RIGHTS TO PUBLIC SPACE: REGULATORY RECONFIGURATIONS OF LIBERTY[i]

Evelyn S. Ruppert
Department of Sociology
Trent University
Peterborough, Canada

Abstract: I define how public space is constituted not by real property but by a regime made up of regulatory practices. What is at issue in assertions about the decline of public space is that this regulatory regime is reconfiguring liberty, that is, rights to public space, through a change in the conception of the public, of who and what belong as part of the public. By way of a case study, the redevelopment of the corner of Yonge and Dundas Streets in Toronto, I argue that liberty is defined by a multiplicity of practices (such as laws, regulations, urban design, surveillance and policing) that are oriented to a particular conception of the public, and which seek to guide the conduct of agents. This suggests that if our concern is to expand the political and social uses of public space then we need to turn our attention away from resources, spaces and goods and towards how the regulatory regime configures liberty and in turn the possibilities that public space can be taken and made.

Is public space becoming less public? It is easy to find arguments in the urban studies literature making this claim. The use values of public space are said to be in decline and spaces are becoming *less* public as a result of the exclusion of certain conducts, activities, political practices and groups in both private and state owned public spaces. However, while public space is said to be the object of concern, what is really at issue are changes that are occurring in a number of regulatory practices that configure liberty, that is, rights to public space and of who and what belong as part of the public. By building on the work started by Don Mitchell (2003), Nicholas Blomley (2004) and others, I set out to define how myriad regulatory practices configure liberty and thus the possibilities that public space be taken and made. To begin it is necessary to review the arguments that have led to a concern about the decline or loss of public space in the first place.

The values of public space are often celebrated and promoted in the urban studies literature. Public space is represented as a forum that encourages mingling and encounters between people of different classes, races, ages, religions, ideologies, and cultures (Berman, 1986; Harvey, 1992) and as such serves as a breeding ground for mutual respect, political solidarity, tolerance and civil discourse (Walzer, 1986). It is described as being open to everyone (Sennett, 1977) and supportive of tolerance by making room for "great differences between neighbours" (Jacobs, 1961). As a spatially unrestricted communal meeting ground for all members of a pluralistic society (Cybriwsky, 1999; Oc and Tiesdell, 1998) it is the "realm of freedom where people of all sorts are welcomed and encouraged to linger and minds of all kinds may freely congregate" (Longo, 1996). These values of plurality, openness and social

learning render public space essential to the practice of politics (Sennett, 1970), and the "heterogeneity of open democracy" (Harvey, 1992) providing "forums where anyone can speak and anyone can listen" (Young, 1990). For it is in public spaces that people can assert and challenge social arrangements and values in parades, demonstrations, and celebrations (Lofland, 1998).

While advancing a number of different values these authors are united in asserting that in a social democracy public space meets or provides for certain public needs and use values such as social integration and political expression. As such, public space is considered part of the domain of collectively held and valued goods and services distinct from that of the private. An interest in what happens or is allowed to happen in public space rather than the qualities of physical space also unites these examples; in other words, the authors define the "public" of public space in terms of those activities and practices that can be conducted there. However, they identify two distinct types of collective or public activities that often get conflated: one envisages public space as the domain of sociability while the other sees it as the realm of politics (Weintraub, 1995).

As a domain of sociability, the values of public space that are advanced refer to a system of conventions for negotiating and mediating face-to-face interactions between strangers (Weintraub, 1995) to enable diverse groups to "dwell in peace together on civilized but essentially dignified and reserved terms" (Jacobs, 1961). For public spaces are the spaces of encounters between strangers, people outside the life of family and close friends and within the region of diverse, complex social groups (Lofland, 1998). Conventions manage encounters and make up patterns of civility

and urbanity that are developed and shaped over time by informal and everyday negotiations and practices (Walzer, 1986). Here public space is the domain of interaction and the practices of sociability. However, the other view sees public space as the domain of active citizenship and the practices of politics, of public life that involves debate and collective action. As a domain of politics, the values advanced refer to an unstructured and informal sphere of discussion, debate and expression that leads to collective action concerning public affairs.

While social and political theorists often discuss these two conceptions of the public in terms of abstract and metaphorical spaces (e.g. social and political spaces), the examples above refer to real property—streets, sidewalks, parks and squares, as well as cafés and bars—and as such assert that real property plays a significant role in the political and social activities that make up public life. But real property is state or privately owned and is regulated by practices that define what activities and conducts are possible. As such, public space is governed by myriad techniques that manage the relations between different groups, interests and communities that everyday sociability and politics alone do not and cannot address (Weintraub, 1995).

So while many social and political activities that make up public life occur in public spaces, these are enabled and constrained by a variety of practices (laws, regulations, urban design, surveillance and policing). Collectively these constitute a regulatory regime. How this regime configures liberty in public space is the focus of this paper. It argues that in order to understand public space as a collective good we must examine how it is constituted by regulatory practices. Furthermore, by examining these practices our understanding of more abstract and intangible

components of the public can be deepened. For while concepts such as the public domain, realm, sphere and space are quite commonly used, they remain vague and insufficiently defined in relation to the regulation of real property (Staeheli and Mitchell, 2004).

The argument is as follows. The amount of public space in cities is changing, not as a result of an increase in state provision, but rather as a consequence of the addition of new privately owned spaces of leisure, recreation and culture, which the law constitutes as part of the public domain (Davis, 1990; Ellin, 1996; Lofland, 1998; Longo, 1996; Sennett, 1977; Soja, 1992; Sorkin, 1992; Zukin, 1995). While property law has long considered some privately owned spaces as part of the public domain, in recent years, such spaces have become more predominant. In some cases, private sector provision has come to outstrip that of the state, which no longer is the principal owner of public spaces. In light of these, the use values of public spaces are said to be in decline and spaces are becoming *less* public as a result of the exclusion of certain conducts, activities, political practices and groups from private- as well as state-owned public spaces. While such arguments perpetuate the myth that public space was at one time open to all citizens and activities, they do shift attention from the ownership of public space to those regulatory practices that determine what and who belong as part of the public.

I therefore set out to define public space as that object which is constituted not by ownership but by a regime made up of regulatory practices. What is at issue in assertions about the decline of public space is that this regulatory regime is reconfiguring liberty, that is, rights to public space, through a change in the

conception of the public, of who and what belong as part of the public. Regulatory regimes consist of myriad practices (such as laws, regulations, urban design, surveillance and policing) that seek to guide the conduct of agents by "reconfiguring (rather than removing) constraints upon the freedom of choice of the agent" (Garland, 1999, p. 29). As such regimes structure the possibilities rather than ensure or deny, open up or close down the possibilities for the creation of vibrant and democratic public spaces. As Mitchell well states, the "publicness" of space only comes into being when "some group or another *takes* space and through its actions *makes* it public" (Mitchell, 2003, p. 35). However, as Mitchell qualifies, rarely does a group do so "under conditions of its own choosing." The desires and interests of other groups as well as the "power of the state, laws about property, and the current jurisprudence on rights all have a role to play in stymieing, channelling, or promoting the "taking" and "making" of public space" (Ibid.). My purpose here is to understand how the latter –which I refer to as a regulatory regime –configures liberty and thus the possibilities that public space can be taken and made.

I thus turn to examine how public space is constituted by a regulatory regime that configures liberty and the rights to space. This suggests that we need to turn our attention away from resources, spaces and goods as constituting public space to that of regulatory regimes and in this way bring to the fore the state's role in regulation rather than in the direct provision and ownership of public space.

To begin, what are the use values of public space or why should we be concerned about its rise or decline? In the first part of this paper, I provide a survey of theories of the public sphere and how some geographers and sociologists have

spatialized these to reflect on the role of physical public space. This survey provides useful interpretations of the ideals and values of democracy underpinning the practices involved in the regulation of public space to which I turn in the second part.

USE VALUES

Any discussion of the role of public space in the practice of politics often involves a discussion of the public sphere as articulated by Jürgen Habermas. He envisioned the public sphere as those institutions and activities that mediate the relations between society and the state. For Habermas, the public sphere is an arena of political discussion distinct from the state and which can, in principle, be critical of the state. It is also distinct from the official economy, and as such not an arena of market relations but of discursive relations. His conception of the public sphere is a normative ideal that theorizes an abstract space universally open and accessible to all social groups and in which democracy occurs through collective debate and deliberation. Habermas's formulation was a historically specific form of the public sphere, which arose in the nineteenth century when private bourgeois interests challenged the right of the state to represent the public in general (Habermas, 1989). The bourgeoisie became a powerful public with the skills and ability to challenge the state. However, as many have argued, the bourgeoisie had a privileged and exclusive status as an influential public (Fraser, 1990; Goheen, 1998; Howell, 1993).

Fraser (1990) argues that this bourgeois version of the public sphere needs to be rethought if it is to help theorize actually existing democracies. She proposes a post-bourgeois model that responds to the conditions of the late twentieth century

mass democracy. First, the assumption that social status does not matter in the operation of the public sphere is rejected as this ignores the ways in which societal inequality makes existing public spheres more exclusive. Instead, the ideals of open access, participatory parity, and social equality in terms of access to resources are proposed as necessary for equal participation. This proposition acknowledges that social inequalities prevail in the public sphere and serve to exclude and silence some groups and privilege others. Second, she challenges Habermas's argument that the existence of competing publics is a step away from greater democracy and that a singular public sphere is necessary. Rather, equality, diversity, and multiple publics and spheres are proposed as necessary for egalitarian, multi-cultural societies. This recognizes that counter-publics "have long contested the exclusionary norms of a dominant public, elaborating alternative styles of political behaviour and alternative norms of public speech" (Fraser, 1990, p. 61). However, she argues that this fact of a multiplicity of arenas does not mean excluding the existence of more comprehensive arenas that bring different publics together. Third, the distinction between the public sphere and the official economy are eliminated on the grounds that there is no natural or a priori distinction between private and public interests but rather what constitutes a public or common interest must always be open to contestation and challenge. A distinction seeks to exclude some issues from public debate by economizing them, by calling them market imperatives, which results in segregating certain matters and shielding them from general public debate and contestation.

However, in Habermas' and in Frasers' reconstructed version of the public sphere, physical public space is not explicitly considered. Others have pointed out

that physical public space occupies an important role in the constitution of the public sphere by providing forums for the practices of political debate and opinion-formation (Howell, 1993; Young, 1990). In many ways, these authors build on Fraser's reconstruction but go further to spatialize the ideals of access, parity in participation, social equality and multiple publics and spheres. In so doing, they also challenge the assumption that the public sphere or public space was ever inclusive and universal (Deutsche, 1996; Lees, 1998b; Mitchell, 1996; Ruddick, 1996). Hannah Arendt's conception of public space is often drawn upon, a conception which also privileges a normative ideal of public, political discourse but which names this "public space" instead of public sphere. Arendt recognizes the spatial significance of public space in her attention to geographical considerations and the virtues of particularity and localism (Howell, 1993).

> Politics...is a matter of people sharing a common world and a common space of appearance in which public concerns can emerge and be articulated from different perspectives. For politics to occur it is not enough to have a collection of private individuals voting separately and anonymously according to their private opinions. Rather these individuals must be able to see and talk to one another in public, to meet in a public space so that their differences as well as their commonalties can emerge and become the subject of democratic debate (from d'Entreves, 1992, p. 152; quoted by Howell).

The significance of public space to the practice of politics has also been advanced by other political theorists and geographers (Lefebvre, 1991; Mitchell,

2003; Ruddick, 1996; Soja, 1989; Staeheli and Mitchell, 2004; Young, 1990). The existence of spaces and forums to which everyone has access is seen to be critical to the practice of politics:

> In such public spaces people encounter other people, meanings, expressions, issues, which they may not understand or with which they do not identify. The force of public demonstrations, for example, often consists in bringing to people who pass through public spaces those issues, demands, and people they might otherwise avoid. As a normative ideal, city life provides public places and forums where anyone can speak and anyone can listen (Young, 1990, p. 240).

Conceptions of the public sphere that deny and seek to unify group differences are also contested. Instead, an ideal of city life is offered as a vision of social relations that affirms group difference and that "cities provide important public spaces—streets, parks, and plazas—where people stand and sit together, interact and mingle, or simply witness one another, without becoming unified in a community of 'shared final ends'" (Ibid.). As such, it is argued that the diversity of the city is most apparent in its public spaces.

This highlights the importance of being seen, for making claims and demands concerning how institutional and social relations should be organized, and of encountering others. For marginal groups physical social spaces can serve as a resource for achieving equal participation as access to other means are often restricted (e.g., media). Arenas and spaces are where counter publics can be seen by other factions of the public and formulate oppositional interpretations of their identities,

interests and needs (Fraser, 1990). The occupation of public space then mitigates against separatism because it assumes an orientation that is public and not segregated (Fraser, 1990; Mitchell, 1995). Much research has attested to the efficacy of targeting public space as the preferred venue for campaigns that aim to influence public opinion and establish legitimacy. To win the right to representation as part of the political public, excluded groups often take to the streets, plazas, and parks. There have been countless examples of people fighting for inclusion as political actors in public spaces—suffrage movements, free-speech fights, union strikes, feminist activism, homeless struggles (Mitchell, 1995). In these ways, public space is significant as an arena where groups can achieve public visibility, seek recognition and make demands (Boyer, 1993; Zukin, 1995).

Certainly, the most obvious example of the significance of public space in the practice of politics is that of protests and demonstrations. However, through the process of claiming space in public, that is, creating spaces, social groups also contest who is the public and themselves become public:

> Only in public spaces can the homeless, for example, represent
> themselves as a legitimate part of the 'public.' Insofar as homeless
> people or other marginalized groups remain invisible to society, they
> fail to be counted as legitimate members of the polity. And in this
> sense, public spaces are absolutely essential to the functioning of
> democratic politics (Mitchell, 1995, p. 115).

Conversely, many groups seek to control and mould public space as a means to influence the concept of what is public space and private space and to concretely and symbolically announce who is the public (Zukin, 1995).

All of the foregoing suggests that public space is an important part of defining and contesting the public. However, public space is also argued to be important to the construction of group identities. Discussions of public space often assume that social groups exist a priori and that when they come into contact present their different identities and values. This assumes that identity formation is complete, and that action and interaction with others in the spaces of the city has no impact on identity formation (as argued by Deutsche, 1996; Ruddick, 1996). However, others have examined the relationship between public space and identity and argued that interactions in public space are crucial to the formation of social identities. Studies have demonstrated how public space is not an inert arena for expressing fixed social behaviours, but rather is the medium for constructing new class cultures (Berman, 1982; Zukin, 1995), sexual and gendered identities (Wilson, 1991) or the places where marginalized identities can be challenged or confirmed (Ruddick, 1996). New social identities and meanings of public space are constructed together and therefore the meaning of who is the public is always changing and being renegotiated (Deutsche, 1996).

In sum, space is not a passive container; rather, it is a powerful part of a number of social and political activities involved in the making of the public, activities that involve making claims, achieving visibility and recognition, influencing public opinion, establishing legitimacy, contesting the conception of the

public, renegotiating social and political rights and group identity formation. These could be said to be the use values or public interests of space in a democracy. These activities are emphasized as ever more critical in the current context of globalization and postmodernity as new transnational immigrants and new social movements claim rights to the city (Fincher and Jacobs, 1998; Sandercock, 1998). This changing context has re-emphasized the role of the city as a place for the advancement of multiculturalism, socio-cultural integration and cohesion (Borja and Castells, 1997; Sandercock, 1998).

However, at the same time that the social needs and use values of public space are being asserted, it is generally acknowledged in the literature that these same values are being undermined as public spaces are arguably becoming less public as particular groups, activities and conducts are being constrained or excluded. This is usually attributed to two causes. In an era of the minimalist state, the market and private property are said to be replacing the state in the direct provision of public space (Davis, 1990; Ellin, 1996; Lofland, 1998; Longo, 1996; Sennett, 1977; Soja, 1992; Sorkin, 1992; Zukin, 1995). From this perspective, much of civic life now occurs in privately owned spaces such as shopping malls and entertainment complexes that are exclusionary and inaccessible to many citizens (Davis, 1990; Hopkins, 1996; Jackson, 1998). Second, in an era of heightened insecurity, both the private sector and the state are increasing their control and policing of public space (Fyfe, 1995a; Mattison and Duncombe, 1992; Mitchell, 1995). Some of these arguments idealize, romanticize and wax nostaligic about a by-gone era when public space was open and accessible to all, and represent traditional urban spaces as more

authentic and urbane (e.g.,Lofland, 1998; Sorkin, 1992). However, these laments ignore the politics of the historical constitution of public space and consequently also the possibility of its political transformation (Deutsche, 1996, p. 283).

Social and political theory and the spatializations of the public sphere are useful for investigating the social and political processes involved in the constitution of the public and for espousing ideals and principles of democracy. However, they provide little help in elucidating how regulatory practices are involved in the configuring of liberty and in turn, as Mitchell puts it, the "taking and making of public space" (Mitchell, 2003). That is, how the social and political activities that underpin the use values of public space are shaped, constrained or enabled. Indeed, as I will argue below, the possibility of political transformation requires identifying how changes in the regulation of public space enable and constrain the constitution of who and what are the public. The following sections address this through an analysis of how practices structure and constitute a space as public through norms that shape and configure political claims, rights and entitlements. As such, it argues against a discourse on the rise and decline of public space and for an analysis of those regulatory conditions that affect the possibilities of taking and making public space.

OWNERSHIP

An examination of the legal definition of public space reveals that it is impossible to define public space on the basis of ownership. The law does not consider ownership as the basis of what makes a space public, and instead considers different types of state, collective or private property as part of the public. The legal

criterion for delimiting a space as public is that of access. Once a space is legally

defined public on this basis, then ownership is not an obstacle to its public use, even

if access is restricted (Madanipour, 1996). For example, public space is defined in

Canadian law to be "a place where the public goes, a place to which the public has or

is permitted to have access and any place of public resort" (Vasan, 1980). Access is

also the key criterion of legal definitions in other countries.[ii]

Political theorists also emphasize access as a central norm that constitutes a

space as public and what in turn is called publicity. "A public space is a place

accessible to anyone, where anyone can participate" (Young, 1990, p. 240); public

space allows access which means one is entitled to be physically present in a physical

place and space (Benn and Gaus, 1983); and, public space provides open access

which is a central norm of the public sphere and publicity (Fraser, 1990).

Consequently, public spaces provided by the state are only one type of space

that the law constitutes as part of the public. Publicly owned parks and squares and

privately owned malls, entertainment complexes and festival marketplaces are legally

defined as public spaces. However, these spaces also enter and legally become part of

the public in other ways. State recognition of private property grants owners rights,

which means that owners have an enforceable claim to some use or benefit of their

property, a claim which the state in turn enforces (Blomley, 2004). But obligations

are always imposed in the name of a broader public interest or use value. For

example, private property rights entail restrictions and obligations founded on the

principles that there is an inherent public interest in private land, and that any public

space is a shared space (Hopkins, 1996). This gives rise to regulations such as

building codes, property standards and zoning that are imposed by governments on private property. For instance, the private home of an owner is regulated in a number of direct and indirect ways, from what one can build to the property standards one must maintain (Blomley, 2004). These obligations have expanded in the past few decades, for example in design regulations and requirements that private developers contribute to social benefits such as open space, day cares, public art, etc. Spaces and services are often provided by developers as a part of zoning incentive systems that give greater height and density in exchange for spaces for public use (Cybriwsky, 1999; Loukaitou-Sideris, 1993) and governments also provide other tax and financial benefits in recognition of the contribution of private spaces to the public domain (Deutsche, 1988). In addition, requirements are imposed on the design of building exteriors and adjacent spaces of private developments in acknowledgment of their civic value as part of public space. That privately owned spaces are indeed part of the public has therefore long been asserted in laws of property thus making the division between the private and the public less clear cut than is typically understood (Blomley, 2004). In all of these ways, property law acknowledges the social needs and use values that public space serves and which typically "do not pay" in the sense of having a direct economic benefit or exchange value (Lefebvre, 1991; Walzer, 1986). Many of these non-tradable use values were described previously, in particular with regards to the political uses of public space in a social democracy.

However, as Nicholas Blomley argues in his study of the politics of property, an ownership model, which conceives of all property as essentially private, and periodically public, dominates our legal and political thinking about real property and

as such "reproduces the wider tendency to view legal orderings as binary, with a privileging of one pole" (Blomley, 2004, p. 5). The model sustains a focus on the liberty of the owner, presents property as "fixed, natural and objective," treats it as a thing rather than a set of social relations between an owner and others, and renders other claims to land (especially those of a collective nature) marginal and without any legal standing. Or as Fraser puts it, the model presumes a natural or priori distinction between private and public interests. However, despite challenges from a body of scholarly studies that deconstruct this understanding of property as a private-state binary or as "thing-ownership," Blomley notes that it continues to be a powerful cultural force and organizing category. But, as argued above "urban property may be definitionally and politically more ambiguous and varied than the ownership model supposes" (p. 14).

With the increase in private sector ownership of public space, this ambiguity is perhaps ever more consequential. For example, privately owned underground mall corridors have become major public thoroughfares and many malls now include hotels, post offices, schools, community meeting places, and social services demonstrating that public institutions can function on private property (Hopkins, 1996; Lees, 1998a; Zukin, 1995). However, it is obvious that the *fact* of access varies in these different types of public space, which is often described as their degree of publicity. Privately owned public spaces such as the mall have long raised questions about whether all members of the public have access and under what conditions. But laws of private property ownership are not the only basis on which access is restricted. State-owned public spaces are also regulated and never completely

accessible to all groups and often can be less so than some private public spaces. For example, public buildings such as a city hall or state legislature can be more exclusionary and restrictive in terms of access than malls. Different state-owned public spaces can also have different degrees of access, for example, rules of access to parks and civic plazas are usually more restrictive than that of public sidewalks. The same can be said of different private public spaces where, for example, malls are more accessible than cafés. Furthermore, beyond access, the kinds of activities that are permitted in different public spaces vary considerably.

Clearly, property ownership does not exhaust the possibilities of what is public space nor determine the publicity of these different spaces. One consequence of the shift in ownership is that publicity and privacy are being redefined in relation to one another (Staeheli and Mitchell, 2004). Indeed, as Staehli and Thompson argue, the definitions of both terms are complex and constantly shifting, but the tension between the two spheres creates a space for politics. One aspect of this tension which they agree is not well theorized is how the material constructions of space are involved in shaping publicity and privacy.[iii]   To do this we must understand how space is "shaped, who has access to it, what sorts of laws govern it" (152). We thus need to turn our attention away from the ownership of public space to that of regulation. In particular, as I argue in the following section, how a regulatory regime configures liberty and in turn shapes the publicity of public space.

LIBERTY

All of the political activities outlined in theories of the public sphere involve

the liberty to exercise certain rights such as free speech and the expression of dissent and difference. Liberty therefore underpins the practice of politics. While the most obvious examples are the taking to the streets in demonstrations and protests, building on the earlier discussions of the political values of public space, liberty also entails the right to be present and public, of a visible presence of difference, where participation does not require or impose that one be like others but where different identities and interests can be co-present. If public space is where difference is encountered then it must be structured in a manner that enables difference to be expressed and where particular conducts and uses are not privileged above and beyond those of others. Liberty in public space therefore means being able to express oneself using different means and methods, from how one dresses to how one occupies space and how one speaks. This could be described as parity in participation and the recognition that social inequalities are also expressed in deliberation, where certain forms and styles of communication are privileged or dominate others (Fraser, 1990). Liberty therefore requires a conception of the public that is not based on sameness but on difference, where the public is understood to consist of multiple publics, counter-publics, and dissenting groups (Fraser, 1990; Staeheli and Thompson, 1997; Young, 1990). These ideas of liberty are closely entwined with the understandings of sociability previously outlined. That is, the conventions for mediating face-to-face interactions between strangers are not oriented to eliminating difference, but rather to managing a peaceful coexistence between strangers. Similarly, political practices involve the right to express difference, to be different. Here we can see how sociability and politics are entwined in that both are about

participation and the exercise of liberty.

While these rights are identified in the literature on public space, limitations on these rights in a liberal democracy are often not (e.g., Lofland, 1998; Longo, 1996; e.g.,Sennett, 1970; Walzer, 1986). Liberty or freedom is often referred to as the capacity to choose one's actions without external constraints (Garland, 1999). Much of the problem lies with a singular understanding of public space as free and democratic or repressed and controlled. However, "public space is both at the same time. It is simultaneously a space of political struggle and expression and of repression and control" (Lees, 1998b, p. 238). In liberal democratic theory order is a prerequisite of liberty and that one's liberty must not interfere or impose upon that of others. Constraints and limitations on conduct in public space are often expressed as obligations or responsibilities in the exercise of freedoms without infringing upon or abusing those of others (Siegel, 1995). To be sure, conflicts often arise as the spatial rights and freedoms of individuals, groups and institutions are perceived by one group as a real or potential threat to the spatial liberties and freedoms of others (Hopkins, 1996). For example, homeless encampments in public spaces are often seen as a form of privatization in that they appropriate space for exclusive personal use and therefore deny others use and access (Mattison and Duncombe, 1992).

At this juncture I think it is useful to move away from conceptualizing order and constraints as the opposites of liberty towards understanding how they are bound up together and mutually constitutive. Several sociologists drawing on Foucault's work have made such a move to understand how we are 'governed' through, and by means of, our 'freedom' (Rose, 1999). Rose provides a detailed analysis that seeks to

understand how more or less rationalized programmes and techniques seek to guide and shape conduct so as to achieve certain ends. To govern means to presuppose a liberal subject and their freedom to act; it means not to remove their ability to act, but to recognize it and to utilize this capacity to achieve one's own objectives. Similarly, Garland (1999) understands liberty as always and necessarily a "*configured* range of unconstrained choice in which agency can operate. The truth is that the exercise of governmental power, and particularly neo-liberal techniques of government, rely on, and stimulate, agency while simultaneously reconfiguring (rather than removing) the constraints upon the freedom of choice of the agent" (Garland, 1999, p. 29).

Those practices that configure liberty consist of myriad techniques that together seek to guide conduct in public space. Laws and regulations are but one set of techniques. Others include the design of space, its policing and surveillance. To this we can also add "how judicial and legislative lawmaking works dialectically with social and political action to structure public space itself" (Mitchell, 2003, p. 50). Thus we need to take into account how the regulatory regime is shaped by challenges from citizens and in turn how both enforcers such as the police and the courts shape that regime through their interpretations of the law.[iv] Or, as Blomley (2004) suggests, how property arrangements are not merely legislated but also "enacted" by agents who both police and interpret the meaning of property law. Consequently, property is always in a process of becoming rather than a fixed and stable category. Conflict and struggles over the rights to space attest to this, from the claims of squattors to those of neighbourhood residents who seek to "'take ownership' of public space and 'reclaim' it from criminals" (Blomley, 2004, p. 17)

Struggles over the regulation of public space are thus not about a choice between liberty and order, but rather about competing configurations and indeed interpretations and enactments of liberty. Liberty is configured by a regulatory regime in that no single law or code governs public space but rather consists of a variety of techniques enacted by states, municipal governments and private corporations, and enforced by private and public security forces. This regime establishes the configuration of liberty through constitutions and charters that guarantee freedoms by protecting certain rights on the one hand and myriad technologies that guarantee order by regulating or prohibiting certain conducts on the other. But it is only through the simultaneous operation of both charters and regulatory practices that liberty is configured and through social practices (taking and making of space) that liberty is realized.

The significance of this regulatory regime for shaping publicity is apparent as we are seeing how it is both materially and symbolically targeting particular activities, political practices and groups. Prohibitions on conduct are often based on the proposition that order is only possible by excluding certain people and conduct from the space of the public (Mitchell, 1996). However, the basis of this exclusion is founded on interpretations of what constitutes violence or disorder (as though these are natural or obvious) and which have come to include what is otherwise considered unruly behaviour but which is a priori defined as threatening to the existing order. These practices are often defended in the name of safety, but as it turns out making public spaces safer for some has become contingent on excluding others. Increasingly the grounds of exclusion are based on preconceptions, prejudices, and fear of

potential harm rather than real danger (Von Hirsch and Shearing, 1999). A large

proportion of incidents covered by law address concerns about nuisance activities,

suspicious youths, drunkenness and vagrancy (Fyfe and Bannister, 1998). As such,

the liberties of certain individuals to be free from exposure to particular conducts and

from people who create anxiety merely by their physical presence are often given

greater weight than the liberties of expression and association of others. This, I argue,

reflects a reconfiguration of liberty based on a particular conception of the public

rather than the loss of public space.

If the regulatory regime configures liberty and thus the possibilities that

public space can be taken and made then the consequences of privatization for the

publicity of public space is not given. For example, new spaces called privatized,

while excluding certain groups, can open up spaces for a variety of other social

groups (Jackson, 1998; Lees, 1998b; Shields, 1996). In this view, privatization and

regulation are not simple processes that lead to undemocratic spaces but can be

opened up in new and complex ways with control almost always countered, subverted

and resisted. However, such postulations about acts of resistance that are possible in

privately-owned shopping malls, for example, ignore that there is a world of

difference between minor transgressions against behaviour codes and larger acts of

subversion such as demonstrations and free expression, between individual and

collective displays of transgression (Boyer, 1993). Furthermore, regulatory

conditions open up or foreclose opportunities through their configuration of liberty.

In this regard, the regulatory regime is constitutive and does not simply operate

instrumentally or formally through enforcement. Rather, the regime shapes political

claims, helps constitute the politics of public space, and structures spaces through codes of access, exclusion and entitlement (Blomley, 1998; Brigham and Gordon, 1996). Regulations have real effects on the lives and liberties of many citizens as witnessed in the aggressive implementation of laws such as Ontario's *Safe Streets Act,* which has led to targeted policing campaigns and crackdowns on the liberties and activities of marginalized groups in Toronto (Hermer, 2002; Ruppert, 2002).

In the following section I analyze a specific case study to further develop the argument that the publicity of space is less a function of ownership and more a product of regulatory regimes that configure liberty. The project is the expropriation and redevelopment of a *privately owned space* in downtown Toronto into two new *public spaces*: a privately owned urban entertainment centre/mall and a publicly owned urban square. I will argue that the possibilities of publicity of these two spaces are not revealed by their ownership. Rather the regulatory regimes governing each reveal much ambiguity about their relative publicity, and, as I will suggest, a convergence between the regimes governing privately and publicly owned public space.

REGULATORY REGIMES: RECONFIGURING LIBERTY

In the late 1990s, the City of Toronto expropriated a number of low-end retailers (discount stores, bargain electronics outlets, pawnshops, pinball parlors, jewelry exchanges, and fast food restaurants) at the corner of Yonge and Dundas Streets in the centre of downtown Toronto (Yonge-Dundas) in order to remake the space. The rationale for this action was the claim that the area was dangerous,

threatening, and crime-prone and suffering from social and economic blight. The conduct of discount retailers, illegal vendors, panhandlers, street youth, discount shoppers and squeegeers was identified as the source of the area's problems. These groups were blamed for creating disorder and feeding negative perceptions that the space was dangerous and unsafe. Improving the space and returning it to the "public" thus became a central mantra underpinning the City's actions. The City entered into a public-private partnership with local businesses and developed a plan for redevelopment that involved the transfer of some of the property rights to the City for the purposes of an urban square, and the sale of a large portion to a major Canadian developer for the building of an "urban entertainment centre" (UEC) containing high-end retail, theme restaurants and a cinema megaplex.[v]

The public-private partnership and the new arrangement of property ownership reveal little about how liberty was reconfigured. Myriad governing technologies were deployed in both spaces, which collectively established two new regulatory regimes focused on guiding conduct in public space. These consisted of laws and regulations, urban design, community management structures, surveillance and policing.

The regulatory regime governing the urban square included the addition of new laws to the existing arsenal of punitive measures against particular conduct. In addition to existing municipal laws prohibiting certain non-criminal activities such as littering and spitting and regulating others such as public assembly and vending, a special municipal bylaw was enacted to regulate access and conduct in the square. The bylaw creates prohibitions against activities that would generally be allowed on

sidewalks (e.g., skateboarding). It also requires permits for activities such as exhibits, entertainment, demonstrations, fairs, etc. and prohibits activities such as climbing any structure; standing on any receptacle or container for plants, shrubs or trees; riding a bicycle; throwing objects; and riding or standing on any skateboard, roller skate, or rollerblade (City of Toronto, 1998). Activities requiring permission or permits include selling, performing, advertising, displaying, and demonstrating. Other activities that the city of Toronto sought to exclude in the urban square were covered by a provincial law that was passed at the same time that the square was being approved: the *Safe Streets Act, 1999* criminalizes aggressive panhandling and other kinds of aggressive solicitation, as well as "squeegeeing" in the name of protecting the public's ability to use streets and other public spaces "without intimidation."

A second prong of the regime consisted of design technologies, which were identified as a way to guide conduct away from threatening or disorderly behaviour and to reduce perceptions that the area was unsafe. The design of the square was based on the principles of situational crime prevention, a technique that involves the mapping, classification and surveillance of territory through the incorporation of crime-control considerations in urban planning and design. It is based on a rationality of minimizing the risk of crime and disorderly conduct by acting on the design of environments. For example, design guidelines for the urban square focused on enhancing surveillance by opening up sightlines, increasing the visibility of all areas, eliminating hiding spaces, and introducing extensive lighting schemes. Methods of surveillance also included that which could be carried out by the staff in an events ticket kiosk located in the square; by a limited number and type of licensed street

performers and vendors assigned to designated locations within the square; by the presence of active uses such as retail stores and sidewalk cafes; and through the design of open and transparent building façades to encourage visibility and overlook into, and from, the square. Subtle forms of policing were also incorporated such as the use of low maintenance, easily cleaned materials that are "vandal resistant" and which also discourage unacceptable activities such as skateboarding, rollerblading, loitering and sleeping.

The design of the space also involved aesthetic strategies and the orchestration of image to announce to whom the space belonged and for attracting particular groups, specifically middle class consumers. All edges of the square were designed to contain beautified storefronts, murals and an advertising aesthetic that involved covering buildings with coloured lights, jumbotrons, and advertising images. Collectively these were identified as a way to culturally and symbolically regulate which groups would be attracted to and thus use the space.

A third prong involved the establishment of new authorities for the community government and on-going management of the surrounding street and urban square. The Downtown Yonge Street Business Improvement Area (BIA) was incorporated to govern day-to-day security, cleanliness, beautification, and the programming of events.[vi] While security was highlighted as a central reason for establishing a BIA, other ends such as maintaining the cleanliness and appearance of the area were also seen to require on-going management by engaged and responsible businesses. A second management body, the Yonge-Dundas Square Board of Management, was incorporated and given responsibility for the operational

management of the square including marketing, event booking, logistical support, maintenance and security. This was identified as a way to ensure the involvement of community stakeholders (principally local businesses, residents and civic officials) who had a "vested interest in ensuring the Square remains safe, clean and active," and to allow for the pooling of expertise between City staff and business representatives (City of Toronto, 2001). One of its first actions was to hire a private security force to monitor and police the square and complement the public police service.[vii] The Board also installed a CCTV (closed circuit television surveillance) system, a surveillance technology once associated with private malls but now also adopted in the management of public spaces in city centres (Fyfe and Bannister, 1998).

Governance of conduct in the privately owned space involved the enclosure of common spaces and access points to stores in the UEC. Such privately owned spaces are not governed by the same laws that regulate sidewalks though they are legally defined as public spaces; they are governed by trespass laws that give owners regulatory powers to prohibit and enforce conduct. Hopkins (1996) describes how laws of trespass are generally more restrictive and exclusionary than those governing public property and so owners of private property such as malls have greater latitude in policing conduct and restricting access. Trespass laws in Ontario have a broad reach which gives private property owners the right to expel others at any time, for any reason, or for no reason at all. An owner has absolute discretion over who gets expelled, the grounds for expulsion, and the duration of the ban. In other words, those deemed undesirable can be expelled for no other reason than simply being there. Private security guards use trespass laws to regulate and enforce rules of their

own design with little accountability, giving them much leeway to interpret who is desirable. As privately owned public spaces are expanding, these laws of private property are consequently becoming a more significant part of the regulatory regime.

The design of and intended businesses for the UEC were also targeted to a particular conception of the public. Desired businesses included high-end stores, entertainment retailing, and theme restaurants that will attract what was described as the right demographic to Yonge-Dundas: the families, shoppers, tourists, middle class and higher income adults. These groups were described as having leading edge tastes in consumer preferences and entertainment choices and would conduct themselves according to accepted standards of urban civility. Through the strategic use of purchasing preferences, such targeted marketing and retailing strategies simultaneously mobilize and attract consumers and serve to "exclude their undesirables, the underclass of non-consumers, would-be consumers or flawed consumers" (Lyon, 1994; cited in Rose, 1999). The privatization of space in the urban entertainment centre also opened up the possibility of introducing design elements to regulate conduct such as increasing visibility and surveillance through controlled entrances (referred to as target-hardening). In addition, the inclusion of a private security force and CCTV surveillance throughout the centre and individual stores were identified as ways to regulate conduct in this space.

Collectively, all of these practices, from laws to design and security techniques, established two regulatory regimes. Ostensibly the urban square created a publicized space and the urban entertainment centre a privatized one. However, the

regulatory regimes suggest a much more ambiguous result and a convergence between techniques for regulating privately and publicly owned public space.

Both regimes consist of urban design techniques focused on security and surveillance and private security forces including CCTV surveillance. This is illustrative of what is more generally identified as a convergence between public and private security and policing as public forces increasingly adopt private sector risk management-based operating practices (Ericson and Haggerty, 1997). Police forces also ever more collaborate and form partnerships with private security personnel and share goals and styles of working (Wakefield, 1999). For example, public police forces often locate substations in privately owned malls and collaborate with private security forces as in the case of Toronto's Eaton Centre (located across the street from the Yonge-Dundas project site). Furthermore, the policing of not only the privately owned but also publicly owned space by a private security force is another instance of collaboration and convergence that is underway at other sites. For instance, the new Vancouver Public Library is a state-owned public space that is also managed by a private security force hired by the City (Lees, 1998b).

The day-to-day oversight and regulation of both spaces will be the responsibility of three different management authorities. Local business interests will be involved in each and will dominate the BIA and management structure of the UEC, while local residents and civic officials will participate in only the Board of Management overseeing the urban square. Through the management and governing of the publicly owned space of the urban square commercial interests have thus expanded their control of the regulatory regime. This reflects a more general trend

wherein public spaces have become progressively less public as private groups and organizations have taken over the managing and financing of state-owned spaces (Zukin, 1995). The privatization of the management of state-owned public spaces is thus a further reason for abandoning simple conceptions of what is public and private.

While the trespass laws governing the urban entertainment centre are more restrictive and exclusionary, the bylaw governing the urban square significantly shifted regulation in this direction. Importantly, private security guards who have some degree of latitude in their interpretation and enactment of the law will enforce the law in both spaces. For instance, in May 2003, private security officers charged two youths for defacing the square with chalk drawings (an activity which is illegal under the special bylaw but would be permitted on the sidewalks and in many other state-owned public spaces) and banned them from entering the square for a year. It is argued that this shift in the regulation of state –owned public spaces reflects the state's strategic role in securing conditions under which commerce can flourish (Bianchini, 1990; Fyfe and Bannister, 1998) and in creating environments that are based on desires for security rather than interaction, for entertainment rather than divisive politics (Mitchell, 1995). This is evident in increasing laws on conduct and social order in the city often passed to address private sector concerns about any activity that might deter or interfere with the commercial function of public spaces (Hopkins, 1996). The policing of loitering for example relies on a concept of the public that excludes those who offend a capitalistic ethic of conspicuous consumption (Hermer, 1997). As such, private market and individual consumer interests are given greater weight than the rights of expression and association of others.

The regimes also share a similar orientation to aesthetics. Attractiveness, safety, an advertising aesthetic, and creating a pleasant shopping experience were touted as objectives for both. Design and image were used as a means of regulating by appealing to particular groups and symbolically excluding others. Indeed, in both state- and privately-owned public spaces, private interests have become more dominant in the definition of the city's symbolic economy, which has become more exclusive in terms of image, a coded means of discrimination, and an aesthetic that reflects social divisions (Cybriwsky, 1999; Zukin, 1995). In the absence of a more publicly produced vision, Zukin argues that there is no balancing of the needs of the public and of space in the symbolic economy. In the end public space is becoming less democratic as the city as a cultural object is being upgraded to appeal to more affluent people.

The two regimes were also united in their conception of the public, of who and what belongs in both spaces. While the redevelopment was proposed as a way to return the area to the "broader public," it is clear from all the statements and plans for both spaces that the public consisted of middle class consumers, workers and tourists and not their counter-publics or all those groups perceived to be threats or not belonging in the space: street youth, squeegee kids, panhandlers, discount shoppers, illegal vendors and others deemed as disorderly or perceived as a threat to the safety and security of the "public." In doing so the regimes established a common framework and set of possibilities for the taking and making of space.

What then of the argument that a regulatory regime configures liberty but does not determine publicity? What can be said about the possibilities of publicity in

either space? Taken together, neither regulatory regime sought to *overtly* exclude any particular group; rather they sought to regulate, guide and shape conduct, discourage certain conduct, and repel and attract particular groups in order to effectively change the demographics of the area. In general, it was implied that attracting desired groups—the "public"—would in effect dilute the prominence of those who did not belong and at most displace them to other areas of the city. It is in this regard that I have argued that regulatory regimes focus on techniques that guide and shape conduct rather than simply exclude particular groups. This is achieved by reconfiguring (rather than removing) liberty through the implementation of myriad constraints that act upon the freedom of choice of the agent and thus the possibilities of taking and making space.

What of the actual use of the space? To date, only the square has been completed. Some commentators in the media have complained that the regulation of behaviour has "seriously diminished" the chance of the square becoming a significant public space (Rochon, 2003), while others have argued that there will be an inevitable "war over its ownership" and that "statutes controlling antisocial or merely unattractive behaviour are mere wisps compared to the steady pressure, which will only grow over the centuries, of insistent citizens" (Barber, 2003). Appropriations by some insistent citizens have already occurred. Prior to the official opening, groups protesting the Iraq war used the square as a gathering point for marches and demonstrations and dubbed it "Peace Square." But such use was not without a significant presence of police mounted on horses and dressed in riot gear. What is clear is that the regulatory regimes will affect and configure the rights to public space

by those groups constituted as the non-public. From the subtle forms of policing and natural surveillance built into the environment to the introduction of CCTV cameras and private security forces in the urban entertainment centre and urban square, targeted groups will be subjected to enhanced surveillance and regulation. In conclusion, what is also clear is that the possibilities of both public spaces cannot easily be read from a property ownership model based on a public and private binary.

RIGHTS TO PUBLIC SPACE: RENEGOTIATING THE REGULATORY REGIME

Liberty is exercised in many spheres of social and political life. Here I have emphasized liberty as rights to public space for making claims, achieving visibility and recognition, influencing public opinion, establishing legitimacy, and contesting the conception of the public. Thinking of liberty as including a right or entitlement to public space acknowledges that "no one is free to perform an action unless there is somewhere he is free to perform it" (Waldron, 1991, p. 296). I have argued that these forms of political participation serve a number of use values and social and political needs. Yet, at a time when public space is seen crucial to the negotiation and integration of new groups in the city, those public spaces crucial to this renegotiation are being redefined in ways that attempt to exclude particular groups and activities. While exclusion is clearly not a new phenomenon, there are new forms of exclusion based on a changing conception of the public and reconfiguration of liberty. Ironically this is emerging at a time when theorists of globalization and postmodernity claim diversity, multiple publics and tolerance as being characteristic of our times. Rather we are seeing a conception of the public that excludes certain

non-criminal conducts, activities, groups and political practices based on preconceptions, prejudices, and fear of potential harm rather than real danger.

In this way, the regulatory regime governing conduct in public space is redefining liberty and denying rights to space as a political forum for dissenting and marginal groups to make claims and contest the conception of the public. Such a denial of rights represents an exclusionary notion of citizenship with the underlying presumption that this is just and good (Mitchell, 1997). Alternatively, as cited in Mitchell (2003, p. 232) and originally proposed by Richard Van Deusen, we could think of how public space in the city is a barometer of "justice regimes," that is, the existing structure of social justice in the city. If social justice as it is reified in space is the objective then the task is to renegotiate the configuration of liberty. For example, this means revisiting the laws of private property, which grant discretionary powers of exclusion to owners, which are more concerned with the consumption interests of individuals as opposed to the democratic interests of groups. It means reopening laws that govern state owned public spaces, which often privilege the rights of some groups over others. Only governments have the capacity to renegotiate these laws and secure rights to public space through democratic processes and institutions.

All of this draws attention to the state as a regulator of public space rather than an owner and the centrality of this role in securing publicity. While it can be argued that some forms of "non-paying" public space require state ownership (e.g. major public parks, sidewalks, central squares), the argument laid out in this paper is that state-ownership is not unproblematic or the answer to exclusion. While it is true that private property laws give excessive powers to owners, there are sufficient

examples of state-owned public spaces also becoming more exclusive and less public often in the name of private market or individual consumer citizenship. Furthermore, new spaces of leisure and socializing are being increasingly provided and/or managed by the private sector as the state seeks ways of reducing its capital and operating costs through new partnerships with the private sector.

This emphasizes the state's role in regulation and law making. As in other forms of privatization where the market is now providing public goods, the state has an interest in securing certain collective needs and use values that do not have an exchange value. As many more public goods are being delivered and provided by the private sector, the state's role is necessary to ensure that collective objectives such as distribution and access are met, things that the private sector cannot do. In this regard, the state has a role in securing rights to space as it does in the realm of any other set of rights.

The argument that the regulatory regime configures liberty means that it structures the possibilities of public space. For while it is through the practices of agents that public space is brought into being, or that public space is taken and made, these practices are constituted, shaped, guided, constrained and configured by regulatory regimes. In contradistinction to social and political theories of the public sphere then, this paper has examined how regulatory practices configure liberty in public space. This suggests that we need to turn our attention away from resources, spaces and goods as constitutive of public space to that of regulatory regimes. In this way we can think of systems of laws, regulations, designs, surveillance and security as shaping the possibilities of who and what constitutes the public and that through a

just configuration of liberty the social and political use values of public space can be

expanded.

REFERENCES

Barber, J. 2003, Square's beauty lies in public life it will inspire. *The Globe and Mail*, May 31.

Benn, S. I., and G. F. Gaus, 1983, The public and private: Concepts and action. In S. I. Benn and G. F. Gaus, ed., *Public and Private in Social Life*. Beckenham, Australia: Croom Helm.

Berman, M., 1982, *All that is Solid Melts into Air: The Experience of Modernity*. New York: Penguin Books.

———, 1986, Take it to the streets: conflict and community in public spaces. *Dissent,* 33 (4): 470-94.

Bianchini, F., 1990, The Crisis of Urban Public Social Life in Britain: origins of the problem and possible responses. *Planning, Policy and Research,* 5 (3): 4-8.

Blomley, N., 1998, Landscapes of Property. *Law and Society,* 32 (3): 567-612.

———, 2004, *Unsettling the City: Urban Land and the Politics of Property*. London: Routledge.

Borja, J., and M. Castells, 1997, *Local and Global: Management of Cities in the Information Age*. London: United Nations Centre for Human Settlements (Habitat) and Earthscan Publications Limited.

Boyer, M. C., 1993, The City of Illusion: New York's Public Places. In P. L. Knox, ed., *The Restless Urban Landscape*. Englewood Cliffs, NJ: Prentice-Hall.

Brigham, J., and D. R. Gordon, 1996, Law in Politics: Struggles over Property and Public Space on New York City's Lower East Side. *Law & Social Inquiry,* 21 (2).

Toronto Municipal Code. Section 237.

City of Toronto, 2001, Yonge-Dundas Square: Operations resulting from UDS Capital Project and Governance Model. Toronto: Chief Administrative Officer and Commissioner of Economic Development, Culture and Tourism.

Cybriwsky, R., 1999, Changing patterns of urban public space. Observations and assessments from the Toyko and New York metropolitan areas. *Cities,* 16 (4): 223.

Davis, M., 1990, *City of Quartz*. New York: Verso.

Deutsche, R., 1988, Uneven development: public art in New York City. *October,* 47: 3-53.

———, 1996, *Evictions: Art and Spatial Politics*, *MIT Press Series in Comtemporary Architectural Discourse*. Cambridge, MA and London, England: MIT Press.

Ellin, N., 1996, *Postmodern Urbanism*. Cambridge, MA: Blackwell Publishers Ltd.

Ericson, R. V., and K. D. Haggerty, 1997, *Policing the Risk Society*. Toronto: University of Toronto Press.

Fincher, R., and J. M. Jacobs, eds, 1998, *Cities of Difference*. New York: The Guilford Press.

Fraser, N., 1990, Rethinking the Public Sphere: a contribution to the critique of actually existing democracy. *Social Text,* 25/26: 56-80.

Fyfe, N., 1995a, Controlling the Local Spaces of Democracy and Liberty? 1994 British Criminal Justice Legislation. *Urban Geography,* 16 (3): 192-97.

———, 1995b, Law and order policy and the spaces of citizenship in contemporary Britain. *Political Geography,* 14 (2): 177-89.

Fyfe, N., and J. Bannister, 1998, 'The Eyes Upon the Street:' Closed Circuit Television Surveillance and the City. In N. R. Fyfe, ed., *Images of the Street: planning, identity and control in public space*. London: Routledge.

Garland, D., 1999, 'Governmentality' and the Problem of Crime. In R. Smandych, ed., *Governable Places: Readings on Governmentality and Crime Control*. Aldershot; Brookfield, VT: Ashgate.

Goheen, P. G., 1998, Public space and the geography of the modern city. *Progress in Human Geography,* 22 (4).

Habermas, J., 1989, *The Structural Transformation of the Public Sphere: An Inquiry into a cateogry of Bourgeois Society*. Cambridge, MA: MIT Press.

Harvey, D., 1992, Social postmodernism and the city. *International Journal of Urban and Regional Research,* 16 (4): 588-601.

Hermer, J., 1997, Keeping Oshawa Beautiful: Policing the Loiterer in Public Nuisance By-Law 72-94. *Canadian Journal of Law and Society,* 12 (1): 171-192.

———, 2002, *Disorderly People: Law and the Politics of Exclusion In Ontario*. Toronto: Fernwood Press.

Hopkins, J., 1996, Excavating Toronto's Underground Streets: In Search of Equitable Rights, Rules and Revenue. In J. Caulfield and L. Peake, ed., *City Lives and City Forms: Critical Research and Canadian Urbanism*. Toronto: University of Toronto Press.

Howell, P., 1993, Public space and the public sphere: political theory and the historical geography of modernity. *Society and Space (Environment and Planning D),* 11: 303-22.

Jackson, P., 1998, Domesticating the Street: The Contested Spaces of the High Street and the Mall. In N. R. Fyfe, ed., *Images of the Street: planning, identity and control in public space*. London: Routledge.

Jacobs, J., 1961, *The Death and Life of Great American Cities*. New York: Vintage Books.

Lees, L., 1998a, Urban Renaissance and the Street: Spaces of Control and Contestation. In N. R. Fyfe, ed., *Images of the Street: planning, identity and control in public space*. London: Routledge.

———, 1998b, Urban Renaissance and the Street: Spaces of Control and Contestation. In N. R. Fyfe, ed., *Images of the Street: planning, identity and control in public space*. London: Routledge.

Lefebvre, H., 1991, *The Production of Space*. Translated by D. Nicholson-Smith. Cambridge: Blackwell.

Lofland, L., 1998, *The Public Realm: Exploring the City's Quintessential Social Territory*. New York: Walter de Gruyter, Inc.

Longo, G., 1996, *A Guide to Great American Public Places: a journey of discovery, learning and delight in the public realm*. New York: Urban Initiatives, Inc.

Loukaitou-Sideris, A., 1993, Privatisation of public open space: the Los Angeles experience. *The Town Planning Review,* 64 (2): 139.

Lyon, D., 1994, *The Electronic Eye: The Rise of Surveillance Society*. Cambridge: Polity.

Madanipour, A., 1996, *Design of Urban Space*. Chichester: John Wiley and Sons.

Mattison, A. O., and S. R. Duncombe, 1992, Public Space, Private Place: The Contested Terrain of Tomkins Square Park. *Berkeley Journal of Sociology,* 37.

Mitchell, D., 1995, The End of Public Space? People's Park, Definitions of the Public and Democracy. *Annals of the Association of American Geographers,* 85 (1): 108 - 133.

———, 1996, Political violence, order and the legal construction of public space: power and the public forum doctrine. *Urban Geography,* 17 (2): 152-178.

———, 1997, The Annihilation of Space by Law: The roots and implications of anti-homeless laws in the United States. *Antipode,* 29 (3): 303-335.

———, 2003, *The Right to the City: Social Justice and the Fight for Public Space.* New York, London: The Guilford Press.

Oc, T., and S. Tiesdell, 1998, City centre management and safer city centres: approaches in Coventry and Nottingham. *Cities,* 15 (2): 85-103.

Rochon, L. 2003, There's no there there. *The Globe and Mail*, May 22.

Rose, N., 1999, *Powers of Freedom: Reframing Political Thought.* Cambridge: Cambridge University Press.

Ruddick, S., 1996, Constructing difference in public spaces. *Urban Geography,* 17 (2): 132-51.

Ruppert, E., 2006, *The Moral Economy of Cities: Shaping Good Citizens*. Toronto: University of Toronto Press.

Ruppert, E., 2002, The Moral Economy of Cities: Security, Consumption, Aesthetics. Doctoral thesis, Department of Sociology, York University, Toronto.

Sandercock, L., 1998, *Towards Cosmopolis: Planning for Multicultural Cities*. Toronto: John Wiley and Sons.

Sennett, R., 1970, *The Uses of Disorder: Personal Identity and City Life*. New York: Vintage.

————, 1977, *The Fall of Public Man*. New York: Alfred A. Knopf.

Shields, R., 1996, Feel Good Here? Relationships between Bodies and Urban Environments. In J. Caulfield and L. Peake, ed., *City Lives and City Forms*. Toronto: University of Toronto Press.

Siegel, F., 1995, Reclaiming Our Public Spaces. In P. Kasinitz, ed., *Metropolis: Center and Symbol of our Times*. New York: New York University Press.

Soja, E. W., 1989, *Postmodern Geographies: The Reassertion of Space in Critical Social Theory*. London: Verso.

———, 1992, Inside Exopolis: Scenes from Orange County. In M. Sorkin, ed., *Variations on a Theme Park: The New American City and the End of Public Space*. New York: Hill and Wang.

Sorkin, M., ed. 1992, *Variations on a Theme Park: The New American City and the End of Public Space*. New York: Hill and Wang.

Staeheli, L. A., and D. Mitchell, 2004, Spaces of Public and Private: Locating Politics. In C. Barnett and M. Low, ed., *Spaces of Democracy: Geographical Perspectives on Citizenship, Participation and Representation*. London: Sage Publications.

Staeheli, L. A., and A. Thompson, 1997, Citizenship, Community, and Struggles for Public Space. *The Journal of the Professional Geographer,* 49 (1).

Vasan, R. S., 1980, Public place, *The Canadian Law Dictionary*. Don Mills: Law and Business.

Von Hirsch, A., and C. Shearing, 1999, Exclusion from public space. In *Workshop on Situational Crime Prevention: Ethics and Social Context*. Fitzwilliam College, Cambridge.

Wakefield, A., 1999, Situational Crime Prevention in Mass Private Property. In *Workshop on Situational Crime Prevention: Ethics and Social Context*. Fitzwilliam College, Cambridge.

Waldron, J., 1991, Homelessness and the issue of freedom. *UCLA Law Review,* 39: 295-324.

Walzer, M., 1986, Pleasures and Costs of Urbanity. In P. Kasinitz, ed., *Metropolis: Center and Symbol of our Times*. New York: New York University Press.

Weintraub, J., 1995, Varieties and Vicissitudes of Public Space. In P. Kasinitz, ed., *Metropolis: Center and Symbol of our Times*. New York: New York University Press.

Wilson, E., 1991, *The Sphinx in the City: Urban Life, the Control of Disorder, and Women*. Berkeley: University of California Press.

Young, I. M., 1990, *Justice and the politics of difference*. Princeton: Princeton University Press.

Zukin, S., 1995, *The Cultures of Cities*. Oxford: Blackwell.

NOTES

[i] I gratefully acknowledge the critical commentaries of four anonymous reviewers from this journal. All errors and omissions of course remain my responsibility.

[ii] For example, in England, public space is distinguished on the basis of access; the *fact* of access to a space and not of ownership or of the legal right of access is the determining criterion: "a public place means any place to which the public or any section of the public has access, on payment or otherwise and any other place to which people have ready access" (Fyfe, 1995b: p. 185).

[iii] See Staeheli and Mitchell (2004) for a detailed discussion of how the public and private are defined in political theory.

[iv] See (Mitchell, 2003) for a description of how rights to public space are influenced by specific U.S. Supreme court rulings. While the arbitration of specific conflicts sets precedents, such cases are often too particular to a set of circumstances to have any general applicability and only address symptoms not the causes (Hopkins, 1996).

[v] The plan required the expropriation of several privately owned properties. The property owners contested the City's action to the Ontario Municipal Board (OMB), a provincially appointed, quasi-judicial, administrative tribunal that resolves disputes that fall under the Ontario Planning Act. In June 1988 the OMB dismissed the appeals and approved the project. The urban square was subsequently completed in 2002; the urban entertainment centre is still not completed. See (Ruppert, 2006) for a detailed description and analysis of the project.

[vi] Similar organizations exist in the United States in the form of Business Improvement Districts (BIDs) and in Britain, as Town Centre Management committees (TCMCs).

[vii] Members include representatives from groups such as the BIA, the local resident's association (Toronto East Downtown Neighbourhood Association), Ryerson University (a neighbouring educational institution), and police and city services staff.