

**LAW AND THE SOCIAL PRODUCTION  
OF SPACE**

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A thesis submitted in fulfilment of the requirements of the degree of  
Doctor of Philosophy in the Law School, Faculty of Law,  
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August 2003

## Abstract

This study investigates the relationship between law and space by focusing on the role of the land-use planning system in producing the space of Australian urban regions. The primary aim of the project is to demonstrate the significance of the theoretical and sociological framework of Henri Lefebvre for an emerging field of socio-legal studies concerned with the relationship between law and geography. To this point very few contributions to this field have considered the theoretical connections between law and space in any depth. This thesis demonstrates how Lefebvre's sophisticated theory of the socially produced nature of space can broaden the scope of 'law and geography' research. It does so through a detailed survey of Lefebvre's work and a deployment of his ideas in a series of inquiries into the production of space in Australia.

This endeavour is pursued in two stages. Part I of the thesis begins by examining how explanatory models within the social sciences have become increasingly concerned with the spatial dimensions of social life. This 'spatial turn' is reflected in a small, but growing literature within socio-legal studies which focuses on the interdisciplinary connections between law and geography. However the theoretical foundations of this field remain underdeveloped. Through an analysis of Lefebvre's writings, this thesis identifies an anti-reductionist methodological approach to space and its social production. This is used to establish a theoretical framework for the study of the spatial dimensions of law.

Part II of the thesis uses this framework to address two questions about the law-space relationship. The first of these is concerned with how law is involved in the production of space. This is considered through three linked studies of the production, planning and legal regulation of space. The starting point for this investigation is the geographical site of suburbia. Lefebvorean categories are used to redescribe Australian suburbia as a form of *abstract space* – simultaneously fragmented, homogeneous and hierarchically organised. The thesis then argues that the land-use planning system in the post-war decades played a significant role in the development of this form of settlement space, by adhering to a form of bureaucratic thinking that Lefebvre characterises as the *rationality of habitat*. This rationality embodied technocratic functionalism, a visualised formalism and a structural imposition of expert authority in planning decision-making.

With the shift to a neoliberal state form in the last two decades, there have been significant changes to spatial planning. Through an analysis and critique of the *Integrated Planning Act 1997 (Qld)*, it is demonstrated that under neoliberalism there

has been a reformulation of the rationality of habitat. In particular, the *Integrated Planning Act* relies on two new formal strategies, the exchange form and the integrative form, in instituting its changes to planning practice. The exchange form abolishes the technique of land-use ‘zoning’ and increases the use of market mechanisms in the designation of spatial uses. The integrative form restructures the relationships between local and State government agencies and attempts to channel most forms of public participation into the early stages of policy formation. This thesis argues that rather than changing the spatial outcomes of land-use planning, by commodifying space and restructuring the hierarchies of state decision-making, the *Integrated Planning Act* will continue to reproduce the social relations of abstract space.

The second question in Part II deals with how Lefebvre’s ideas can contribute to critical thinking about public law in general. It is argued that while law plays a significant role as a producer of space through the planning system, processes of spatial production also shape and structure state institutions. Two areas of research which could benefit from a Lefebvrian theoretical framework are identified. The first area concerns explanations of the effects on public law of the reterritorialised state form that has emerged under neoliberalism. The second is the renewal of critical theory in public law. In particular, the thesis makes the case that the spatial contradiction between the use and exchange values that are attached to space, challenges the normative orthodoxy within public law scholarship which relies on the values of participation and accountability.

This thesis contributes to socio-legal research in three important ways. Firstly, it uses Lefebvre’s theoretical approach to develop a *critical* planning law, linking state planning to the process of the production of space. Secondly, the thesis uses Lefebvrian categories to link the study of public law to political struggles which surround spatial production. It suggests a new way for critical legal scholarship to conceptualise public law in terms of the relationship between state power and the inhabitation of space. Lastly, these inquiries demonstrate the importance and relevance of Lefebvre’s social theory for the discipline of socio-legal studies. By grounding the concept of ‘space’ in material processes of production, a Lefebvrian approach provides an alternative to existing theoretical accounts within law and geography research and will deepen our understanding of the relationships between legal and spatial relations.

## Table of Contents

Abstract.....	i
Table of contents.....	iii
Acknowledgments.....	vii
Statement of originality.....	ix
Dedication.....	x
<b>Introduction: Law and the social production of space.....</b>	<b>1</b>
1. Social theory and the spatial turn: theoretical orientations.....	3
2. Space, planning and law: studies in the production of space .....	5
<b>PART I: Theoretical Orientations.....</b>	<b>11</b>
<b>Chapter One: Space, social theory and critical legal geographies.....</b>	<b>12</b>
1. Introduction.....	12
2. Space and social theory.....	13
<i>Marxism and the question of space.....</i>	<i>15</i>
<i>Structuralism and space .....</i>	<i>19</i>
<i>Poststructuralism, postmodernism and space.....</i>	<i>23</i>
3. Critical legal geographies.....	28
<i>Research in law and geography.....</i>	<i>29</i>
<i>Theories of law and space.....</i>	<i>33</i>
4. Conclusion.....	36
<b>Chapter Two: Lefebvre, social theory and everyday life.....</b>	<b>38</b>
1. Introduction.....	38
2. Lefebvre, Marxism and critical social theory.....	41
<i>Dialectical materialism.....</i>	<i>42</i>
<i>Alienation.....</i>	<i>43</i>
<i>Totality.....</i>	<i>46</i>
<i>Marx / Hegel / Nietzsche .....</i>	<i>48</i>
<i>Lefebvre and critical social theory.....</i>	<i>50</i>
3. The critique of everyday life.....	56
<i>Everyday life and alienation.....</i>	<i>58</i>
<i>Everyday life and the philosophy of moments.....</i>	<i>60</i>
<i>A history of everyday life.....</i>	<i>61</i>
<i>The subsystems of everyday life.....</i>	<i>62</i>
<i>Repetition and change.....</i>	<i>64</i>
<i>Everyday life, the body and social struggle.....</i>	<i>66</i>
4. Conclusion.....	69

<b>Chapter Three: The production of space</b> .....	70
1. Introduction: the production of space.....	70
2. Space and philosophy.....	71
<i>Space and production</i> .....	77
3. The state, politics and the production of space .....	81
<i>The state mode of production</i> .....	82
<i>The state mode of production and neoliberalism</i> .....	85
<i>Social struggles and the politics of space: domination vs appropriation</i> .....	87
4. The logic of visualisation.....	90
5. The historical emergence of space.....	94
<i>Absolute space</i> .....	95
<i>Sacred space</i> .....	96
<i>Historical space</i> .....	97
<i>Abstract space</i> .....	98
<i>Abstraction realised I: art, architecture and the logic of visualisation</i> .....	102
<i>Abstraction realised II: space, violence and law</i> .....	104
<i>Contradictory space</i> .....	107
6. Differential space: appropriation and self-management.....	111
<i>Self-management: the right to the city and the right to difference</i> .....	114
7. Conclusion.....	117
<b>Chapter Four: Law / space / method</b> .....	118
<b>PART II: Studies in the Production of Space</b> .....	123
<b>Chapter Five: Australian suburbia as the production of space</b> .....	124
1. Introduction: space and suburbia.....	124
<i>Why suburbia?</i> .....	125
2. Suburban life in Australian cultural geographies: a prologue.....	127
3. Urbanisation, industrialisation and deconcentration.....	129
<i>Social ecology and technological functionalism</i> .....	130
<i>Suburbanisation, everyday life and spatial practice</i> .....	133
4. Suburban ideology, social relations and the politics of deconcentration.....	136
<i>Australian critics of suburbia I: the rejection of the bush myth</i> .....	138
<i>Australian critics of suburbia II: "the suburban home is a blasphemy"</i> .....	140
<i>Australian critics of suburbia III: gender relations and abjection in suburbia</i> .....	142
<i>The defence of suburbia</i> .....	144
<i>Suburbia and abstract space: the rise of 'habitat'</i> .....	147
5. The state and suburbia .....	151
<i>Suburbanisation and the regulation of space: the case of housing</i> .....	152
6. Conclusion.....	157

<b>Chapter Six: The state, urban planning and the production of suburbia</b> .....	159
1. Introduction: planning and the production of space.....	159
2. Planning and the growth of suburbia.....	161
<i>Urban planning and the Australian state</i> .....	163
<i>Regional governance and the planning of urban space</i> .....	165
3. Planning practice and the control of land-use: zoning for abstract space.....	168
<i>Zoning as technique</i> .....	169
<i>Lefebvre and Foucault: land-use planning and social control</i> .....	171
4. The state, planning and the production of Australian suburbia.....	174
<i>Planning and the rationality of habitat</i> .....	174
5. The evolution of neoliberal urban governance in Queensland.....	179
<i>Social democracy and the 'new managerialism'</i> .....	179
<i>Micro-economic reform and the emergence of the neoliberal state</i> .....	181
<i>Neoliberal planning defined</i> .....	182
6. Conclusions: state planning, suburbia and the production of abstract space...	185
<b>Chapter Seven: Integrated planning, neoliberalism and abstract space</b> .....	187
1. Introduction.....	187
2. Law / planning / theory.....	189
3. Constructing integrated planning in Queensland.....	191
<i>Institutional tendencies within the Integrated Planning Act 1997 (Qld)</i> .....	192
4. Function: ecological sustainability and micro-economic reform.....	196
<i>Ecological sustainability in the neoliberal state</i> .....	197
<i>Micro-economic reform: the practice of the neoliberal state</i> .....	201
<i>The contradictions of neoliberal planning</i> .....	205
5. Form: procedural integration and the demise of prescriptive zoning.....	209
<i>No zone: An end to prescriptive regulation?</i> .....	209
<i>The integration of planning process</i> .....	215
<i>Obsessional themes I: integration and exchange</i> .....	216
<i>Obsessional themes II: integration and participation</i> .....	220
6. Structure: integration, decentralisation and centre-periphery relations.....	224
<i>Socio-legal relations and the local state</i> .....	224
<i>Integrated planning and the local state</i> .....	228
7. Conclusions: neoliberal urban governance and the production of space.....	233

<b>Chapter Eight: The administrative state, critical legal theory and the production of space</b> .....	237
1. Introduction: space, law and production.....	237
2. Public law and the contradictions of abstract space.....	239
3. The spatial relations of administrative justice.....	243
<i>Public law and critical social theory</i> .....	246
<i>The limits of participation and accountability</i> .....	247
4. Differential space and the politics of everyday life.....	252
<i>The appropriation of space: the right to the city and the right to difference</i> ...	253
5. Conclusion.....	256
<b>Conclusions and openings</b> .....	258
<b>Bibliography</b> .....	263

## Acknowledgments

I would like to thank a number of people whose assistance has been crucial to the completion of this thesis.

I am enormously grateful to Paulette Dupuy for her love and emotional support over the past four and a half years. Her constant interest and enthusiasm for this project have reminded me of its worth, particularly when doubts threatened to overwhelm me. She contributed substantially at all stages of the process by translating texts, discussing ideas with me, editing chapters and using her considerable desktop publishing skills in compiling the final draft. Without her energy, strength and practical intelligence, I would have found finishing this thesis much more difficult. I offer her my love and thanks and now look forward to getting on with the rest of our lives together.

I thank my principal supervisor Shaun McVeigh for his help over the past six years. This project has gone through a number of evolutionary stages and Shaun has patiently worked with me over countless long discussions which have helped me to clarify my ideas about the relationships between law, the state and social theory. I am also grateful to my two other supervisors, John Dewar and Bill MacNeil. John's attention to detail in my written work and his questions assisted me to sharpen the structure of my argument. Bill played an influential role in my decision to focus on suburbia when I was beginning my research.

A number of friends have offered me great support at various times during the planning and writing of this thesis. I would like to thank Yasmin Gunn for helping me to develop an interest in the study of cities and for initially encouraging me to take this project seriously. Thanks are also due to Mike Leach for his advice about thesis writing and our conversations about space, law and many 'other matters', to Andrew McInally, for those explorations of urban life in London and Brisbane, and to Greg Daley for our regular discussions about theses over warm drinks at various West End sites.

I have benefited from conversations with colleagues within the Law School at Griffith including Tarik Kochi, Geoff Airo-Farulla and Philippa England. I would especially like to thank Philippa for reading a draft of chapter seven and for helping me through the maze of Queensland's system of 'integrated planning'.

Recognition is also due to our dog Toke, whose daily 4pm demands for a walk dragged me away from this project and undoubtedly helped me to maintain my mental health during the past three years, as well as forcing me to explore the streets of Woolloongabba.

Lastly, I would like to acknowledge the gentle waters of Minjerribah where many of the ideas and plans for this thesis were formed.

## **Statement of Originality**

This work has not previously been submitted for a degree or diploma in any university. To the best of my knowledge and belief, the thesis contains no material previously published or written by another person except where due reference is made in the thesis itself.

## **Dedication**

The Australian government's disgraceful policy of mandatory detention has led to the incarceration of many people who arrived in this country seeking refuge. The experiences of these people testify to a much harsher and more sobering denial of their spatial rights than the depiction of abstract space in the pages that follow. This thesis is dedicated in solidarity with their resistance struggle.