporations), synchronically or over time, and to evaluate their performance by reference to one or more standards.”²⁵

Exploring the genealogy of indicators, investigating how individual criteria have developed, by whom and for what purpose, has led Sally Merry to identify their “seductive qualities.”²⁶ She raises the alarm, writing that indicators, “particularly those that rely on ranks or numbers, convey an aura of objective truth and facilitate comparisons” even while they “typically conceal their political and theoretical origins and underlying theories of social change and activism . . . [relying] on practices of measurement and counting that are them-selves opaque.”²⁷ Scoring progress against indicators encourages partial compliance—and even cheating or changing definitions and assessments of whether compliance has been achieved.²⁸ Scholars are critical of how indicators function

²²Briana Millett, *Historic England has say on future of Edward Colston statue*, BRISTOL POST (June 8, 2020), <https://www.bristolpost.co.uk/news/bristol-news/historic-england-edward-colston-statue-4203119> (last visited Jun 8, 2020).

²³Lee Epstein & Andrew D. Martin, *Quantitative Approaches to Empirical Legal Research*, in *THE OXFORD HANDBOOK OF EMPIRICAL LEGAL RESEARCH*, 902 (Peter Cane & Herbert M. Kritzer eds., 2010).

²⁴Kevin E. Davis, Benedict Kingsbury & Sally Engle Merry, *Indicators as a Technology of Global Governance*, 46 L. & SOC'Y REV. 71, 73–74 (2012).

²⁵Kevin E. Davis, Benedict Kingsbury & Sally Engle Merry, *Introduction: The Local-Global Life of Indicators: Law, Power, and Resistance*, in *THE QUIET POWER OF INDICATORS 4* (Sally Engle Merry, Kevin E. Davis & Benedict Kingsbury eds., 2015).

²⁶SALLY ENGLE MERRY, *THE SEDUCTIONS OF QUANTIFICATION: MEASURING HUMAN RIGHTS, GENDER VIOLENCE, AND SEX TRAFFICKING* (2016).

²⁷Sally Engle Merry, *Measuring the World: Indicators, Human Rights, and Global Governance: With CA Comment by John M. Conley*, 52 CURRENT ANTHROPOLOGY S83, S84 (2011).

²⁸Amanda Perry-Kessaris, *Prepare Your Indicators: Economics Imperialism on the Shores of Law and Development*, 7 INT'L J.L. CONTEXT 401, 410 (2011).

as a technology of governance, noting their “deep managerial roots,” with Amanda Perry-Kassariss’ video providing an excellent representation of how indicators narrow down the view—translating something into a definition to be counted, relying on a particular form of recognizability—which may not translate into all contexts and cultures.²⁹ Indicators are both a form of knowledge production and a technique of governance, producing both co-option and resistance.³⁰

And yet, despite all of these critiques, indicators are likely to continue in policy evaluations. They provide a method to attempt to achieve equivalence, critical to any form of comparative urban assessment. By understanding quantitative data analysis, the legal formulations that underpin categorizations, and the critiques of numeric reduction, socio-legal scholars can contribute to these debates, explaining how legal and numeric taxonomies interact at the urban scale.

III. Urban Law: A Grammar

As analysts, in any discipline, we need some way to make cities legally legible, we cannot see the city in its legal totality, at a scale of 1:1. This frustration was famously captured by Luis Borges and Adolfo Bioy Casares’ one-paragraph story, *On Exactitude in Science*, where the Guild of Cartographers “struck up a map of the Empire whose size was that of the Empire, and which coincided point for point with it.”³¹ To map on a scale of 1:1, the cartographers had to create a map as big as the space they were mapping, and in their case, the Empire. To map the urban on a scale of 1:1, we would have to create a city.

This necessity for analytical reduction is not only a problem for lawyers. Algebraic equations make the world readable to scientists, modern economics rests on a central tenet that profit and loss can be calculated—there are many mechanisms of legibility. If urban law aims to understand cities, then we need some mechanism of reduction, a form of intellectual infrastructure, to investigate how cities govern and are governed by people, places, reputations, and things. We cannot study the city in all its complexity.

So how do we reduce the city to be studied in urban law? One starting point is to attempt to identify the grammar of urban governance by identifying the key legal frameworks, the laws, cases, policy documents, practices, and legal cultures that govern cities—including local government arrangements, economic development, housing, transportation, public and community spaces, the community as a whole, criminal law and criminology, and infrastructure. We then use the socio-legal scholar’s toolkit: Theory, qualitative, quantitative, and/or doctrinal legal analysis to understand how cities are produced by, and produce, law. Socio-legal research investigates how law constitutes everyday social relations, in this case, in an urban setting. This includes a focus on administrative rationality, asking how a city sees as well as investigating how the city is produced, from the ground up.³² Quantitative data sets, including indicators, might be useful here—noting their limitations—particularly when paired with legal analyses. Although undoubtedly costly, urban law research can draw on multiple methods, engaging reflexively to interrogate and strengthen initial theories, questions, and findings.³³

The aim is to understand how cities are legally produced with an eye to identifying shared legal concepts, regulatory approaches and practices, as well as notable differences. We can adopt the insight, if not the full critique, of Jennifer Robinson, that most urban areas are “ordinary cities,”

²⁹Amanda Perry-Kassariss, *Socio-legal model making 3: Conceptualisation* (2016), <https://vimeo.com/185963121> (last visited May 15, 2020).

³⁰Morag Goodwin, *The Poverty of Numbers: Reflections on the Legitimacy of Global Development Indicators*, 13 INT’L J.L. CONTEXT 485, 486 (2017).

³¹JORGE LUIS BORGES, COLLECTED FICTIONS 325 (1999).

³²Mariana Valverde, *Seeing Like a City: The Dialectic of Modern and Premodern Ways of Seeing in Urban Governance: Seeing Like a City*, 45 L. & SOC’Y REV. 277 (2011).

³³See Laura Beth Nielsen, *The Need for Multi-Method Approaches in Empirical Legal Research*, in THE OXFORD HANDBOOK OF EMPIRICAL LEGAL RESEARCH (Peter Cane & Herbert M. Kritzer eds., 2010).

addressing similar problems—unaffordable housing, transport congestion, and air pollution—using analogous governance frameworks. Research has often prioritized capital and mega-cities—such as London, Paris, Shanghai, or New York—yet we need to study cities regardless of their size. An ordinary city approach avoids hierarchy, privileging the “mega-cities,” “global cities” or the metropolis over other cities and can help bridge geographical and epistemological divides, and broadens the number of cities understood as legal governance systems.³⁴ As Belgian Geographer Nick Schuermans reviewing Robinson’s book notes, challenging the hierarchical production of urban theory:

Very rarely, a scholar from the Anglo-Saxon heartland would be expected to cite a Belgian case study for the sake of the originality of the theory, and not just to embellish his list of references with a publication from an exotic country imitating and confirming the theories produced in London, Los Angeles or New York.³⁵

To truly understand the urban everyday, we need to understand “ordinary” as well as “mega” or “global” cities—assessing both the differences and similarities between them, and producing legal legibility for analysis.

C. Why “Urban”?

For lawyers, the urban area can fall into administrative boundaries, drawing a line beyond which a city government’s formal jurisdiction on local affairs does not run. One risk with this bounded approach is that it can transform urban law into local government or localized administrative law—raising the argument that we should no more study cities than rural administrative areas. A related concern is that focusing too much on city boundaries can also prioritize the rights, duties, and interests of city government—downplaying the significance of land ownership, private capital flows, ecosystems or movements by people, vehicles or pollutants. More fundamentally, a focus on local government boundaries misses the quality of urbanism as a way of life.

Such questions are not limited to urban law. One of the most perplexing questions for all urban scholars—be they in anthropology, sociology, politics, history, or geography—is why we would distinguish cities from other forms of human settlement. Should we have a specifically urban focus of analysis? What, if anything, is distinctive about cities or urban places?

Summarizing this critique in the 1980s, Doreen Massey explained that “[e]stablished theory has on the whole rested content with a rather unthought-out position that there is something called ‘the urban,’ that urban phenomena can be treated as independent variables.”³⁶ This led some geographers to shift their interests, focusing on networks, mobilities, and global capitalist relations, aiming to understand cities as part of broader economic, spatial, and social processes.³⁷ Marxist geographers raised questions about whether cities are better understood as facilitating capitalism, creating a class of workers to service wealth production, or embedding cities within broader economic and political relations.³⁸ David Harvey, investigating how capital and urban

³⁴JENNIFER ROBINSON, *ORDINARY CITIES: BETWEEN MODERNITY AND DEVELOPMENT* (2013); SASKIA SASSEN, *SOCIOLOGY OF GLOBALIZATION* (2007); SASKIA SASSEN, *THE GLOBAL CITY: NEW YORK, LONDON, TOKYO* (2013); Nick Schuermans, *J. Robinson, Ordinary Cities: Between Modernity and Development*, 4, 5 (2009).

³⁵NICK SCHUERMANS, *J. ROBINSON, ORDINARY CITIES: BETWEEN MODERNITY AND DEVELOPMENT* 3, 4 (2009).

³⁶Doreen Massey, *The Urban Land Nexus and the State*, London: Pion. (Book Review 1980).

³⁷See generally MANUEL CASTELLS, *THE URBAN QUESTION: A MARXIST APPROACH* (1977); MANUEL CASTELLS, *THE CITY AND THE GRASSROOTS: A CROSS-CULTURAL THEORY OF URBAN SOCIAL MOVEMENTS* (1983); MANUEL CASTELLS, *THE RISE OF THE NETWORK SOCIETY: THE INFORMATION AGE: ECONOMY, SOCIETY AND CULTURE* (2000); JOHN ALLEN ET AL., *RETHINKING THE REGION: SPACES OF NEO-LIBERALISM* (2012); JOHN URRY, *SOCIOLOGY BEYOND SOCIETIES: MOBILITIES FOR THE TWENTY-FIRST CENTURY* (2002).

³⁸*Id.*

processes interact and what they spatially produce, concluded that capital accumulation takes place within geographical context, producing specific kinds of geographical structures, including cities.³⁹ Henri Lefebvre suggested that urbanization processes create the conditions for capitalism, underpinning his claim that “society has been completely urbanized.”⁴⁰ For scholars studying the urban effects of empire, relationality proves significant. Colonial cities should not be understood as a particular category of city, explains Anthony King, but rather as the interaction of distinct elements, including national society, territory, and location, as well as the particular process of colonization experienced.⁴¹ This critique recognises that urbanism is also a process, challenging a conception of “the urban” as just a type of place.

There are also geographic boundary criticisms. Where does the city end and the rural start? How should we understand the causes and effects of urban expansion, decentralization, and suburbanization? Roger Keil has argued that urbanization today “is mainly suburbanization in its manifold differentiation” with the “form and life of the global suburb” taking “shape in a general dynamic of multiple centralities and decentralities.”⁴² Infrastructure is networked, often—though not always in a “modern infrastructural ideal”—patterning urban and suburban areas in way we often take for granted outside of rural settlements, where fuel supplies, broadband connections, and sanitation connections may be missing.⁴³ Given these networked infrastructures, can we effectively draw lines around a city boundary?

A further challenge is to identify the best scale for research, with researchers often finding that urban inequality occurs in neighborhoods, rather than in cities as a whole. Scholars identify housing choices and residential mobility as having the capacity to improve neighborhood deprivation at the neighborhood scale.⁴⁴ They examine experiences of structural racism, high rates of poverty, and social isolation in communities suffering from poor infrastructure, job opportunities, and reputational stigma.⁴⁵ Economic geographers, in particular, investigate urban difference at a granular level to try to understand whether living or growing up in certain neighborhoods affects life chances—even when they are embedded in broader national, regional or city-wide processes such as recessions, de-industrialization, or local government austerity.⁴⁶ Scholars researching one Swedish neighborhood found that “individuals who lived with their parents in a poverty concentration neighborhood, experience negative effects on their income later in life, even seventeen years after they have left their parental home.”⁴⁷ Although there is much more that needs to be understood here, research so far indicates that housing tenure and social welfare programs

³⁹See David Harvey, *The Geography of Capitalist Accumulation: A Reconstruction of the Marxian Theory**, 7 *ANTIPODE* 9 (1975); DAVID HARVEY, *SPACES OF GLOBAL CAPITALISM* (2006); DAVID HARVEY, *REBEL CITIES: FROM THE RIGHT TO THE CITY TO THE URBAN REVOLUTION* (2012).

⁴⁰HENRI LEFEBVRE, *THE URBAN REVOLUTION* (2003), 1.

⁴¹See ANTHONY D. KING, *URBANISM, COLONIALISM, AND THE WORLD-ECONOMY* (2015).

⁴²Roger Keil, *Extended urbanization, “disjunct fragments” and global suburbanisms*, 36 *ENVIRON PLAN D* 494–511, 494 (2018).

⁴³Olivier Coutard, *Placing Splintering Urbanism: Introduction*, 39 *GEOFORUM* 1815, 1815–20 (2008); STEVE GRAHAM & SIMON MARVIN, *TELECOMMUNICATIONS AND THE CITY: ELECTRONIC SPACES, URBAN PLACES* (2002); STEVE GRAHAM & SIMON MARVIN, *SPLINTERING URBANISM: NETWORKED INFRASTRUCTURES, TECHNOLOGICAL MOBILITIES AND THE URBAN CONDITION* (2002).

⁴⁴WENDA DOFF, *PUZZLING NEIGHBOURHOOD EFFECTS: SPATIAL SELECTION, ETHNIC CONCENTRATION AND NEIGHBOURHOOD IMPACTS* (2010).

⁴⁵WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY*, SECOND EDITION (2012).

⁴⁶JÜRGEN FRIEDRICH, GEORGE GALSTER & SAKO MUSTERD, *LIFE IN POVERTY NEIGHBOURHOODS: EUROPEAN AND AMERICAN PERSPECTIVES* (2013); DAVID MANLEY ET AL., *NEIGHBOURHOOD EFFECTS OR NEIGHBOURHOOD BASED PROBLEMS?: A POLICY CONTEXT* (2013).

⁴⁷Lina Hedman et al., *Cumulative Exposure to Disadvantage and the Intergenerational Transmission of Neighbourhood Effects*, 15 *J. ECON. GEOGRAPHY* 195, 207 (2015).

appear to improve neighborhood outcomes, providing more equitable life chances for children growing up in deprived urban areas.⁴⁸

Despite these findings, legal rules and practices are rarely implemented at a neighborhood scale, with these effects continuing to be poorly understood, despite studies of “the divided city.”⁴⁹ Neighborhoods have been studied in the context of planning and ideologies of localism, or as relationships between neighbors.⁵⁰ Scholars have addressed legal questions at a micro-scale, particularly on the street or sidewalk, investigating how such interactions are produced and managed⁵¹, and these are important contributions to understanding how urban flows are regulated by people, objects, rules, and practices. However, just as urban studies cannot ignore neighborhood effects on health, wealth or participation, neither can urban law. We need city, neighborhood, and street-scale analyses to combine if we are to understand urban legal dynamics. The task is to use the granular findings from streets and neighborhoods to inform a broader understanding of urban law, even if this widens out our understanding of “the urban”.

Yet another critique of urban law is that governance arrangements vary, with many cities having only limited jurisdictional scope. Not all can determine economic policies, make their own transportation improvements, or cap rents. Sometimes responsibility rests with regional governance, as with German Länder. At other times, as in the United Kingdom, centralized governments make the most fundamental urban decisions, limiting local tax raising powers, controlling local budgets, and mandating rental laws and employment frameworks. Different histories embodying the legacies of the Hanseatic League or Italian city states have emerged into distinctive jurisdictional arrangements.⁵² The task of urban law must acknowledge the variabilities of constitutional law, identifying the powers of cities. Having set out the local government framework, urban law must then go beyond it, explaining how cities operate in both law and policy in the gaps that are left—or in the governance fields cities claim, depending on the jurisdiction. Such analyses can draw work in international law where scholars consider the scale of human rights—investigating their possibility at the city level, questioning the value of legalizing urban citizenship, and analyzing the effects of framing places as sanctuary cities.⁵³

A broader riposte still to urban law is to ask whether—even if we study deprivation, pollution, and poor housing quality in cities—we should neglect economic, welfare, or environmental law outside urban and spatial boundaries. Is housing law not the same inside and outside of cities? Even if we argue that some policy problems accumulate in certain places, that air quality is worse in urban areas and high demand can exacerbate poor quality housing, this is not necessarily an argument for urban law *per se*.

⁴⁸FRIEDRICHS, GALSTER & MUSTERD, *supra* note 46.

⁴⁹SUSAN S. FAINSTEIN, IAN GORDON & MICHAEL HARLOE, *DIVIDED CITIES: NEW YORK & LONDON IN THE CONTEMPORARY WORLD* (1992); ALAN MALLACH, *THE DIVIDED CITY: POVERTY AND PROSPERITY IN URBAN AMERICA* (2018); CARL H. NIGHTINGALE, *SEGREGATION: A GLOBAL HISTORY OF DIVIDED CITIES* (2012).

⁵⁰See Alexandra Elizabeth Flynn, *Re-Imagining Local Governance: The Landscape of “Local” in Toronto*, OSGOODE DIGITAL COMMONS: PHD DISSERTATIONS (2017), <https://digitalcommons.osgoode.yorku.ca/phd/35>; Alexandra Flynn & Zachary Spicer, *Re-Imagining Community Councils in Canadian Local Government* (2017); Alexandra Flynn & Mariana Valverde, *Planning on the Waterfront: Setting the Agenda for Toronto’s ‘Smart City’ Project*, 20 PLAN. THEORY & PRAC. 769, 769–75 (2019); ROBERT C. ELLICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* (2009).

⁵¹NICHOLAS BLOMLEY, *RIGHTS OF PASSAGE: SIDEWALKS AND THE REGULATION OF PUBLIC FLOW* (2010); Rodrigo Meneses-Reyes, *Out of Place, Still in Motion: Shaping (Im)Mobility Through Urban Regulation*, 22 SOC. & LEGAL STUD. 335 (2013); Padmapriya Vidhya-Govindarajan, *Who Owns the Sidewalk?: Analysing Spatial Reorganization Amidst Regulation and Hierarchies in the Pondy Bazaar Street Market, Chennai, India*, in *GLOBAL PERSPECTIVES IN URBAN LAW* 114 (Nestor M. Davidson & Geeta Tewari eds., 2018).

⁵²SASKIA SASSEN, *TERRITORY, AUTHORITY, RIGHTS: FROM MEDIEVAL TO GLOBAL ASSEMBLAGES* (2008).

⁵³Aust Helmut Philipp, *Urban Citizenship – a Status or a Practice?*, VERFASSUNGSBLOG (JAN. 29, 2020), <https://verfassungsblog.de/urban-citizenship-a-status-or-a-practice/>; Harald Bauder & Dayana A. Gonzalez, *Municipal Responses to ‘Illegality’: Urban Sanctuary across National Contexts*, 6 SOC. INCLUSION 124 (2018).

The imperfect answer to all of these criticisms is that they undoubtedly hold a kernel of truth, and yet we should still act. Half of humanity, 3.5 billion people, live in cities,⁵⁴ many in quite terrible personal circumstances, produced by a lack of regulatory oversight of housing quality, pollution control, or planned economic development. Urban law gives us a rare opportunity to engage holistically, investigating how laws interact in time and space from the ground up. We cannot capture every urban aspect. Instead, urban lawyers attempt to study cities from the inside, trying to commit to paper how the city operates around us and how legal rules on local government, finance, transportation, education, sustainability, housing, policing, and protesting—to name just a few—operate at the same time.

D. Why Urban “Law”?

Taking all these difficulties and limitations on board, we can identify three further sets of reasons to develop urban law as a field of study: The first is the subject’s potential to contribute to vibrant interdisciplinary research; the second is to put law in service of improved urban quality; the third is to further develop legal concepts and understandings of interest to lawyers including governance, territory, jurisdiction, sovereignty, networks, and money.

I. Urbanism

The first argument for urban law is perhaps the most compelling—urbanism is interesting. In 1973, New York urban lawyer Frank Grad suggested that then, in a period of urban decline, one contributing factor to the relative lack of urban law scholarship rested on “the many so-called urbanists who either hate the city or have given up on it.”⁵⁵ Today, cities and urban living are back in vogue, providing a growing focus for interdisciplinary research. Cities attract socio-legal scholars, the intellectual descendants of Ehrlich’s study of “living law,” keen to study urban rules and practices in urban sites that are still, to some extent, living laboratories—to use the language of 1930s Chicago sociology. Anthropological and sociological methodologies and methods, particularly ethnography, interviews, and observations, provide valuable ways for scholars interested in urban law to gather data to better understand the legal production of the city, even if at the moment much of this research is undertaken by scholars with their initial training outside of law.⁵⁶

And so, despite the vibrant discourse of urban studies, legally-focused scholarship is, with notable exceptions, mostly absent.⁵⁷ Nonetheless, lawyers have much to contribute here, asking

⁵⁴UNITED NATIONS DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, *supra* note 1.

⁵⁵Frank P. Grad, *The City is Here to Stay*, URB. L. ANN. 3, 3 (1973).

⁵⁶NICHOLAS BLOMLEY, UNSETTLING THE CITY: URBAN LAND AND THE POLITICS OF PROPERTY (2004); Mariana Valverde, *Seeing Like a City: The Dialectic of Modern and Premodern Ways of Seeing in Urban Governance*, 45 L. & SOC’Y REV. 277 (2011); INSA LEE KOCH, PERSONALIZING THE STATE: AN ANTHROPOLOGY OF LAW, POLITICS, AND WELFARE IN AUSTERITY BRITAIN (2018).

⁵⁷Phil Hubbard, *Kissing is Not a Universal Right: Sexuality, Law and the Scales of Citizenship*, 49 GEOFORUM 224 (2013); Phil Hubbard & Rachela Colosi, *Sex, Crime and the City: Municipal Law and the Regulation of Sexual Entertainment*, 22 SOC. & LEGAL STUD. 67 (2013); Jason Prior, Spike Boydel & Philip Hubbard, *Nocturnal Rights to the City: Property, Propriety and Sex Premises in Inner Sydney*, 49 URB. STUD. 1837 (2012); Nicholas Blomley, *How to Turn a Beggar into a Bus Stop: Law, Traffic and the “Function of the Place”*, 44 URB. STUD. 1697 (2007); Anna Barker et al., *Everyday Encounters with Difference in Urban Parks: Forging ‘Openness to Otherness’ in Segmenting Cities*, 15 INT’L J.L. CONTEXT 495 (2019); John MacDonald et al., *The Privatization of Public Safety in Urban Neighborhoods: Do Business Improvement Districts Reduce Violent Crime Among Adolescents?*, 47 L. & SOC’Y REV. 621 (2013); Mariana Valverde, *Seeing Like a City: The Dialectic of Modern and Premodern Ways of Seeing in Urban Governance: Seeing Like a City*, 45 L. & SOC’Y REV. 277 (2011); Mariana Valverde, *Authorizing the Production of Urban Moral Order: Appellate Courts and Their Knowledge Games*, 39 L. & SOC’Y REV. 419 (2005); Ann Varley, *Modest Expectations: Gender and Property Rights in Urban Mexico*, 44 L. & SOC’Y REV. 67 (2010).

about the significance of property, feeding into debates about urban land acquisition,⁵⁸ protest and free expression, policing and urban criminology, and cultural practices—complementing sociological focus not only on people in cities but also people in urban law and society.

Certainly, the ideal type of the European city, so influenced by Weber and his *Die Stadt* with its emphasis on urban associations, cannot provide a single template for urban law. Weber's "Politico-Administrative concept of the City"⁵⁹ undoubtedly informs urban life in some countries but cannot encapsulate all cities in their entirety. In particular, as Weber himself noted, urbanism as a form of consciousness is distinct from its physical embodiment. Contrasting these as the *cit * and the *ville*, Richard Sennett identifies the *cit * as representing "the character of life in a neighborhood," its anthropology and a "kind of consciousness," while *ville* encompasses the built environment—both buildings and "the product of the maker's will."⁶⁰ These two conceptions can be bridged, Sennett argues, if the urbanist is a partner to the urbanite, being both critical and self-critical.⁶¹ Similarly, for urban lawyer and theorist Andreas Philippopoulos-Mihalopoulos, there is far more to cities than built environment alone, remaining in pursuit of careful critical analysis which produces "the ideal conversion from *urbs* to *civitas*."⁶² Fordham's Nestor Davidson and Nisha Mistry also point to the broader possibilities for urban law, borrowing from Jan Gehl's 1973 *Life Between Buildings*, to call for "Law Between Buildings," providing a careful investigation of cities beyond their physical form.⁶³ With participatory governance a conventional way to understand the *cit *, and planning, building and infrastructure regulations conventional ways to understand the *ville*, urban lawyers can bring their appreciation for how these regimes interact, by producing, for example, opportunities for local residents to object to contentious development applications, even if they are not always heard.

Urban studies can also be enriched through analysis of repeated techniques used in urban law, fitting into modern debates framed as "planetary urbanism", drawing on the broader question about what is distinctive about "the urban", whether there is an "outside" to urbanity.⁶⁴ This line of scholarship, developed by Neil Brenner and Christian Schmid, builds on Henri Lefebvre's argument from the 1960s that, given the extension of networks both human, technological and financial, we are, in effect, "all urban now".⁶⁵ These arguments are highly theorized and polarized, highlighting urbanization as a process, prioritizing dynamics in terms of explanatory power, preferring to understand "urban" as a verb rather than as a noun.⁶⁶ Theories of planetary urbanism have been criticized for "occluding" central aspects of urban studies, including difference, centrality, and the everyday, as well as privileging particular epistemologies.⁶⁷ Arguing for progressive urban change, Clive Barnett and Susan Parnell have noted that while planetary urbanism provides space for aspects of Southern urban realities, it does not provide much assistance in thinking

⁵⁸ ALLEN J. SCOTT, *THE URBAN LAND NEXUS AND THE STATE* (2013); Allen J. Scott & Michael Storper, *The Nature of Cities: The Scope and Limits of Urban Theory*, 39 INT'L J. URB. & REGIONAL RES. 1 (2015).

⁵⁹ Max Weber, *The Nature of the City*, in RICHARD SENNETT, *CLASSIC ESSAYS ON THE CULTURE OF CITIES* (1969).

⁶⁰ RICHARD SENNETT, *BUILDING AND DWELLING: ETHICS FOR THE CITY* 1–2 (2018).

⁶¹ *Id.* at 16.

⁶² PHILIPPOPOULOS-MIHALOPOULOS, *supra* note 8, at 7.

⁶³ See NESTOR DAVIDSON & NISHA MISTRY, *LAW BETWEEN BUILDINGS: EMERGENT GLOBAL PERSPECTIVES IN URBAN LAW* (2016).

⁶⁴ HENRI LEFEBVRE, *THE URBAN REVOLUTION* (Robert Bononno tran., 2003); PLANETARY URBANIZATION: AN URBAN THEORY FOR OUR TIME?, (Neil Brenner & Christian Schmid eds.); NEIL BRENNER, *IMPLOSIONS/EXPLOSIONS: TOWARDS A STUDY OF PLANETARY URBANIZATION* (2014); Christian Schmid, *Journeys through planetary urbanization: Decentering perspectives on the urban*, 36 ENVIRON PLAN D 591–610 (2018).

⁶⁵ *Id.*

⁶⁶ NEIL BRENNER, *IMPLOSIONS/EXPLOSIONS: TOWARDS A STUDY OF PLANETARY URBANIZATION* (2014).

⁶⁷ Sue Ruddick et al., *Planetary Urbanization: An Urban Theory for Our Time?*, 36 ENVTL. PLAN. 387 (2018).

concretely about how local city governments can find opportunities about how city-based actors can be supported “to expand their influence and agency relative to national and international actors such as firms, political parties or governments.”⁶⁸

And yet while there may be limits to the planetary urbanism thesis, the focus on repetition within debates on planetary urbanism provides space for lawyers to demonstrate how repeated practices—sometimes by global commercial players using familiar techniques of property management and urban renewal—can replicate across jurisdictions.⁶⁹ In *Urban Warfare: Housing Under the Empire of Finance*, Special Rapporteur on Adequate Housing, Raquel Rolnik argues that the financialization of housing since 2008 has been disastrous for many left homeless and dispossessed.⁷⁰ Rolnik points to familiar legal techniques, often resting on property commodification, including home ownership, sub-prime mortgages, and the right to buy, arguing that these legally facilitated transactions enable global urban wealth to be concentrated disproportionately in the hands of a few. Many cities have been affected by the same legal techniques, conceptually similar, if tweaked by jurisdiction.

Similarly, repeated practices have characterized urban retail development. Legal and spatial enclosures of previously public spaces, “malls without walls,” are often based on repeated prototypes, particularly using long leases from public authorities to private developers for 250 years—whilst maintaining on websites or public documents that the city still owns the land, which of course it does in terms of the freehold estate, though this is a long-postponed interest in reversion. The standard pattern is to masterplan a neglected urban area, using public powers of compulsory purchase and highway adaptation to subdue unruly landscapes into economically productive sites of consumption, governed by standard leases networks of experience.⁷¹

Transportation is also subject to repeated moves, including the designation of express or motorways, governed often at a national or regional scale, used by individual and corporate drivers.⁷² Automobility is a cultural, economic, and political practice, which, all around the world is “the predominant global form of ‘quasi-private’ *mobility* that subordinates other mobilities of walking, cycling, travelling by rail and so on, and reorganizes how people negotiate the opportunities for, and constraints upon, work, family life, childhood, leisure and pleasure.”⁷³ Observing these repeated patterns and practices provides legal scholars opportunities to investigate transfers of both progressive and regressive urban practices. More fundamentally, by exposing the legal basis for these practices, urban lawyers can ask whether these repetitions are urban in their conception or in their effect. Urban lawyers have real scope to contribute to broader debates on whether “the urban” is a place or a process, engaging with debates in “planetary urbanism” or “planetary gentrification” explaining how we can often see the same techniques used again and again. It is in picking up these repeated legal forms—as well as noting progressive good practice or cultural distinctions—that urban law can develop in its own right as well as contributing to comparative legal development and urban studies.

⁶⁸Clive Barnett & Susan Parnell, *Ideas, Implementation and Indicators: Epistemologies of the Post-2015 Urban Agenda*, 28 ENV'T & URBANIZATION 87, 87 (2016).

⁶⁹See LORETTA LEES, HYUN BANG SHIN & ERNESTO LÓPEZ-MORALES, PLANETARY GENTRIFICATION (2016); Antonia Layard, *Property and Planning Law in England: Facilitating and Countering Gentrification*, in HANDBOOK OF GENTRIFICATION STUDIES (2018).

⁷⁰RAQUEL ROLNIK, URBAN WARFARE: HOUSING UNDER THE EMPIRE OF FINANCE (Gabriel Hirschhorn trans., 2019)

⁷¹Antonia Layard, *Shopping in the Public Realm: A Law of Place*, 37 J.L. & SOC'Y 412 (2010).

⁷²See generally John Urry, *The 'System' of Automobility*, 21 THEORY, CULTURE & SOC'Y 25 (2004); JIM CONLEY, CAR TROUBLES: CRITICAL STUDIES OF AUTOMOBILITY AND AUTO-MOBILITY (2016); NICHOLAS LOW, TRANSFORMING URBAN TRANSPORT: FROM AUTOMOBILITY TO SUSTAINABLE TRANSPORT (2012); SUDHIR CHELLA RAJAN, THE ENIGMA OF AUTOMOBILITY: DEMOCRATIC POLITICS AND POLLUTION CONTROL (1996).

⁷³Urry, *supra* note 72, at 26.

II. Law in Service of Urban Quality

The United Nations couch their call for policy engagement by extrapolating from current trends, in that “the future will be urban for a majority of people, the solutions to some of the greatest issues facing humans—poverty, climate change, healthcare, education—must be found in city life.”⁷⁴ The city provides a test case for policy questions, while “sustainable urbanism” becomes a policy rubric to address shared problems of infrastructure, housing, economic development, and environmental adequacy. This is a pragmatic—if sometimes contested—strategy. For while sustainable development has long been understood as a contested subject, modern formulations, beginning with the Millennium Goals, have reduced complexity—compared to Agenda 21’s 351 pages—fitting objectives onto a single page, using simplicity to raise public awareness, facilitating mobilization, advocacy, and continuity.⁷⁵

Law and legal practice are clearly relevant to this progressive task. The “New Urban Agenda” was adopted at the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) in Quito, Ecuador in 2016 and endorsed by the United Nations General Assembly later that year.⁷⁶ It presents a “shared vision,” promoting the agenda as “a powerful tool for sustainable development for both developing and developed countries.”⁷⁷ The Agenda incorporates the newly developed Sustainable Development Goal 11, which proclaims that we should make “cities and human settlements inclusive, safe, resilient and sustainable.”⁷⁸ Such policy activity is increasingly coupled with rising interest in behavioral economics or “nudge theory” in policy and decision-making circles, encouraging scholars to contribute understanding of “the human dimension” in more accessible forms.⁷⁹ Any legal contributions come, of course, with an acknowledgement of disciplinary normativity, explicitly acknowledging urban aims to build better, cleaner, and more equitable cities. It requires urban law scholars explicitly to lay bare their intellectual foundations, which is an unfamiliar scholarly move.

Socio-legal studies are primarily concerned with the “how,” investigating the ways in which law and society, people and rules, customs and practices, objects and places, interact and inter-relate. Of course, it will always be critically important to separate the research from policy prescriptions. Nonetheless, urban law has potential not only to understand the “how” but also to inform the “how to.” Socio-legal studies have seen increasing numbers of self-identified “scholar activists” at a time where politicians have sometimes claimed that “people have had enough of experts” or where identifying a point as “academic” consigns it to the sidelines of debate.⁸⁰ M. V. Lee Badgett, writing in *The Public Professor: How to Use Your Research to Change the World*, calls on scholars to engage with problems of climate change, social and economic inequality, war, violence, threats to democracy, and infrastructure meltdowns. He argues that while “it’s tempting to keep our heads in books and computers, hoping that our students and published ideas will trickle down from the ivory tower into the world to make a difference,” this rarely happens.⁸¹ Indeed, Badgett believes that “giving into this temptation would be a lost opportunity and an abdication of our social responsibility.”⁸² Martin Partington agrees, particularly given the growing preference

⁷⁴UNITED NATIONS DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, *supra* note 1.

⁷⁵Jeffrey Sachs, *From Millennium Development Goals to Sustainable Development Goals*, 379 LANCET 2206, 2210 (2012).

⁷⁶UNITED NATIONS CONFERENCE ON HOUSING AND SUSTAINABLE URBAN DEVELOPMENT (HABITAT III), *New Urban Agenda*, (Oct. 20, 2016).

⁷⁷*Id.* at iv.

⁷⁸*Id.* at 4.

⁷⁹Noel Castree et al., *Changing the Intellectual Climate*, 4 NATURE CLIMATE CHANGE 763, 763–68 (2014).

⁸⁰*Britain has had enough of experts, says Gove*, FINANCIAL TIMES, <https://www.ft.com/content/3be49734-29cb-11e6-83e4-abc22d5d108c> (last visited May 13, 2020); *Michael Gove on the Trouble With Experts*, CHATHAM HOUSE (March 3, 2017), <https://www.chathamhouse.org/expert/comment/michael-gove-trouble-experts> (last visited May 13, 2020).

⁸¹M.V. LEE BADGETT, *THE PUBLIC PROFESSOR: HOW TO USE YOUR RESEARCH TO CHANGE THE WORLD* 15–16 (2016).

⁸²*Id.*

for “evidence-based” policy-making, noting drily that evidence-based policymaking is always “likely to be better than policy-making shaped by anecdote or personal preference.”⁸³

Of course, taking a normative position, being “pro-urban,” is not a neutral step. It is important to be explicit about it, separating “research” from “policy implementation” to the greatest extent possible. Given socio-legal academics’ substantial—if sometimes imperfect—academic freedom all research starts from a subjective viewpoint. It is increasingly important to acknowledge researcher positionality within socio-legal studies. Urban law is no different in this respect.

In the absence of formal treaties or legislation focusing on urban law, charters and indicators provide one way to engage in detailed legal scrutiny of explicitly pro-urban agendas, using well-established doctrinal skills. The 1996 Habitat II Charter, agreed to in Istanbul, had already called for legal implementation of urban objectives, including through “national laws and development priorities, programs and policies,” as “the sovereign right and responsibility of each State in conformity with all human rights and fundamental freedoms [...] to achieve the objectives of adequate shelter for all and sustainable human settlements development.”⁸⁴ Such definitions provide lawyers with opportunities to track language and meanings, noting how rhetorically attractive declarations can shift objectives over time.

In housing, Habitat II already emphasized the importance of legal rights to security of tenure in 1996 when it called for states to provide “legal security of tenure and equal access to land to all people, including women and those living in poverty.”⁸⁵ Nevertheless, by 2016, the Habitat III *Quito Declaration on Sustainable Cities and Human Settlements for All*, security of tenure, such a key legal concept, was only to be “promoted.”⁸⁶ Paragraph 13, rather than confirming the significance of secure tenure, “envisage[s] cities and human settlements that: Fulfil their social function, including the social and ecological function of land, with a view to *progressively achieving* the full realization of the right to adequate housing as a component of the right to an adequate standard of living, without discrimination.”⁸⁷ The understanding of hard and soft law, policy, and the limits of rights legislation by lawyers, is critical to understand what States have signed up to.

Such linguistic and legal limits to international declarations have long been understood. Their limitations provide one reason why modern global urban policymaking has turned to targets and indices to encourage progress. Sustainable Development Goal 11 “to make cities and human settlements inclusive, safe, resilient and sustainable” has been crafted in ostensibly quantitative form, with four priority targets and accompanying indices.⁸⁸ The four targets are to: (i) Improve housing and upgrade slums; (ii) reduce harm to people and economic losses from disasters; (iii) reduce the adverse per capita environmental impact of cities, particularly from air quality and waste management; and (iv) substantially increase the number of cities and human settlements adopting and implementing integrated policies and plans.⁸⁹ The SDG housing target 11.1 assesses whether States can “[b]y 2030, ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums,” with an indicator measuring the “proportion of urban population living in slums, informal settlements or inadequate housing.”⁹⁰

⁸³Martin Partington, *Empirical Legal Research and Policy-Making*, in *THE OXFORD HANDBOOK OF EMPIRICAL LEGAL RESEARCH* 1004 (Peter Cane & Herbert M. Kritzer eds., 2010).

⁸⁴UNITED NATIONS, *Report of the United Nations Conference on Human Settlements (HABITAT II)*, 17 (1996).

⁸⁵*Id.*

⁸⁶United Nations, *New Urban Agenda: Quito Declaration on Sustainable Cities and Human Settlements for All* 35 and 109 (2016).

⁸⁷*Id.*

⁸⁸*Global indicator framework for the Sustainable Development Goals and targets of the 2030 Agenda for Sustainable Development*, (2017), <https://unstats.un.org/sdgs/indicators/indicators-list/> (last visited May 15, 2020) [hereinafter SDG Indicators].

⁸⁹*Id.*

⁹⁰SDG Indicators, *supra* note 88 (Target 11.1).

As Sally Merry *et al.* have explained in their explorations of the genealogies of indicators, categorizations are deductive, raising democratic questions of who assesses, what is measured, and why.⁹¹ One task for legal scholars is to engage with the definitions that underpin these targets and indicators in meaningful ways. Clearly, definitions of a “slum” or a “plan” can vary considerably⁹² so that even if slums and plans can be counted, they may not all be equivalents, with the potential that some quite shocking urban housing conditions could be ignored. A definition of a “slum” matters, particularly when listing the proportion of a country’s urban population living in slums⁹³: any number is not absolute, instead it provides a perspective of what a “slum” is and how it can be counted. Theoretical and political objections remain to using reductive quantified assessments of this type that may miss important lived realities, while data tables and visualizations are only as reliable as the information entered into the software. Focusing on SDG 11, and indicator 11.1 specifically, the United Nations itself acknowledges the difficulties in differentiating between slum and non-slum areas, suggesting that, “methodologically, such an approach would start with innovative digital-based satellite imagery analysis, coupled with community ground-truthing and local observation, and participatory slum mapping.”⁹⁴

Ultimately, lawyers can make their own decisions as to whether or not to engage with these debates. Sally Merry has encouraged scholars to think about how to make indicators better, avoiding the overgeneralization, over-homogenization, and lack of context that so often limit the development and application of indicators.⁹⁵ Arguing that numbers can give us important knowledge, she exhorts policymakers to get more complicated and nuanced information into the process, particularly by drawing on categories of knowledge and information from the people themselves.⁹⁶ Socio-legal research is particularly well-suited to contributing to this task, drawing both on understanding of legal and official policy formulations as well as conducting empirical investigations into everyday meanings and understandings of key terms.

We should, then, be sensitive to the limits of quantitative analysis, slow to suggest that a particular legal framework can definitively improve a given variable, be that economic growth or urban quality. Some legal concepts have already indicated their potential in urban law. The best known, perhaps, is the “right to the city,” formulated both in political geography and in legal form, primarily rhetorical but sometimes also a legal right.⁹⁷ Activists and scholars have used the concept of a right to formulate a deontological response to problems of urban insecurity as well as challenging growing private control of public functions and spaces. Similarly, the legal concept of security of tenure is understood to promote housing safety, linked to wellbeing at the neighborhood scale.⁹⁸ One question here is whether equivalent—and this is the key test—framings of security of tenure can reduce populations living in urban housing insecurity. A German lease differs significantly from an English lease in terms of renter protection, yet security of tenure can be

⁹¹SALLY ENGLE MERRY, *THE SEDUCTIONS OF QUANTIFICATION: MEASURING HUMAN RIGHTS, GENDER VIOLENCE, AND SEX TRAFFICKING* (2016), <http://www.bibliovault.org/BV.landing.epl?ISBN=9780226261287> (last visited May 11, 2020); SALLY ENGLE MERRY, KEVIN E. DAVIS & BENEDICT KINGSBURY, *THE QUIET POWER OF INDICATORS: MEASURING GOVERNANCE, CORRUPTION, AND RULE OF LAW* (2015); KEVIN DAVIS ET AL., *GOVERNANCE BY INDICATORS: GLOBAL POWER THROUGH CLASSIFICATION AND RANKINGS* (2012).

⁹²NESTOR M. DAVIDSON & GEETA TEWARI, *LAW AND THE NEW URBAN AGENDA* (2020).

⁹³*Id.* (Indicator 11.1.1).

⁹⁴United Nations, *Tackling Progress Towards Inclusive, Safe, Resilient and Sustainable Cities and Human Settlements: SDG 11 Synthesis Report, High Level Political Forum 2018*, 44 (2018).

⁹⁵Sally Merry, *How to Make Global Indicators Better*, YOUTUBE, 2016, =<https://www.youtube.com/watch?v=68gTttIn2xM> (last visited May 15, 2020).

⁹⁶*Id.*

⁹⁷See Edésio Fernandes, *Constructing the ‘Right to the City’ in Brazil*, 16 SOC. & LEGAL STUD. 201 (2007); Edésio Fernandes, *The “Right to the City” as a Legal Right: Lessons from Latin America 2*; Abigail Friendly, *The Right to the City: Theory and Practice in Brazil*, 14 PLAN. THEORY & PRAC. 158 (2013); HARVEY, *supra* note 39; Peter Marcuse, *From Critical Urban Theory to the Right to the City*, 13 CITY 185 (2009).

⁹⁸Hedman et al., *supra* note 47; MANLEY ET AL., *supra* note 46.

achieved in both with sufficient political will.⁹⁹ Rights and security of tenure are recurring legal concepts often producing, both in their observance or non-observance, how a city feels. Does it have high levels of civic engagement and political participation? Are there many people living on the streets or in inadequate housing? Urban studies do not conventionally study the work done by legal concepts even though, as Raquel Rolnik reminds us, there is remarkable repetition in cities all over the world.¹⁰⁰

III. Governance Concepts

A third, more conceptual justification for urban law is that cities provide spaces to work out ongoing puzzles. These include the interaction of territory, sovereignty, and jurisdiction at a manageable legal scale. This is useful for internally-facing legal studies, but also for engaging with related social science and arts disciplines where legal frameworks are often disregarded in favor of more theoretical or conceptual frameworks of governance.

There is clearly scope for synthesis in qualitative work on urban decision-making studying the processes through which government is organized and delivered in urban areas as well as the relationships between state agencies and civil society. Questions of democratic representation, power, and decision-making have been longstanding issues of interest, with classic American studies, for example, producing discordant results. For while Hunter Floyd identified a small, interlocking elite as governing 1950s Atlanta, Robert Dahl rejected such “sovereignties,” finding instead a pluralist model of community power in 1980s New Haven.¹⁰¹ Urban governance scholars aim to understand the interaction of public, private, and community participants, all of which happens within a legal framework, and usually, structures of democratic participatory involvement, which may—of course—be more or less ignored depending on the type of decision being made.

Recent urban research indicates, however, that there is more interaction between the legal and governance worlds than might at first be supposed. In their study of “seeing like an investor” in London, Mike Raco *et al.* conclude that complex imaginations of planning and regulation have led to many firms realizing that “market success results from becoming more deeply embedded in the local political, social, and regulatory environments in which they are investing.”¹⁰² This finding echoes studies of de-centered governance where lawyers and political scientists are reaching largely compatible conclusions, including the Foucauldian insight that power and control are disposed amongst social actors and the state, a finding which has been particularly significant in studies of “street level bureaucrats.”¹⁰³ For as socio-legal scholars know well, regulatory decisions are dynamic, both in their drafting and in their enforcement, with processes sometimes informing the look, feel, or smell of a city as much as planned decisions.

⁹⁹SUSAN BRIGHT, LANDLORD AND TENANT LAW IN CONTEXT (2007); ALISON CLARKE, PRINCIPLES OF PROPERTY LAW (2020); Peter A. Kemp & Stefan Kofner, *Contrasting Varieties of Private Renting: England and Germany*, 10 INT’L J. HOUSING POL’Y, 379 (2010).

¹⁰⁰RAQUEL ROLNIK, URBAN WARFARE: HOUSING UNDER THE EMPIRE OF FINANCE (2019).

¹⁰¹FLOYD HUNTER, COMMUNITY POWER STRUCTURE: A STUDY OF DECISION MAKERS (1953); ROBERT A. DAHL, WHO GOVERNS?: DEMOCRACY AND POWER IN AN AMERICAN CITY (2005).

¹⁰²Mike Raco, Nicola Livingstone & Daniel Durrant, *Seeing Like an Investor: Urban Development Planning, Financialisation, and Investors’ Perceptions of London as an Investment Space*, 27 EUR. PLAN. STUD. 1064, 1064 (2019).

¹⁰³See generally JULIA BLACK, CRITICAL REFLECTIONS ON REGULATION (2002); JULIA BLACK, MARTIN LODGE & MARK THATCHER, REGULATORY INNOVATION: A COMPARATIVE ANALYSIS (2006); MICHAEL LIPSKY, STREET-LEVEL BUREAUCRACY: THE DILEMMAS OF THE INDIVIDUAL IN PUBLIC SERVICE (1983); Michael Lipsky, *Street-Level Bureaucracy and the Analysis of Urban Reform*, 6 URB. AFF. Q. 391 (1971); Richard Crook & Joseph Ayee, *Urban Service Partnerships, ‘Street-Level Bureaucrats’ and Environmental Sanitation in Kumasi and Accra, Ghana: Coping with Organisational Change in the Public Bureaucracy*, 24 DEV. POL’Y REV. 51 (2006); PETER HUPE, RESEARCH HANDBOOK ON STREET-LEVEL BUREAUCRACY (2019); Einat Lavee & Nissim Cohen, *How Street-Level Bureaucrats Become Policy Entrepreneurs: The Case of Urban Renewal*, 32 GOVERNANCE 475 (2019); Jesse Proudfoot & Eugene J. McCann, *At Street Level: Bureaucratic Practice in the Management of Urban Neighborhood Change*, 29 URB. GEOGRAPHY 348 (2008).

Municipal budgets provide yet another relatively understudied aspect of law, despite their undoubted effects on urban areas.¹⁰⁴ Cities may have the broadest jurisdictions and range of powers, but if they lack allocated funds or cannot directly tax their residents, they are limited in what they can achieve. In a call to update studies of public law in the 1980s, Terence Daintith identified “imperium” and “dominium” as mechanisms of governance.¹⁰⁵ For Daintith, imperium represents a legislative expression of government deployment of force—or the threat of force—and respect for rules, while dominium describes policy instruments that involve the deployment of wealth by government. The two interact, particularly after periods of budget reductions.¹⁰⁶ While localism initiatives can bring much vaunted freedom for local authorities to set their own imperium regulatory priorities, the ability to enact urban rules reduces when coffers are bare.

Money matters enormously to legal studies of urban governance. With financial austerity so devastating in many cities, these concepts prove useful in understanding decisions between mandatory and discretionary funding choices. This governance distinction is often blurred in practice as Mia Gray and Anna Barford explain in their study of urban child welfare.¹⁰⁷ For while protection for “at risk” children is mandatory, the funding of youth centers is discretionary, with many vulnerable children relying on youth centers for socializing and networks of support.¹⁰⁸ Understanding the inter-relationship between funding and administrative rationality is critical to understanding the practice of urban law and governance.

The urban context also provides space for legal scholars to continue to study ongoing questions of networks, jurisdiction, scale, territory, and sovereignty. So far, these questions have primarily emerged in studies of international law and settler colonialism, with notable exceptions only in municipal law.¹⁰⁹ Territory, in particular, is understood as a politico-geographic concept, as well as a process, whose relevance to administrative law is not yet well understood.¹¹⁰ Sometimes, jurisdiction is understood as having fixed geographic boundaries. However, lawyers know well that jurisdiction can be contested and does not necessarily stop at national boundaries.¹¹¹ There are also tensions between globalization and territory, which the city, particularly with an understanding of both repeated public and private practices, as well as networks and infrastructures, can help us to interrogate.¹¹² Lastly, urban law continues to provide a rewarding context in which to

¹⁰⁴TONY PROSSER, *THE ECONOMIC CONSTITUTION* (2014); FRED L. MORRISON, *FISCAL RULES - LIMITS ON GOVERNMENTAL DEFICITS AND DEBT* (2016); ANN MUMFORD, *FISCAL SOCIOLOGY AT THE CENTENARY: UK PERSPECTIVES ON BUDGETING, TAXATION AND AUSTERITY* (2019).

¹⁰⁵T. C. Daintith, *Legal Analysis of Economic Policy*, 9 *JOURNAL OF LAW AND SOCIETY* 191–224 (1982).

¹⁰⁶See Peter Vincent-Jones, *Values and Purpose in Government: Central-Local Relations in Regulatory Perspective*, 29 *J.L. & SOC'Y* 27 (2002).

¹⁰⁷Mia Gray & Anna Barford, *The Depths of the Cuts: The Uneven Geography of Local Government Austerity*, 11 *CAMBRIDGE J. REGIONS ECON. SOC'Y* 541 (2018).

¹⁰⁸*Id.* at 555.

¹⁰⁹See generally Henry Jones, *Property, Territory, and Colonialism: An International Legal History of Enclosure*, 39 *LEGAL STUD.* 187 (2019); Jeremy J. Schmidt, *Bureaucratic Territory: First Nations, Private Property, and “Turn-Key” Colonialism in Canada*, 108 *ANNALS OF THE AM. A. GEOGRAPHERS* 901, 901–16 (2018); Nicholas Blomley, *Precarious Territory: Property Law, Housing, and the Socio-Spatial Order*, 52 *ANTIPODE* 36 (2020); MARIANA VALVERDE, *EVERYDAY LAW ON THE STREET: CITY GOVERNANCE IN AN AGE OF DIVERSITY* (2012); Mariana Valverde, *Jurisdiction and Scale: Legal ‘Technicalities’ as Resources for Theory*, 18 *SOC. & LEGAL STUD.* 139 (2009); Nicholas Blomley, *The Territory of Property*, 40 *PROGRESS IN HUMAN GEOGRAPHY* 593 (2016); Blomley, *supra* note [56].

¹¹⁰ROBERT DAVID SACK, *HUMAN TERRITORIALITY: ITS THEORY AND HISTORY* (1986).

¹¹¹Richard T. Ford, *Law’s Territory (A History of Jurisdiction)*, 97 *MICHIGAN LAW REVIEW* 843–930 (1999); Mariana Valverde, *Jurisdiction and Scale: Legal ‘Technicalities’ as Resources for Theory*, 18 *SOCIAL & LEGAL STUDIES* 139–157 (2009); SHAUNNAGH DORSETT & SHAUN McVEIGH, *JURISDICTION* (2012); STEPHEN ALLEN ET AL., *THE OXFORD HANDBOOK OF JURISDICTION IN INTERNATIONAL LAW* (2019).

¹¹²Stuart Elden, *Missing the Point: Globalization, Deterritorialization and the Space of the World*, 30 *TRANSACTIONS INST. BRIT. GEOGRAPHERS* 8 (2005).

investigate legal pluralism in both formal and informal settings.¹¹³ Cities provide a “bottom up” way to investigate territory, networks, and jurisdictional scaling in one place, developing a new scholarly setting for legal studies.

E. Conclusion

Urban law is an emerging field of socio-legal studies where scholars aim to understand how law produces and is produced by the city. While the urban is understood as a form or place, legal research can also identify repeated provisions and practices that contribute to urban patterns, particularly in land use, transportation or infrastructure, even if these techniques are not necessarily urban in and of themselves. Identifying these repeated legal moves, drawing on specific provisions and practices, can help identify what is distinctive about “the urban” as a subject of study. Urban law can also be pragmatic, starting “on the streets”, in quite classic socio-legal fashion, investigating cities in their everyday form, asking how urban areas are legally produced and co-produced as well as how better urban laws and legal practices might produce more sustainable, equitable and hopeful cities.

One of the key difficulties for urban law lies in identifying the right level of analysis, covering sufficient legal and empirical detail whilst also making the city legible at an urban scale. Focusing on small-scale case studies can illustrate repeated patterns or trends with investigations explaining, as Don Mitchell notes, “the structured and intense struggles” in urban development processes.¹¹⁴ Such granular analyses, Mitchell explains, need to be studied alongside an understanding of the legal framework of law, governance, and practices within which cities operate.¹¹⁵ As this article has explained, finding an intellectual infrastructure remains a key task for urban law, recognizing that scalar tensions produce imperfect compromises. Nevertheless, we should accept this challenge, just as cities continue to grow and develop so too should urban law.

¹¹³See Boaventura de Sousa Santos, *The Law of the Oppressed: The Construction and Reproduction of Legality in Pasargada*, 12 L. & SOC'Y REV. 5 (1977).

¹¹⁴Don Mitchell, *Mitchell on Fainstein, “The Just City”*, H-ENVIRONMENT, <https://networks.h-net.org/node/19397/reviews/20588/mitchell-fainstein-just-city> (last visited Apr. 24, 2020).

¹¹⁵*Id.*