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Taking the Law to the Streets: Legal and Spatial Tactics Deployed in Public Spaces to Control Protesters and the Homeless in Montreal

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UNIVERSITY OF CALIFORNIA,
IRVINE

Taking the Law to the Streets:
Legal and Spatial Tactics Deployed in Public Spaces to Control Protesters
and the Homeless in Montreal

DISSERTATION

submitted in partial satisfaction of the requirements
for the degree of

DOCTOR OF PHILOSOPHY

in Criminology, Law & Society

by

Véronique Fortin

Dissertation Committee:
Professor Susan B. Coutin, Chair
Professor Elliott Currie
Professor Marie-Ève Sylvestre

2015

DEDICATION

To

Natacha Binsse-Masse

We have started the doctoral adventure together,
we should have finished it together...
In your loving memory,
I keep writing and fighting

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ACKNOWLEDGMENTS

Lately it occurs to me,
What a long strange trip it's been
Sometimes the lights all shining on me
Other times I can barely see
Truckin' I'm a going home
Whoa, whoa, baby, back where I belong
Back home, sit down and patch my bones
And get back truckin' on"

Grateful Dead, Truckin'

We say it takes a village to raise a child. I say it takes a village (and sometimes several villages!) to write a dissertation! I am privileged to have had those multiple figurative « villages » behind me in the past few years. Be it in Mirabel, Montreal, Sherbrooke, Irvine, Long Beach, or Los Angeles, I am so grateful for the tremendous support I have received, and the multiple sources of inspiration I benefitted from throughout my PhD.

I am aware that this acknowledgment section is lengthy. But it is particularly important for me to acknowledge all the support networks that surrounded me as a doctoral student. Too often, we think of academia as an ivory tower disconnected from “the real world”. I have always guarded myself against this and I have always tried to be rooted, to balance work and play, and to be more than just an academic. Social relations allow this. Admittedly, I have not always been perfectly balanced in the past few years, but it would have been much worse if not for all the fabulous people around me!

So come with me, we're going on a long beautiful journey of gratefulness.

IRVINE

I went to the University of California, Irvine because of Susan Bibler Coutin, my adviser. I had read a chapter of her on spaces of non-existence and I thought it was such a compelling concept. I wanted to know more about the creative, and activist, mind that had come up with such a concept. And here I am, more than 7 years later, thanking Susan for everything related to my doctoral studies. Susan is for me the epitome of the perfect mentor. To this day I still cannot believe my immense chance to not only have had the opportunity to work with such an inspiring and exceptional scholar, as her advisee, as her research assistant and as a co-author, but also to have found in her a warm, supportive and truly dedicated mentor. Susan's scholarship might have been the reason why I went to UCI; her incredible mentorship is definitely the reason why I stayed. Always available to discuss ideas, or anxieties –despite having the busiest schedule of all!– Susan has always been thoroughly supportive and respectful of my autonomy as a scholar. Empathetic, encouraging, without

being complacent, Susan has never tried to steer me away from activism: she in fact led the way and I am immensely grateful to have learnt, with her, the tricks of the trade in terms of ethnographies and engaged research. Over tea, pancakes or homemade scones, she always generously shared her academic experiences in the most pedagogical way. I thank her for having communicated me her passion for the anthropology of law, and having encouraged me to be myself as an interdisciplinary scholar, without having to be defensive about it. I will be forever grateful to have worked with her, and I can only wish that the end of my PhD is not the end of our collaboration, and our friendship.

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I extend also the warmest thanks to Elliott Currie. Elliott first taught me a seminar on criminological theories. I remember it as if it was yesterday. Elliott transferred me his passion for critical theories and taught me to never forget the historical context of theories. Elliott has a way to ask big questions, without being afraid of answering them. He is not afraid neither to shake academic conventions (hosting the most inspiring and vibrant seminars at his house!) and I have learnt with him that it is possible to be an academic without loosing our critical perspective towards academia. He welcomed my activism against budget cuts in education in California and never hesitated to offer his support. I thank him for the multiple chatting sessions, over coffee, and for his time to discuss theories, social justice, and academia. Little did he know that he is the one who reconciled me with criminology as a field, at a time when I was profoundly unsure about my choices... I am immensely grateful to have had the opportunity to work with him.

Outside of my dissertation committee, there are so many other people at UCI who I want to thank. I am grateful to Kitty Calavita, another engaged scholar whom I had read and quoted years before I came to UCI and who taught me so much, including Marxist theories (it was like learning to read all over again: I had a new tool to understand the world!); I also want

to thank Justin Richland, for an inspiring course on anthropology of law and for several conversations on law, time, language, and ethnographies. I want to thank Donna Schuele for being such a model teacher of undergraduate classes and for her trust in me as a teaching assistant at a time when I was struggling with English... let alone with constitutional American law! I thank also John Dombrink and Susan Turner for very important administrative support. Outside of CLS, I thank Rei Terada, another model of activist scholar, Julia Elyachar and Tomas Mastnak for a mind-blowing seminar on the theories of property, and George Marcus, who taught me what is ethnography, with great patience!

My PhD experience would not have been so fantastic had it not been for the wonderful community of colleagues I had at UCI. First, I want to thank my (small!) cohort, Ken Cruz, Megan Halvorson, Jasmine Montgomery, Nick Petersen, with whom I shared ideas in seminars and beers in bars... and vice versa! A special thanks to Nick who one day, in the sun, in between two courses, told me this: "you spend so much time working as a student activist, why don't you make this your dissertation?" This was the spark I needed... and the rest of the story is now in this dissertation! I also want to acknowledge Aaron Roussel for having been there, supportive, understanding and compassionate, from my first stats class to the darkest days of 2012 when I was trying to cope, from a distance, with my sister's disease. I thank him also for answering my endless questions about the department, for being my union buddy, and a remarkable resource on the dilemmas of fieldwork. His friendship is invaluable to me. In CLS, finally, I want to thank Alyse Bertenthal, my dear friend, my partner in crime (who, like me, has partially migrated over to anthro!), my conference family, and one of my favorite persons to think and laugh with! This PhD. might be coming to an end for me, but I am convinced that our exchange of ideas on academia, life, fieldwork, legal processes, or language is only in its early stages... I am so grateful to have found her in this doctoral journey!

I am also very grateful to have met, at the very beginning, the happy bunch of the Radical Students Union (RSU), and later the Academic Workers for a Democratic Union (AWDU-UCI). They all have welcomed me with open hearts, and were indulgent with me, who was coming with a Francophone and legalistic background. Tim Brown, John Bruning, Seneca Lindsey, Robert Wood, Anne Kelly, Jessica Conte, Cheryl Deutsch, Ben Cox, Chima Anyadike-Danes, and especially Jordan Brocious, you have all provided me with a much needed like-minded community and allowed me to keep my mental sanity. Thank you so much for the countless meetings, actions, workshops, protests, and all the debriefings at the pub over shared French Fries and beer pitchers!

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In between Irvine and Los Angeles, there is Long Beach, and in the recent years I have been privileged to find a home in Long Beach, thanks to Cecelia Lynch and Tom and Aidan Warnke (and Rex and Preston). By a weird combination of circumstances, I ended up finding the greatest hospitality of all in the little house behind their home. But more than landlords, I found loving friends, carpool partners and so much more. A special thanks to Cecelia, who was first on my advancement committee as an outside member, but rapidly became an important special adviser in my doctoral life! Thanks for her wise advices, for her warmth and calm when I was overwhelmed with anxiety, thanks for the delightful

Saturday morning farmers market trips, thanks for the food and the wine (because sometime that's really what one needs the most) and thanks for the practice job talk by the piano! I feel privileged to have had the Lynch-Warnke family in my life in the past few years.

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SHERBROOKE

If I have started writing this dissertation in Long Beach, I finished writing it in Sherbrooke, my new academic home. My new colleagues at the Faculty of Law of the Université de Sherbrooke are the most supportive and understanding people in the world! I just had to say that I was working on my dissertation for people to be immediately compassionate. I knew they understand. I especially thank Hélène Mayrand, Marie-Claude Desjardins, Marie-Ève Couture Ménard, Mathieu Devinat, Derek McKee, Simon Roy, and Marie-Pierre Robert for their warm welcome and their endless advices as I start this new job. Thanks also to the Recruitment Committee (Arthur Oulaï, Denise Pratte, Sébastien Lanctôt) and to the Dean Sébastien Lebel-Grenier for their trust. It's been only a few months, and I feel already at home in my office and with my colleagues. This is precious.

MONTREAL

In between my trips to UCI, I was mostly in Montreal and I am immensely grateful to several people at the faculty of Law of McGill University. First, I want to thank everyone (Julie Fontaine, Linda Coughlin, Margaret Baratta, Jane Matthews Glenn, etc.), who arranged for me to have an office from where to write my dissertation in the Winter of 2015.

I also want to thank Nicholas Kasirer, who gave me so many opportunities and believed in me. He is the one who encouraged me to leave for the PhD (only to come back though!) and I am grateful for his advices in this journey. I am indebted also to Jean-Guy Belley, who initiated me to the sociology of law and who saw in me potential as a socio-legal scholar. I thank him for his honesty about the field, and for his inspiring talks, in a classroom and outside, about how to be a scholar who doesn't lose touch with social reality (and morality). He is to me one of the greatest socio-legal scholars of our times and I feel privileged to have benefitted from his guidance. I am grateful also to the late Roderick Macdonald, another tremendously inspiring socio-legal scholar with whom I had the immense pleasure to work during my PhD. Rod was bigger than life, but humble like no one else and I am so grateful to have learnt with him the rigour of the editorial process. I miss him tremendously, but I continue to be inspired by him every day.

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This dissertation would not exist if it wasn't of all the people I worked with and who generously shared with me information: all the participants to the PAJIC programme, all the activists who courageously protested, all the lawyers who gave me precious insights (Denis Barrette, Franccesca Cancino, Andrée Bourbeau). I am also especially indebted to Alexandre Popovic who for the past 3 years has been an invaluable source of information. His experience, research skills, and dedication to social justice issues are admirable. A special thanks also to Maryse Poisson with whom I had the chance to exchange on participant observations and engaged research. Thanks for pushing me to think more.

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Writing a dissertation far from my university and intellectual community was not always easy, but I had Dominique Bernier and Genevieve Painter, with whom I could meet for coffee or lunch in Montreal and share writing frustration or organizing strategies when I was lost in a sea of fieldnotes. Thanks to Dominique who briefed me about the first day on the job as a law professor, and thanks to Geneviève who made me looking forward to go to the McGill office, or to wake up early to meet at Café Olimpico on a cold Fall day, before a long day of writing. The three of us will soon become doctors, but I know that our community and friendship will continue beyond the time we get two – well deserved! – letters before our name!

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Maude Lapierre, Louis-Xavier Gagnon-Lebrun, Mathieu Desruisseaux, and Claude-Catherine Lemoine. Special kudos to Claude-Catherine and her little Elliott, who is barely two and a half but never stops to amaze me, and who provided me with great entertainment on so many Friday evenings! Many thanks also to Mara Chercover, my friend and yoga teacher, who helped me to stay minimally sane and balanced during the writing process.

M I R A B E L

North of Montreal, Sherbrooke, Long Beach, Los Angeles, and Irvine is Mirabel, where I grew up and where my parents, Robert Fortin and Line Soucy, still live. I owe them so much and I want to thank them deeply for their support and perpetual encouragements, without judgment. This is precious. They taught me how to be autonomous and principled and my activism is definitely rooted in the humanist education they gave me. My father taught me early the ethics of hard labor, but he is also always there to warn me against myself and to remind me to take vacations. I thank him for his calm, when I'm overwhelmed, for his advices when I don't see clearly. I thank my mother and I will switch to French to make sure she understands (although I know her English skills are better than what she gives herself credit for). Maman, merci d'avoir toujours cru que je pouvais tout faire, d'avoir sauté à pieds joints dans tous mes projets, toujours là derrière moi, meilleure cheerleader qui soit, à me dire " vas-y ma fille, tu es capable!". Que ce soit quand j'ai décidé de quitter la maison à 16 ans pour aller au cégep ou de quitter le Québec pour aller en Californie faire mon doctorat, tu étais là, à croire en moi. Dans les moments les plus sombres de l'aventure doctorale, tu as toujours su trouver les mots pour me reconforter. Dans les plus grandes joies, tu étais là pour célébrer avec moi. Merci, mille fois.

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Pretty much everyone who knows me knows that I have four younger sisters. I just can't help talking about them! They are everything for me. Isabelle, Gabrielle, Ariane and Maude, how would have I gone through my PhD without you? Thank you for being there by my side, on Messenger or in person, in the toughest moments. Thank you for the countless laughs around the dinner table when we would finally be gathered together. Thank you for being genuinely interested in my research and never showing signs of boredom when I talk about it. Thank you for coming with me in protests and for understanding the injustice surrounding the judicialization of homelessness. A special thanks to Gabrielle, who was my roommate when I was in the field and who heard me debriefing night after night about my new theoretical discoveries and fieldwork insights. Girls, each of you so different, you

inspire me in many ways, and I am immensely privileged to have you in my life. Isa, Gab, Ariane and Maude, you allow me to never feel alone, even when I am far far away from you, even when I am working non stop. The last miles of this doctoral marathon were not easy, but you were there, cheering for me. It worked, and I finished! And I am deeply grateful to all of you.

If home is, as we say, where the heart is... then home is for me in all the above places! And home is, right now, especially with Robert Green. I warmly thank him for having let me go, and welcome me back... always. After so many years travelling everywhere, I suddenly felt like unpacking those boxes I had stored for more than 10 years. I finally wanted to stay put, with him. Rob, thank you for your indefectible words of encouragement since the very first day we met but especially during these last years of the PhD; thank you for pushing me to think harder; thank you for always being open to discuss ideas; thank you for reading over my drafts and correcting my English; thank you for answering my innumerable questions (does it sound ok if I say it like this?); thank you for being patient and supportive and understanding at times when I was getting on my own nerves; thank you for being a model activist; thank you for the laughter, the Portlandia episodes, the tacos, the trips, the music... and so much more! Finishing a PhD is so much easier when you feel well surrounded, and I'm immensely grateful for your love.

Ha! There were so many "villages" behind me during my PhD! The dissertation process might feel like a solo adventure, but in the end, it is a colossal teamwork. I had the best team (I hope I haven't forgot anyone, but I probably did and I apologize in advance...) and I sincerely thank you all.

CURRICULUM VITAE

Véronique Fortin

EDUCATION

University of California, Irvine (Irvine, California, USA) **2009- 2015**
Ph.D. Criminology, Law & Society (School of Social Ecology, Department of Criminology, Law & Society).

Oñati International Institute for the Sociology of Law (Oñati, Spain) **2006 - 2008**
International Master in Sociology of Law
Official Master of the University of the Basque Country (Donostia, Spain) and the Università degli Studi di Milano (Italy).

Bar School of Québec (Montreal) **Aug-Dec. 2005**
Professional course (mandatory) leading to call to Bar.

Faculty of Law, McGill University (Montreal) **2001-2005**
B.C.L., LL.B, with distinction (transsystemic programme).

Université Paris II, Panthéon-Assas (Paris) **Sept. – Dec. 2003**
French Law elementary diploma, with distinction (student exchange).

Collège Jean-de-Brébeuf (Montreal) **1999-2001**
International Baccalaureate Diploma, with a concentration in economics.

PROFESSIONAL EXPERIENCE

Assistant Professor **2015 - ...**
Université de Sherbrooke, Faculty of Law

Research Assistant **2011-2014**
On the Record: Archival Practices in Immigrant and Indigenous Advocacy
Research project supervised by Prof. Susan Bibler Coutin (University of California, Irvine) and Prof. Justin Richland (University of Chicago).

Research Assistant **2013**
Court-imposed Restrictions to Public Spaces and Marginalized People in Canada
Canadian research project supervised by Prof. Marie-Eve Sylvestre (Faculty of Civil Law, University of Ottawa), Prof. Céline Bellot (School of Social Work, Université de Montréal) and Prof. Nicholas Blomley (Geography, Simon Fraser University).

Teaching Assistant **2009-2011**

University of California, Irvine

Courses taught: "Criminology, Law & Society", "Constitutional Law" & "Women and the Law".

Legal Aid - Legal Clinic "Droits Devant" **July-Sept. 2010**

Réseau d'aide aux personnes seules et itinérantes de Montréal (RAPSIM)

[*Montreal Support Network for the Homeless*]

Court accompaniment, assistance and defense of the rights of the homeless; part-time, temporary contract.

Associate Director **Sept. 2008 - Sept. 2009**

Québec Research Centre of Private and Comparative Law

Supervision of researchers and coordination of various research projects –from legal terminology projects, like the Private Law Dictionaries and Bilingual Lexicons, to transsystemic legal education– that aim to develop new theoretical understandings of fundamental private law.

Law clerk to Chief Justice of Québec, J.J. Michel Robert **June 2007 - June 2008**

Québec Court of Appeal

Research points of law, prepare memoranda of law and generally assist the Judge in the work of the Court.

Research Assistant **2006**

Prof. Marie-Ève Sylvestre, Faculty of Civil Law, University of Ottawa

Field research on imprisonment for unpaid fines in Canada. The research project mainly focuses on homeless people who are ticketed for vagrancy or other minor offences under municipal by-laws and who are, for many reasons, unable to pay the fines.

Research Assistant **2003 - 2007**

Québec Research Centre of Private and Comparative Law

Draft of legal definitions (English and French) in various areas (family law, civil law obligations, etc.) but principally in civil law property.

Researcher, Barbados **May - Oct. 2005**

Prof. Jane M. Glenn, Faculty of Law and School of Urban Planning, McGill University

Field research on access to housing and ownership, particularly on the government's 'transfer of title' program in low-income Barbadian urban areas. Research done in collaboration with the Urban Development Commission, Bridgetown, Barbados.

Researcher, Costa Rica **Feb. - Apr. 2005**

Prof. Jane M. Glenn, Faculty of Law and School of Urban Planning, McGill University

Field research on access to public and private housing finance in Costa Rican low- to middle-income suburban areas.

SCHOLARSHIPS AND AWARDS

UCI Graduate Dean's Dissertation Fellowship **2014-15**
Writing fellowship, value: US \$30,000.

APLA Graduate Student Paper Prize - finalist **2014**
Finalist for the Graduate Student Paper Prize organized by the Association for Political and Legal Anthropology, for my article : « Homeless People in Montreal: In and Out of Spaces of Nonexistence ».

UCI Social Ecology Dean's Dissertation Writing Fellowship 2014 **Summer 2014**
Writing fellowship, value : US \$5,885.

Smith Pontell Award for Outstanding Accomplishment in Graduate Study **2014**
Award given by the department of Criminology, Law & Society (UCI) for outstanding accomplishment in graduate study, value: US \$2,000.

Dean's Award for Community Engagement **2013**
This award recognizes School of Social Ecology (UCI) graduate students engaged in research that has a positive impact in the community (i.e., local, regional, state, national, or international).

Gil Geis Excellence in Graduate Research Award 2012 **2012**
This award is given annually to a graduate student in Criminology, Law and Society (University of California, Irvine) for excellence in research.

Oñati International Institute for the Sociology of Law, Workshop Grant **2012**
Workshop grant for the workshop « Indignation, Socio-economic Inequality and the Role of Law », held in the Oñati IISL in May 2013.
Role: co-organizer with Prof. Jane M. Glenn and Prof. Anneke Smit.

CLSC Peterson Fellowship **2011-2012**
Fellowship provided by the Center in Law, Society and Culture of University of California, Irvine. The selected fellows participate in a year-long set of activities designed to further their interdisciplinary research training, through intellectual collaboration and exchange, and through the production of an original project.

**Doctoral Scholarship of the Social Sciences and Humanities
Research Council of Canada** **2010-2013**
Canadian scholarship for a Ph.D. program in social sciences of a value of Can. \$20,000 per year, for 3 years.

Doctoral Research Grant from the Quebec Fund for Research on Society and Culture **2010-2013**

Québec scholarship for a Ph.D. program in social sciences of a value of Can. \$20,000 per year, for 3 years (offer declined).

Social Ecology Tuition Fellowship **2009-2010**

Scholarship equivalent to the non resident tuition (14,698\$ US) for Year 1 of the Ph.D. in Criminology, Law & Society, University of California, Irvine.

Thomas Shearer Stewart Travelling Fellowship **2009**

Fellowship (12,000\$ Can) awarded to a recent graduate of the Faculty of Law of McGill University to be used to follow a program of studies in Law at a University outside Québec. The graduate should be a Canadian citizen intending to reside in Canada upon completion of his/her studies.

Annual Conference Bursary for Post-Graduate Student **2007**

Bursary (£250) granted by the Socio-Legal Studies Association of the UK for post-graduate students to attend the *Socio-Legal Studies Association Annual Meeting*, held in Kent University, Canterbury, England.

J.S.D. Tory Writing Award **2005**

Award (\$500) granted for term essay "Les modalités d'accès au financement public et privé du logement au Costa Rica" ["Modes of access to public and private housing finance in Costa Rica"].

Morris Wilson Entrance Scholarship **2001**

Scholarship (first year tuition fees) awarded by McGill University for academic achievement and participation in extracurricular activities.

RESEARCH AND PUBLICATIONS

Books

Roderick A. Macdonald and Véronique Fortin, ed., *Autonomie économique autochtone : dimensions multiples / Dimensions of Indigenous Economic Autonomy* (Montréal: Themis, 2015).

Véronique Fortin, Myriam Jézéquel and Nicholas Kasirer, eds., *Les sept péchés capitaux et le droit privé [The Seven Deadly Sins and Private Law]* (Montréal: Thémis, 2007).

Journal

Jane M. Glenn, Véronique Fortin et Anneke Smit, eds., « Indignation, Socio-economic Inequality and the Role of Law », *Oñati Socio-Legal Series*, 2015, vol. 5, no. 1.

Articles

Susan B. Coutin, Justin B. Richland, and Véronique Fortin, "Routine Exceptionality: The Plenary Power Doctrine, Immigrants, and the Indigenous under US Law" (2014) 4 (1) *UC Irvine Law Review* 97.

Véronique Fortin, « Occupation, Exclusion and the “Homeless Problem” during Occupy Montreal » dans « Indignation, Socio-economic Inequality and the Role of Law », Oñati Socio-Legal Series, 2015, vol. 5, no. 1.

Véronique Fortin and Aaron Roussell, “ ‘Just the Facts’: Student Occupations, Police Repression, and ‘Protest Management’ in California”, *The Critical Criminologist Newsletter*, Winter 2012, 20:3.

Book Chapters

Susan B. Coutin and Véronique Fortin, « Legal Ethnographies » in Austin Sarat and Patricia Ewick, *Wiley Handbook of Law & Society* (Malden, MA : Wiley, 2015).

Véronique Fortin et Roderick A. Macdonald, « Introduction » in Roderick A. Macdonald et Véronique Fortin, *Autonomie économique autochtone : dimensions multiples / Dimensions of Indigenous Economic Autonomy*, Montréal, Thémis, 2015.

Lucie Lemonde, Andrée Bourbeau, Véronique Fortin, Émilie Joly et Jacinthe Poisson, « Répression judiciaire et législative du mouvement étudiant et du droit de manifester » [“Legal repression of the student movement and the right to protest”] in Francis Dupuis-Déri and Marcos Ancelovici, *Un Printemps rouge et noir : Regards croisés sur la grève étudiante de 2012 [A Spring in Black & Red: cross-perspectives on the 2012 student strike]* (Montreal : Ecosociété, 2014)

Newspapers article

Véronique Fortin, Claude-Catherine Lemoine, Daredjane Assathiany et Kathy Ramsey, «Itinérants : La discrimination persiste » [“Discrimination Continues Towards Homeless People”], Op-Ed in *La Presse*, Montreal, Dec. 16, 2010.

Translation (from English to French)

« Méthodes féministes en droit international » [“Feminist Methods in International Law”] by Hilary Charlesworth, translated by Véronique Fortin in Hilary Charlesworth, *Sexe, genre et droit international [Sex, Gender and International Law]* (Paris: Pedone, 2013).

ABSTRACT OF THE DISSERTATION

Taking the Law to the Streets: Legal and Spatial Tactics Deployed in Public Spaces to Control Protesters and the Homeless in Montreal

By

Véronique Fortin

Doctor of Philosophy, Criminology, Law & Society

University of California, Irvine, 2015

Professor Susan B. Coutin, Chair

Homeless people and protesters in Montreal have at least one thing in common: both groups (and they are by no means mutually exclusive) are routinely controlled for their occupation of public spaces through tickets issued by the municipal police for alleged violations of municipal by-laws (such as loitering, drinking alcohol in public, or unlawful assembly).

My doctoral research project brings a municipal and ethnographic dimension to the analysis of local governance of public spaces in Montreal. I argue that two specific groups of marginalized people –namely homeless people and protesters– are disproportionately ticketed by the municipal police because they are seen as disorderly people making atypical uses of public spaces. The ticketing practices, anchored in broken windows theory and order maintenance policing, serve to remove homeless people and protesters from public spaces. Under the appearance of inoffensive space management, serious exclusion occurs and multiple rights are violated. In the end, I show that banal and seemingly unthreatening legal processes, such as those involved in the issuing of tickets in Montreal,

can have a profound impact on people's lives but also on the way we construct public space and experience life in the city.

CHAPTER 1: INTRODUCTION



Figure 1 Metro Place des Arts, May 25th, 2012
Picture by Jacques Nadeau (2012), published in his book *Carré rouge*
(reproduced with permission)

This picture was taken by press photographer Jacques Nadeau in the Place-des-Arts metro station, in Montreal, on May 25th, 2012. The sign held by the man on the left is written in French, the official language of the Canadian province of Quebec. It reads “Hungry. Need money. Please help me”. The sign belonging to the woman on the right reads: “To pay for my university education”. The picture was taken at the height of the

student movement against higher education tuition fee increases and more generally against the privatization of education. The red square on the cardboard is the symbol of the student movement since 2005. It started as a pun on students being “carrément dans le rouge” (squarely in red, i.e. in debt) and became very popular in 2012; it now evokes social justice and political struggle (Chiasson-LeBel & Coutu, 2012). The red square is typically cut out of a piece of red felt and pinned down with a safety pin on a purse, a backpack, a shirt, etc.

If, as the saying goes, an image is worth a thousand words, this powerful but jarring image could save me a few pages in this dissertation! The photo stands out by illustrating the sharing of public space and its re-appropriation as something more than a thoroughfare for commuters (witness the immobility of the two figures in a venue built for public transit). Among other functions, it also bears witness to the failures of capitalism—which produces such poverty that it is possible to be continually hungry in a city like Montreal—and it documents the use of public space as a forum for political action. But the photo is also unsettling because one can assume that the woman and the man do not inhabit the same social reality. She probably has a house to go back to after her “panhandling shift” is over. The woman’s occupation of the space looks like a political stunt. But is it, really? And is the man’s occupation of the space any less political?

Taking the analysis further, let us suppose that both these individuals received a statement of offense (also called a citation, or in Montreal, a “ticket”) fining them for loitering, which is actually very likely to have happened. We can ask what happened to the

fine associated with the tickets? Were they paid? Were the tickets contested before the municipal court? How did the defendants experience and perceive the legal process? Finally, we may ask how do processes like these construct and define public spaces?

In short, this picture illustrates the main topic of my dissertation, which aims to cast light on the interaction between law, space, and society through an ethnographically informed analysis of the legal processes that are at play at the municipal level in certain forms of occupation of public space in Montreal. And to begin, let's set the stage of my dissertation by teasing out the main themes of this photo: public space, homelessness, protest movement, all this on a Montreal background.

The Street and Other Public Spaces

"I will not bend to the street", declared Quebec Premier Jean Charest, in a televised debate a few days before losing power in the provincial elections of 2012. The "street" Mr. Charest was alluding to was a metaphor for a student and grassroots-based protest movement against his government that had started with a student walkout and marches to protest tuition hikes. Several hundreds of demonstrations took place over the seven months of what was dubbed the *Printemps Érable*, or in English *Maple Spring*. At many occasions several thousands of students and sympathizers were taking to the streets, sometimes banging on pots and pans to protest against their government.

The "street" that Premier Charest was talking about is also "home" to around 30,000 homeless people in Montreal. Homelessness is described by one Quebec advocacy group

not as a status but as a process of exclusion, which is caused by a combination of individual and structural factors (RAPSIM, 2003).¹ But in general terms, homelessness can be defined as a lack of regular access to housing, and as such, it occasions a greater-than-average and longer-than-average time in public spaces, including parks, streets, undergrounds, and sidewalks.

If the street is a synecdoche for a social movement, and also the home of the homeless, geographically speaking—in urban settings at least—the street is also this paved public road, often bordered by sidewalks, that allows circulation between places. “Streets provide means of passing and accessing adjoining buildings. They also serve as venues of public communication”, (*Montréal (City) v. 2952-1366 Québec Inc.*, 2005, para. 67) said the Supreme Court of Canada in a landmark decision on freedom of expression on the public domain (the case was about music broadcasted on the street by a strip club in Montreal). The Supreme Court also added that the streets are “a public space owned by the government” (*Montréal (City) v. 2952-1366 Québec Inc.*, 2005, para 61).

In fact, technically, streets are part of the public domain of municipalities (see *Municipal Powers Act*, art. 66; see also Fortin, 2007). Properties in the public domain, such as streets, parks, public squares, urban places, etc., are inalienable, not subject to taxes, unseizable and cannot be acquired through acquisitive prescription (Normand, 2014, p. 420 & seq.). The municipality, with regard to properties in the public domain, cannot act, in theory, toward them as a private owner would. Despite the exclusive right the city has over

¹ See *infra*, in this chapter, for more details on the causes and context of homelessness.

streets and parks on its territory, it cannot exercise its dominion in the way that a private owner can exclude everyone from his or her private property or charge intruders with trespass. So the city is expected to exercise its property rights in function of the general interest or following the requirements associated with public utility (Forget, 2005, p. 52). A large portion of municipal property, including streets, is in the public domain. However, public domain does not necessarily equate to public space.² Even if a police station is technically part of the public domain of the municipality, this is not exactly the kind of public space most have in mind when thinking of the occupation of “public spaces” by homeless people and protesters.

But what is public space, exactly? In this dissertation, I use the phrase “public space” in the material and legal sense of the place governed in the general interest by the municipality, and not the metaphorical sense of the public sphere. The public sphere, broadly speaking, is this forum where members of a collectivity can exchange on common concerns (see generally Habermas, 1989; see also Calhoun, 1992). According to Habermas, the public sphere is meant to facilitate the development of a rational-critical debate on political issues and the participation of the most people possible (Calhoun, 1992). But as Collins and Blomley (2003) write, “the public sphere needs to be grounded in public space – that is, the material location where the social interactions and political activities of the “public” occur.” (p. 55). If nowadays, it could be argued that Facebook and other social media offer virtual locations for the public sphere to be grounded, this dissertation showcases public spaces as geographical places, i.e. as places where a wide array of people,

² Although it is used as a synonymous in certain circumstances.

different from one another, can rub elbows, literally. As political theorist Iris Marion Young (2011) writes, “Because by definition a public space is a place accessible to anyone, where anyone can participate and witness, in entering the public one always risks encounter with those who are different, those who identify with different groups and have different opinions or different forms of life” (p. 240).

This little incursion in the doctrine of public domain is important as it defines the socio-legal status of the streets and sidewalks, parks, and places. But as we will see, the general interest that guides the governance of the public domain of the municipality, as defined by courts and city authorities, is often at odds with the interest of certain groups of marginalized people, such as protesters and homeless people, making some groups much less than welcome in the space. As Nicholas Blomley (2011) writes in his book *Rights of Passage. Sidewalks and the regulation of public flow*, “The role of the authorities, using law as needed, is to arrange (...) bodies and objects to ensure that the primary function of the sidewalk is sustained: that being the orderly movement of pedestrians from point a to point b” (p. 3). Similarly, I will demonstrate in the following chapters that streets (and I include the sidewalks in my definition of streets) in Montreal are conceived in the same way by the authorities, i.e. as a mere space existing for the orderly movement of people and things, cars and pedestrians; any dissident and openly political use of public space (especially if it is counter-hegemonic) is therefore seen as a disorder that should be taken care of swiftly.

But for now, let's just say that public spaces are these large places (streets, parks, plazas) in the public domain of the municipality that are, contrarily to private property, not the object of ownership of one or several private persons and are rather "places held in the name of the whole society in order to make them fairly accessible to everyone" (Waldron, 1991, p. 298).

Homelessness in Montreal

One of the most vivid folkloric images in Quebec's imaginary is the one of the "quêteux" (beggar/vagrant).³ The quêteux was a poor man who was going from village to village at the end of the 19th century and the beginning of the 20th century, knocking on people's door and asking for a warm place to spend the night and a piece of bread. "Charity please, for the love of God," he used to say, appealing to the catholic faith of the host. In exchange for hospitality, the quêteux would tell stories to the household and bring news from other villages. The quêteux was typically hosted on the "banc du quêteux", a wood bench located near the entrance door that could open (like a chest) and in which the straw mattress was hidden.⁴ It was reported that to protect the household from lice (that the quêteux was suspected to carry with him), the bench extremities were covered in molasses or honey, on which the lice would stick. Typically, in the folklore at least, the quêteux was not a source of fear, but of sympathy. He was welcomed in houses and respected. He was

³ This is such a vivid image for me that I have a feeling I have learnt about it from my grand-parents, tv shows, folkloric songs and stories; it is now part of a collective memory. For a magazine article on the figure of the "quêteux", see Hébert-Dolbec 2014.

⁴ I still remember my grand-parents' banc du quêteux at their house... even if since a long time the quêteux had stopped to come and wool slippers had replaced the straw mattress in the chest!

poor and different, but it seems like his marginality was not threatening, almost made familiar even. At least his marginality certainly was not overly emphasized.

Nowadays, the term “quêteux” is a derogatory term to designate the so-called lazy homeless panhandler on the urban sidewalk. After several waves of social transformations, the folkloric rural quêteux has become the excluded urban homeless person. Is it due to the diminished social solidarity associated with the end of rural life and the urbanization? Is it because of the transformation of support networks, from family solidarity to the welfare state to the neoliberal state and its disengagement from social programs? It is actually probably the result of a combination of all those social transformations.

That being said, homelessness as we know it started to be seen as a social problem in the modern cities in the 1970s. In 1974, the Réseau d'aide aux personnes seules et itinérantes de Montréal, RAPSIM (in English the Help Network for Homeless and Lonely People), was set up to prevent homelessness and help homeless people (RAPSIM, 2012). A little more than 10 years later the United Nations declared the year 1987 to be the International year of shelter for the homeless (Roy, 2013). By then, homelessness had clearly crystallized as an urban social problem. And since then, it only grew bigger and bigger.

The most accurate statistic currently available regarding the homeless population in Montreal dates back to 1996-1997.⁵ The number of persons using resources for homeless people (soup kitchen, shelters, day centers) over a year was 28 214 in 1996-1997, 23% of which were women (Fournier, 1998). Community organizations advance that this number has increased and it was estimated in 2005 that there were approximately 30,000 homeless persons in Montreal (Campbell & Eid, 2009). More recently, shelters have struggled to meet the demands and it is generally recognized that the number of homeless women is on the rise. (Montpetit, 2012; Duchaine, 2013). It is also often suggested that the homeless population is aging, and much more diverse than in the past, notably in terms of race, origins, gender, and socio-economic conditions. There is also an overrepresentation of Indigenous people that are homeless (Campbell & Eid, 2009). In the recent years, we have also witnessed the rise of the phenomenon of “street youth”, i.e. young people (generally between 15-24 years old) who have “precarious living conditions, which include poverty, residential instability and emotional and psychological vulnerability” (Public Health Agency of Canada, 2006, p. 1).

Homelessness is the most common term used to describe a situation of extreme poverty and the lack of access to a stable private place to stay, forcing one to spend large amount of time in public spaces (Waldron, 1991). In Quebec French, my favorite expression to describe homeless people is “personne en situation d’itinérance”, which could be translated, in a literal way, by “persons in a state of transiency”. I prefer the

⁵ At the beginning of 2015, the city of Montreal launched a campaign called “I count MTL: A Homelessness Survey”. The idea was to estimate the number of homeless people in Montréal on March 24, 2015. The results of that survey were highly controversial, and decried by most homelessness organizations I worked with as completely invalid because of its faulted methodology and too limited definition of homelessness.

French expression to the English word *homeless*, for three reasons: 1) it reaffirms the humanity and the quality of bearer of rights (person) of the subject living off the streets; 2) it also emphasizes that the extreme poverty in which the person finds him or herself is a situation, not a defining identity; i.e. the “state of transiency” describes a temporary living situation, not a permanent trait; 3) it talks about the movement, the transiency, of the person that is on the move to survive, rather than underlining the lack of home. It is not all homeless people who “sleep rough”; many of them may have access to a friend’s couch or may squat an apartment, or sleep in a tent. The use of the word “itinérance” (transiency) emphasizes the need of those living in this state of poverty to always be moving, uprooting themselves, going from places to places, being displaced constantly, by the weather, the police or just the city life.

All this being said, I will nevertheless use the words *homeless* and *homelessness* in this dissertation, for conciseness and because they are the most widespread words used in Canada (The Homeless Hub 2015). After emphasizing the fact that homelessness is the result of a process of exclusion, marginalization and vulnerabilization, the RAPSIM (2003) describes the homeless person as one who: 1) does not have a fixed address and the assurance of a stable, safe and salutary place to stay in the coming days; 2) has a very low income; 3) is often discriminated against when it comes to receiving public services; 4) has problems relating to alcoholism and/or drug addiction and/or mental health and/or social disorganization; 5) doesn’t belong to a stable social support group (p. 4). I agree with this characterization of homeless people, but I would add one other characteristic: extensive occupation of public spaces, resulting from not having a stable place to stay at. The

occupation of public space can translate into various activities, be they panhandling, “squeegeeing” (i.e. to wash car windshields at street intersections with a squeegee tool in exchange for money), sleeping, or just being idle.

A colleague of mine, working in the same homeless rights advocacy group as I a few years ago, used to say that in an open-minded society, the biggest problem confronting a homeless man would be his poverty, i.e. his lack of money to pay for a decent place to live. (Fortin, 2007) This colleague used to say too that a guy could probably cope with that and navigate his way through life more or less decently. However, the homeless must not only survive under adverse conditions; they must also deal with many problems besides poverty. The main challenge facing a homeless man in Montreal is rarely limited to finding a shelter on a cold night, and the chances are that he is also struggling with alcoholism, or drug use, or mental health issues, or all of these. Alcoholism and drug addiction are certainly more prevalent in the homeless population than in the general population, but what comes first: alcoholism or homelessness? It is not always clear. Addiction can lead to the street, but the street life can also lead to alcoholism, as George, a middle-aged homeless man from San Francisco, expressed to ethnographer Teresa Gowan:

Trouble with homelessness is, it’s hard to sleep well unless you have something in you. Alcohol in my case. See . . . even with a good sleeping bag and a roll, you have to deal with . . . well you always wake up with the little noises. You don’t know what’s going down. There’s the cold hard ground, and various creeps hanging around. . . . But if you can knock yourself out some, then you’re better off. (Gowan, 2002, p. 512)

The same can be said of mental health problems. It is estimated that around 30 to 50% of homeless people suffer from mental health problems, which range from psychotic troubles to depression (Campbell & Eid, 2009). There is a common myth about the

homeless person being that crazy person on the sidewalk talking to herself loudly, but it is important to note that not all homeless people are mentally ill. Moreover, mental health issues might be the result of extreme living conditions rather than the cause of homelessness. The psychiatric deinstitutionalization that started in the 1960s in Quebec and consisted of releasing patients from psychiatric hospitals to have them reintegrate into communities is often cited as an important cause of homelessness but it is especially the lack of mental health services and resources provided to outgoing patients (especially during the neoliberal era of budget restrictions in the 1980s) that aggravated the risks of homelessness for people who are severely mentally ill (Douglas Mental Health University Institute, 2013).

In fact, there is no one profile of the homeless person, and the factors leading to homelessness are diverse and far from uniform. “ The causes of homelessness reflect an intricate interplay between structural factors, systems failures and individual circumstances. Homelessness is usually the result of the cumulative impact of a number of factors, rather than a single cause” (The Homeless Hub, 2015). In terms of structural factors and system failures, apart from the deinstitutionalization, one can think of the rise of the cost of housing, the lack of affordable housing, the dramatic decrease in the supply of single room occupancy buildings, the important cuts in social programs and social welfare, the increase in social inequalities, employment discrimination, systems of care and support failures (including support after incarceration), and so on. Among individual circumstances, figure “traumatic events (e.g. house fire or job loss), personal crisis (e.g. family break-up or domestic violence), mental health and addictions challenges, which can

be both a cause and consequence of homelessness and physical health problems or disabilities” (The Homeless Hub, 2015).

On top of all these problems, and this is the main focus of my dissertation, the homeless must also deal with heavy judicialization. Judicialization⁶ is the process by which the homeless encounter the judicial system or more precisely how they get entangled in the municipal penal legal system. In Quebec, we speak of judicialization as opposed to criminalization of homelessness because mostly the homeless people get accused of violations of municipal by-laws and not of the federal legislation called the *Criminal Code*. I will come back on the judicialization process at length in chapter 3, but suffice it to say for now that, because of their occupation of public space and the various activities they accomplish therein, homeless people are routinely controlled by Montreal police through an everyday legal tool, that is the ticket issued for alleged violations of municipal by-laws. They get tickets for behaviors such as drinking alcohol on the public domain, misusing public street furniture (i.e. sleeping on a bench), impeding traffic (i.e. sitting on the sidewalk), loitering, being in a park at night, jumping the turnstile in the Metro, being drunk on the public domain, etc. (Bellot & Sylvestre, 2012). To illustrate the scale of the ticketing practices toward homeless people, between January 1st, 2006 and December 31st, 2010, 30,551 tickets were issued to 4,370 homeless people in Montreal, for an estimated total of 15 million dollars owed by the homeless to the City of Montreal. (Bellot & Sylvestre, 2012). It is not uncommon to see homeless people with more than \$5,000 in unpaid fines. In 2009, the *Commission des droits de la personne et des droits de la jeunesse*

⁶ In the past, I have also used the word « judiciarization » as a synonym.

du Québec (CDPDJQ), a public agency dedicated to the protection of human rights in Quebec, has recognized that homeless people in Montreal are often victims of social profiling, i.e. of a disproportionate and discriminatory enforcement of municipal by-laws governing public spaces through the issuance of tickets (Campbell & Eid 2009). Social profiling is to a certain extent the equivalent of racial profiling, with selective enforcement of the law based on social conditions (poverty) instead of race.

These tickets have weighty consequences, ranging from fines to administrative sanctions and sometimes even imprisonment in cases of non-payment of fines. In the end, if judicialization is a consequence of homelessness, it is also a key factor in keeping people homeless since the amount of penal debt is often a big hurdle to rehabilitation.

2012 Protest Movement

Protesters also have received their share of tickets in the recent years, especially during the student strike of 2012, which was met with an unprecedented pattern of repression in Quebec history (Ligue des droits et libertés et al., 2013). More than 3,500 people were arrested in the province of Quebec between February 16 and September 3, 2012 (Ligue des droits et libertés et al., 2013). Of those people, only 471 faced criminal charges, the rest either received tickets for violations of municipal by-laws (1,616) or violations of state legislations, e.g. the *Highway Safety Code* (817) (Ligue des droits et libertés et al., 2013). Those tickets were issued to protesters mostly in Montreal and mostly for gathering or demonstrating without having previously disclosed the event location or march itinerary to the police. Since the end of the student strike and until

December 2014, nearly 2,000 protesters were arrested, 92% of which simply for tickets (Ligue des droits et libertés, 2015a). It should be noted that the social climate was very different in 2013 and 2014 in that there were far less protests than in 2012. Yet, the number of people arrested is still considerable, and unprecedented. In the spring of 2015, Montreal was the theatre of a new wave of social protests and student strike. This time the movement was fighting against austerity measures and hydrocarbons. The movement was met with an incredible violence and police brutality.

The 2012 protest movement in Quebec, also called Maple Spring, Student Spring, or Student Strike, was a massive social movement in the province that started with a student strike to protest against higher education fee increase of Can \$1,625, which amounted to a 75% increase. From February until September 2012, post-secondary departmental students' associations organized democratic assemblies and voted to strike, i.e. to stop engaging in pedagogical activities, and notably to refuse to go to their classes (Ataogul et al., 2013). At the peak of the 2012 student strike, in March 2012, more than 300,000 students, which amounted to about 75% of the total population of university students in the province (ICI Radio-Canada, 2015), were on strike and in the streets, protesting the government. "It's a student strike but a people's struggle" as the slogan went. It was the largest and longest student strike in Canadian history.

Throughout the Maple Spring, the government and most of the mass media tried to spin the action as a *boycott*, i.e. as an individual action rather than the democratic and collective exercise of power that is a strike. But the student strike in Quebec has long and

well-established roots (Makela, 2015). In using the word boycott, the government was trying to reduce the students to consumers of education. In reclaiming their right to strike, something that had not be denied since the late fifties when the ultra-conservative Maurice Duplessis was prime minister of the province (Makela, 2015), the students were establishing themselves in organized political subjects engaged in a social struggle for greater social justice (Ancelovici & Dupuis-Déri, 2014, p. 9). Law professor Finn Makela writes:

[Since the 1960s and until 2012] there was a social consensus that a student strike was a legitimate mean of action. It was understood that the student strike brings a moral obligation to negotiate with the student representatives, or at least to acknowledge their demands. (Makela, 2015, p.317, my translation).

In fact, it is important to examine the 2012 student strike in its historical context. The student movement in Quebec is especially strong and dates back to the beginning of the 20th century, with an intensification of its activities in the 1960s (Lacoursière, 2008). The last fifty years saw several student strikes in Quebec, and some of them have had profound impact on the political and social landscape of the province (Lacoursière, 2008; Makela, 2015). To give only one example, no doubt that the student movement in the province has been instrumental in the fact that to this day, Quebec has the lower university tuition fees in the country (See Canadian Universities 2014).

Accessible higher education has not always been the norm though. Until a major education reform in the 1960s (following what is called the Parent Commission⁷), and in the wake of the Quiet Revolution that installed the welfare State, public healthcare system,

⁷ The Parent Commission was a commission of inquiry set up by the Québec government aimed at modernizing education system after centuries of domination by the Catholic church.

and the secularization of society in Quebec, only 13% of Francophones in the province received grade 11 education (Pigeon, as quoted in Green, 2012). Hence, until education was democratized and secularized (education was mainly the business of the Catholic church before the 1960s), higher education was only accessible to a few elites, mainly Anglophones. As a result, the socio-economic gaps between Anglophones and Francophones were striking. The Francophone man in Quebec in the 1960s was earning 52% of the Anglophone man's wages (Fortin, 2011). Robert Green (2012), high school teacher and activist, and author of the text "The conflict in context", explains:

The reason all of this is important to understanding the (...) [student] movement is that many Quebec students today have parents, grandparents, aunts and uncles who not only remember the Parent Commission and the many positive transformations it brought, but more importantly remember what Quebec was like before the Quiet Revolution. They remember the days when being a working class francophone meant that one should not even aspire to bettering one's lot in life through higher education. (Green, 2012, p. 89)

Hence, the student strike of 2012 was not only about the \$1625 tuition increase, it was about a strong, meaningful, accessible public education system, because this is important for more social justice and less inequality in the province.

Starting as a student strike in February 2012, the movement became larger and reached out to a bigger portion of the population in April and May, partly because of the intransigency of the Liberal government to acknowledge the students' demands and to negotiate in good faith with the student associations representatives. On Earth day (April 22nd, 2012), Montreal was the theater of the largest social protest in Quebec history. This protest cast a large net in terms of demands and it gathered a wide array of people: ecologists, anarchists, union activists, families, students, and their supporters wearing the

red square symbolizing the student movement. In total, between 250,000 and 300,000 people were in the streets that day (Guillemette, 2012). Then, on April 25th the night demonstrations started, under the theme “a demonstration every night until the victory!”: these night demonstrations were often met with violent arrests and police brutality. For days, a vague smell of tear gas was floating over Montreal at night.

In May, the movement reached another turning point, when the Quebec provincial legislative assembly adopted a special law with a very twisted title: *An Act to enable students to receive instruction from the postsecondary institutions they attend* (Law 12). Not only did the act suspend the Winter semester for the students on strike and extend it in September, therefore legislating the students back to school, the *Act* also provided for public space management, and banned any assembly of more than 50 people taking place in a venue accessible to the public and for which the organizers would not have given 8-hour prior notice of the date, time, venue, and route, if any, of the event. This law triggered public rage and uprisings and was openly defied. According to a poll conducted in May 2012, about 60% of Quebecers were against the *Law 12* (La Presse Canadienne, 2012, May 26).⁸ Hence, upon its adoption, the movement took a new form: the pots and pans demonstrations, *manifs de casseroles* in French.

Inspired by the *cacerolazos* in Argentina and Chile, the *manifs de casseroles* consisted of spontaneous noise-making exercises at a given time, from home balconies or porches, or

⁸ Contra: Lessard (2012). For yet another statistic, proving how the public opinion is hard to capture and easy to manipulate, see also ICI Radio-Canada (2012, May 25).

on the sidewalks and street corners, using kitchen utensils and pots and pans. The call for the pot and pan concerts in the city was for 8pm, everyday. If at first people stood on their balconies and on sidewalks in front of their apartments for a few minutes at 8pm sharp, soon tens of thousands of people from everywhere in the city took to the streets, spontaneously, banging on their pots and pans, and converging to a downtown plaza. The pot and pan concerts became pot and pan demonstrations, the *manifs de casseroles*. They continued for weeks and became a fascinating family movement, with people of all ages, including kids in pajamas, and grand-mothers with canes...⁹ The streets were animated by a collective symphony at 8pm in May 2012 and the manifs de casseroles led to various poetic scenes, like when one of my neighbors told her 2 year old daughter: “no sweetie, the spoon doesn’t go in your mouth... yes, on the pot, hit the pot with it”. It is also in May 2012 that we start to see banners and placard signs reading “rêve general illimité”, in a playful twist on “grève générale illimitée” (unlimited general dream vs unlimited general strike).

Just as the province adopted its law of exception, another legislative move was made, this time at the municipal level. On May 18, 2012, Montreal City Council decided to amend its *By-law concerning the prevention of breaches of the peace, public order and safety and the use of public property* (P-6) —commonly called P-6 because of its administrative codification number— in order to add two new sections. Basically these new sections state 1) that the authorities should be notified in advance of the itinerary of a demonstration, or else the assembly can be declared illegal and participants can be held liable to a fine, and 2) that any person who covers their face with a scarf or a mask or a hood without a

⁹ See this beautiful video to have a better idea: Battaglia, J. (2012). *Casseroles - Montréal, 24 mai 2012*.

reasonable motive is in violation of the by-law and liable to a fine. The Council also increased the fines for violation of any sections of *P-6* from \$100 to \$500 for a first offense.¹⁰

On August 1, 2012, as the protests were still going on every day, the government decided to call elections for September 2012. The popular movement had forced extraordinary elections. But this victory was not free of cost. If the 2012 social movement was historical, the repression of the movement and the activists was also historical and characterized by police brutality, violations of the freedom of expression, unlawful arrests, political discrimination, etc. The magnitude of the human rights violations was so sheer that three civil society organizations took upon themselves to document them and to call for many redress measures as well as public investigations. (Ligue des droits et libertés et al., 2013) They concluded that the authorities infringed on several constitutionally protected rights:

In 2012, Quebec lived through the longest and most extensive student strike in its history. The strike and social protest movements left in their wake the biggest wave of arrests in Quebec's history. They also led to unprecedented exploitation of Quebec's judiciary system and unparalleled discriminatory profiling in an attempt to repress the student movement and stifle, albeit unsuccessfully, the protests. (...)

In their massive and indiscriminate use of multiple weapons, gas, plastic bullets, stun grenades, horses, dogs and others, did the authorities infringe on freedom of expression and of peaceful assembly?

Did the huge numbers of arrests, the mass arrests during peaceful demonstrations, the across the board ticketing practices, and the preventive detention of hundreds of citizens constitute infringements on freedom of expression and of peaceful assembly?

The answer to these questions is yes. (Ligue des droits et libertés et al., 2013, p. 3 & 40, authors' emphasis)

¹⁰ I will come back more at length in Chapter 3 on the right to protest and the various constraints (and their merits) to that right.

In September 2012, with the highest participation rate in the 2000s election, i.e. 74.6%, the Liberal party was defeated by the independentist and traditionally slightly more leftist party, the Parti Québécois (DGE, 2012). For the age group 18-24, the participation rate was 62.1%, which amounted to a 26% increase (DGE, 2012). The fee hikes and *Law 12* were major electoral issues and had drawn the youth to the polls massively.

Soon after having been elected, the Parti Québécois, with Pauline Marois as the first woman Prime Minister in the province, repealed the despised *Law 12*, cancelled the fee hikes, and promised a big forum on higher education. The new amended by-law in Montreal, *P-6*, was maintained though.

In March 2013, after an education forum (controversial because free education was not on the table), it was decided that tuition fees would be raised, but at only a 3% rate. The government purposely did not call it a fee increase, but an “indexing”, i.e. a simple increase to follow the inflation rate (this advanced rationale is debatable, considering that the inflation rate was 0.7% in the province in 2013 (Institut de la statistique du Québec, 2015). Important demonstrations again erupted in Montreal. But in 2013, all protests were very rapidly controlled by the police, sometimes even before they would start and despite the fact they were peaceful, thanks to *P-6* and the swift enforcement of its itinerary requirement by the police force. I will come back on the question of the itinerary in chapter 3.

For a wide array of reasons which are beyond the scope of this dissertation, the Marois government, a minority government, lasted 18 months, and was defeated in April 2014, only to be replaced again by the Liberal party. With the Liberal Party, a center-right party, at the head of the current Quebec government, the province is now in the midst of severe austerity measures, some of which go exactly against what had been promised during the Spring 2014 electoral campaign. Talking about the proposed reforms in the k-to-12 education system, Robert Green is even dubbing the phenomenon a quiet counter-revolution, with the major gains of the 1960s being slowly taken away (Green 2015a, 2015b). In the Spring of 2015, occupations of educational buildings and governmental offices by student activists happened frequently and student and labor unions were mobilizing against cuts in public services, increases in utilities fees, and proposed wage freezes in the next round of negotiations for the collective agreements of the public sector. Thousands of students were on strike from late March until mid-April 2015.

Finally, I should add that those I call protesters in this dissertation are mostly but not exclusively student activists fighting against austerity measures. I call them protesters because they took part in a protest, which I define, following Babineau (2012) as a form of collective expression, which involves a temporary occupation of public space¹¹ and has a political dimension.

¹¹ Some protests do happen in privately owned public spaces or even on private property but this dissertation is mostly concerned with protests happening in the streets. For more details on the dichotomy between public and private spaces, see Collins and Blomley (2003).

Research Significance

Now that I have set the stage of this dissertation, let's come back to the opening photo and its significance. For one thing, it shows how Montreal is a perfect terrain to study the legal governance of various forms of occupation of public space by marginalized people.

What we see in the picture is two persons occupying public space. One is hungry; the other needs money to go to school. One is presumably doing a performance, she is protesting against something; the other is maybe there everyday, hungry everyday. Generally, only the man would be defined as a street person. According to Anderson and Snow (2003):

Most people use sidewalks for specific purposes: to get from one place to another, for exercise, window-shopping or a leisurely stroll. **Street people, however, use the same spaces for eking out a living and conducting their daily lives.** Thus, the boundaries between public and private are blurred, prompting those of us who use these spaces for more conventional purposes to distinguish ourselves from street people. Street people engage in at least three types of "out-of-place" public activities: economic, social and residential. (Anderson & Snow, 2003, p. 13, my emphasis)

I would add a fourth type of "out-of-place" public activities: political. There in this picture, the alleged protester and the alleged homeless person are not necessarily sharing the same reality—though homeless people and protesters are two "categories" of people that may overlap and are certainly not mutually exclusive—but they both engage in unusual activities in public space, and they are both policed for their uses of the space. They both receive tickets because they are deemed "out of place" (Cresswell, 1996). Hence, I contend that they both, at times, constitute "street people" that are seen as transgressors on the

public domain in Montreal; they are seen as little broken windows that need to be taken care of swiftly (Wilson & Kelling, 1982).

My dissertation makes three contributions to the literature on legal processes impacting both homeless individuals and student protesters. First, by connecting two bodies of literature on “street people” (the literature on the criminalization of homelessness and the literature on the criminalization of protesters and social movements), my research casts light on a certain form of social control, which aims at imposing a very ordered and pristine public space, one that doesn’t tolerate any disorder, especially any “political” disorder.

Secondly, I contend that banal and seemingly unthreatening and unimportant legal processes¹², such as those involved in the issuing and challenging of tickets in Montreal, can have a profound impact on the way we construe and construct public space, and therefore experience life in the city. Social control nowadays is enforced through multiple legal tools that are seemingly mundane (e.g. the ticket, and also other tools designed to apparently merely “manage the space”) but, as we will see, they nevertheless greatly threaten human dignity and other constitutionally protected human rights. Regulatory law at the municipal level is often overlooked in favor of constitutional or criminal law, which are seen as more important domains of law. Following in the footsteps of Riles (2005; 2011), Valverde (2012), Blomley (2011) and Latour (2004), my project, in scrutinizing the everyday

¹² I purposefully used the phrase legal processes here rather than “law”. Legal processes are more dynamic, fluid, open. Legal processes are the various mechanisms by which the law, i.e. the interaction between the municipal by-laws, their enforcement and their interpretation, is deployed.

elements of spatial urban governance, exposes the mechanisms at play and the different workings of the law in their specificity. It looks at the legal technicalities and their effects (Riles, 2005, 2011), exploring the “how” –and not only the “why”– behind the ticketing practices and paying attention to the mundane legal documents and their role in the making of law (see e.g. Latour, 2004).

Thirdly, in studying both the homeless and the protesters, I also challenge popular preconceptions of the desperate use of the streets by the homeless, and the rebellious use of the same streets by the protesters. Without romanticizing either of these groups of people, could it be that the non-conformist activities of some homeless people are an alternative form of democratic participation, offering us ways to re-imagine city life? And could it be that some activists are in fact forced into public spaces, through a lack of better channels to exercise their citizenship? The ethnographic data I gathered seems to indicate that the homeless and the protesters are not only suffering from the legal processes in which they are entangled; they are also both using them in a subversive way, as a means to claim legitimacy over their uses of public spaces. The ethnographic data also reveals that whatever the reasons are for occupying the space, they are deemed irrelevant by the municipal authorities (police, courts, city council members). For them, “out of place” activities are disorders, disorderly people are dangerous, and they constitute a slippery slope towards anarchy; they therefore need to be repressed. In other words, in the name of “space management”, tools of local governance are used to *banish* people that are seen as undesirable (Beckett & Herbert, 2010).

Finally, my research is relevant beyond Montreal, not only because homelessness and demonstrations are widespread urban phenomena both in the United States and in the rest of Canada, but also because the legal architecture in American and Canadian cities is similar (e.g. Valverde, 2012), and because my project sheds light on tools of urban governance that are by no means unique to the City of Montreal.

Outline of the Dissertation

This dissertation is about the local governance of public spaces in Montreal through ticketing practices. I am especially interested in how the homeless and protesters, two groups of marginalized people, are impacted by the tickets issued by the municipal police. I also look at how these two groups navigate the municipal legal system, and find spaces of resistance. Finally, I pay special attention to the political meanings homeless people and protesters attach to their uses of public space, and how these meanings can or cannot make their way to the courtroom as grounds for legal challenges that allow individuals and groups to redefine public spaces in more inclusive terms.

The next chapter, chapter 2, is entitled *Engaged Legal Ethnography at Home*. It explains the methodology of this doctoral research and my position as an engaged legal ethnographer in Montreal. Chapter 3, *Dealing with Protests and Homelessness, One Ticket at a Time*, weaves two parallel stories of judicialization of “out of place” populations. It delves more into the judicialization of homelessness and protest and details the “ticket stories” of a few homeless people and protesters. Chapter 4, *The Arrest is the Punishment* sets out to show how the tickets received by both homeless people and the protesters make their way

to the court after having been issued in the streets. It also engages with literature on broken windows theory (Wilson & Kelling, 1982; Coles & Kelling, 1997; Bratton, 1995) and the idea that process is the punishment (Feeley, 1992). It shows how the ticketing practices and associated legal processes construct a certain vision of public space based on order. Finally, the concluding chapter, *The Political Space of the Street*, teases out the political dimension of the various uses of public space by homeless and protesters and calls for an inclusive and diverse public space.

CHAPTER 2 – AN ENGAGED LEGAL ETHNOGRAPHY AT HOME

Introduction

On July 7, 2012, the car was fully packed, my eyes were wet with tears, and my heart was heavy as I was waving goodbye to the friends I had made during the past three years. I knew I would return at one point, I knew I would see my friends again, but I knew also that a chapter of my life was about to close. This scene might be familiar to many researchers who at one point left the “field”. But I was not leaving the field. I was in fact moving back home, back to Montreal, after 3 years in Southern California where I had started a PhD. And actually, I was going to the field. But what is “the field” anyway? It evokes a clearing, a flat terrain, a delimited ground, where culture “happens”. How can a metropolis like Montreal get to be known as “my field”? As Gupta and Ferguson write, noting the otherness of “the field”,

“going to the “field” suggests a trip to a place that is agrarian, pastoral, or maybe even “wild”; it implies a place that is perhaps cultivated (a site of culture), but that certainly does not stray too far from nature. As a metaphor we work by, “the field” thus reveals many of the unspoken assumptions of anthropology. (Gupta and Ferguson 1997, p.8).

And they continue:

The very distinction between “field” and “home” leads directly to what we call a *hierarchy of purity* of field sites. After all, if the “field” is most appropriately a place that is “not home”, then some places will necessarily be *more* “not home” than others, and hence more appropriate, more “fieldlike.” (Gupta and Ferguson 1997, p.13).

But my “field” was at “home”, which in 2012 was surely less controversial than at the time Gupta and Ferguson were writing. Indeed, I was going back home. Going back and going away at the same time. Strange sensation.

As I reflect back on this day and write this up, I am sitting at a desk, with the window open and no socks in my shoes on a mid-February day —needless to say I’m not in Montreal but back in Southern California again, for a kind of writing retreat. I can’t help thinking of Marilyn Strathern: “The [ethnographic] practice has always had a double location, both in what for a century now it has been the tradition to call ‘the field’ and in the study, at the desk or on the lap” (Strathern, 1999, p.1). For me, in a way the field is in my hometown (Montreal) and the desk is at my neighborhood coffee shop, McGill Law Faculty or even in my adoptive hometown, Long Beach, CA. Hence my ethnographic practice moves not only from the writing field to the research field, like all ethnographic practice (Strathern, 1999, p.6), but it moves between countries (Canada and the US) and also between disciplines (law and social sciences). I will come back to this movement and those multiple locations.

Methods

For my doctoral research, I set out to do a legal ethnography of the uses of public space by marginalized people in Montreal. In order to investigate the different ways in which the homeless and the protesters occupy public spaces and the legal responses to these uses (mostly tickets), I have combined legal research on the construction of public space by the city government and the court system, with ethnographic research among

different groups that are fighting for the rights of the homeless or for the defense of civil rights. I did volunteer work and participant observation with homeless people, activists, and their respective advocates (lawyers and non-lawyers), as they interacted with the municipal legal system.

First, from January 2013 until January 2014, I was volunteering about 10-12 hours every two weeks (one full day one week and a few hours the week after) at a legal aid clinic for the homeless. *Clinique Droits Devant* (this is the clinic's name, in English it would be "Rights Ahead Clinic"). It used to be part of the RAPSIM, a network that defends homeless people's rights, but it is now an autonomous organization. The Clinique provides legal aid and court accompaniment to people who are homeless or are at risk of becoming so, specifically helping them to deal with non violent criminal cases (shoplifting mostly) and non criminal cases involving tickets for minor offenses such as loitering, drinking alcohol in public, being drunk in public, misuse of public street furniture (chattels), being in a park at night, being noisy, etc. Through this volunteer work, I was able to accompany approximately 90 people in their meetings with prosecutors and 70 people on their court dates, observing each time how homeless people, their advocates, the crown prosecutors and judges, perceive the various legal processes triggered by the homeless' uses of public space. I had been assigned to the PAJIC (*Programme d'accompagnement justice pour les personnes itinérantes à la cour*, in English, Justice and Court Accompaniment Program for the Homeless) by the coordinator of the Clinique, who was clearly overworked and in need of extra hands. PAJIC is a relatively new programme of the municipal court that was launched to help former homeless people to deal more easily with the tickets they have

received during their “street life”. The programme consists in one or two (or more sometimes) meetings with the city prosecutor during which the housing situation, drug and alcohol consumption, social network, and future projects of the participant are discussed. If the prosecutor is satisfied that the person is on his or her way out of the streets, then he or she offers to withdraw the tickets. This deal is then confirmed by a judge, in a courtroom, at a later date, after another short meeting with the prosecutor (outside the courtroom), and on the basis of a letter written by the Clinique droits devant worker summarizing the meetings with the prosecutors. I had the opportunity to assist the PAJIC participants in their meetings, to work closely with the social workers running the clinic, to attend the coordination meeting of the PAJIC, and to generally participate in the activities of the legal clinic. For each PAJIC meeting I attended, I took two sets of notes: the official notes that would help me to write the letter to the judge, and my own ethnographic fieldnotes, most of the time scribbled on the margins.

A second aspect of my fieldwork was to participate in various initiatives documenting or challenging the repression of dissent in Montreal. Among other activities, I participated in a community-based project that entailed reviewing and analyzing more than 300 testimonies in order to document police abuses and rights violations during the student strike. On July 5, 2012, a joint call for testimonies was launched by three well-known Quebec-based organizations: Ligue des droits et libertés (Quebec Civil Liberties Union), Association des juristes progressistes (Progressist Lawyers Association) and the Legal Committee of the CLASSE, Coalition Large de l’Association pour une Solidarité Syndicale Étudiante (Large Coalition of Student Unions). The three organizations circulated

the call within their own networks, along with a brief template to help participants draft their testimony and to explain confidentiality rules. Verbal, privately written, and social media public testimonies were gathered and a small committee drafted the report. I was a member of this committee. The report was published on the web in April 2013 (Ligue des droits et libertés, the Association des juristes progressistes and the Association pour une solidarité syndicale étudiante, 2013) and a press conference and launching event was organized.

I also actively participated in the filing of a complaint of political profiling to the Quebec Human Rights Commission. This complaint was the initiative of a group of people who were arrested in a protest against police brutality held on March 15, 2013. I was at the protest but have been lucky enough to escape in time, just before the “kettling”¹³ (mass arrest) began. The 30-something arrestees who filed a complaint argue that they were arrested because of their political opinion and not on the basis of their action (hence the alleged political profiling). The Ligue des droits et libertés, an independent non-profit organization defending and promoting human rights in Quebec for 50 years, is representing the group of arrestees in their complaint. But the arrestees are mostly in charge and sovereign in the decisions regarding the strategy.

In addition to these two projects with activists, I have also co-organized with several affinity groups of activists a workshop on the legal procedures at the municipal court. The

¹³ Kettling is a police tactic of crowd control which consists in surrounding and containing the protesters in a limited area without possibility of exit. The protesters are then processed by the police (either they are criminally charged or issued a ticket). This tactic, although controversial, is common in several countries around the world. See CBC News (2012, May 24).

social worker in charge of the Clinique Droits Devant shared her experience of the municipal court and the legal processes initiated by the issuance of tickets with protesters who had been arrested during the student strike or in its aftermath, in 2013. I have also assisted several lawyers who were in need of legal research on specific questions with regards to the defense of the protesters. Finally, I am currently an active member of the committee “freedom of expression” of the Ligue des droits et libertés and one of the mandate of the committee is to protect the freedom to protest. With this committee, I have worked on various initiatives, including a popular education tool on the right to protest and a follow-up report on human rights violations during protests after the 2012 student strike. This second report, *Manifestations et répressions. Bilan sur le droit de manifester au Québec* (*Protest and Repression. A Survey of the Right to Protest in Quebec*) was released in June 2015. This activism indirectly informs my research, and my research indirectly informs my activism.

All in all, I developed close relationships with about twenty activists and legal advocates (which maybe by coincidence, or maybe not, were majoritarily women) and I interacted more informally with more or less fifty other activists and protesters and more than a hundred PAJIC participants. In these various initiatives, as a participant observer, I was able to take extensive notes on several aspects of the meanings attributed to the occupation of public spaces, and the legal strategies used by those who are criminalized for such occupations and by their advocates. I participated in various demonstrations (for a total of 7), attended several community-organized workshops on homelessness and on the judicialization of protests, and conducted countless observation sessions both in public

spaces (especially in Place Émilie-Gamelin, a park that is a gathering point for both homeless people and protesters) and in municipal courtrooms where the judges were dealing with tickets issued to members of these two groups. I have also gathered information found on several blogs or Facebook pages. Activists and non-profit organisations extensively use social media and the Internet as a way to network, and disseminate information. Interesting testimonies, pictures and updates were found throughout my fieldwork on social media.

In addition to the ethnographic field research portion of my project, I also benefitted from having conducted semi-structured (recorded and transcribed) interviews with activists who have been arrested for their political activities. I conducted these interviews in my capacity of research assistant for a Canadian research project on spatial restrictions directed by Marie-Eve Sylvestre, Nicholas Blomley and Céline Bellot. I also had countless informal conversations with homeless people, advocates, and activists at the occasion of my volunteer work, but those were not recorded, happening mostly on the spur of the moment. Because of the nature of my involvement with the organizations I was working with, it seemed like I would inappropriately add a burden on people if I were to ask them for interviews. I felt also like I was running the risk of altering my relationship with them if I was to conduct semi-structured interviews. Those kinds of interviews might potentially establish a distance and a hierarchy (researcher vs research subject) that did not fit with my engaged ethnographic approach, as I will detail in the next section.

Finally I also did documentary and legal research. I collected boxes of documents produced by the City or non-profit organizations with regards to the governance or the occupation of public spaces. Blueprints, reports, media release, newspaper articles, activist pamphlets etc. are as many artefacts that informed my ethnographic endeavour. I also browsed legal databases for case law dealing with interpretation of public space, and violations of by-laws by homeless people and activists. I read those legal decisions carefully and they provided primary material for the analysis of the legal construction of public space. The combination of ethnographic and documentary research allowed me to bring space to the legal forefront and to understand how the law has effects on the ground, and vice-versa.

My methodological choices, like all methodological choices, imply some trade-offs. My ethnographic commitment produced everyday knowledge about the uses of public spaces and municipal court practices, from the marginalized occupiers and advocates' perspectives. It is necessarily incomplete, partial. Moreover, to maintain the trust of the people I was working with, I neither interviewed nor did participant observations with police officers or city authorities. I can therefore only get indirectly at the latter's motivations and rationales for their social control of public spaces. I do think however that because of my extended immersion in the homeless and the activist scenes, I acquired enough situated knowledge to be able to describe what is happening in the streets, how it is happening and infer about why it is happening.

Admittedly, ethnographic research, especially the kind that I conducted, produces particularly messy accounts. While interviews would have possibly produced more clean-cut quotations and direct answers to questions, my observations, often done “on the fly” while volunteering, produced indirect data: for example, I have scribbles of quotes (rather than clean transcriptions of recorded interviews) taken while nodding with empathy to the homeless person I was accompanying to court, or keywords noted on the back of a political tract during a protest. Those jotting notes became more or less detailed fieldnotes, but they remain messy. Their messiness was counteracted by my profound and extended experience of the milieus I was studying (on the richness of participant observation, see Becker and Geer, 1957), as well as by the various documents, legal cases, social media writings and newspapers I gathered.

Concretely, I ended up with more than 500 files on my computer in two folders, respectively entitled “protesters” or “homeless people”, where I gathered newspaper articles, personal narratives, or other related documents. I also ended up with 90 letters that I wrote for the court (letters in which I was summarizing the meetings between the PAJIC participants and the prosecutors), dozens of notebooks detailing my observations at the Clinique droits devant and activist events I attended (7 protests and countless meetings and court dates). My analytic strategy to deal with this considerable amount of information was relatively straightforward: in order to have meanings emerge, I closely read my material and identified themes in the margins —with an elaborated colour post-it stickers system— or via the comment function of word or pdf. I then reorganized the themes (and then the material) in more specific ideas, building integrative memos that became the basis

of the following chapters. I should say also that at numerous occasions, the persons I was working with offered me their analytical perspectives, and helped me refine my analysis. For sure, the analysis started in the field well before its formalization at the desk. Finally, I have always tried to approach my material with an open and flexible spirit, with “ethnographic imagination” as Willis (2013) would put it.

Engaged Ethnography

The idea that the ethnographer is the one who sets foot on “a tropical beach close to a native village, while the launch or dinghy which has brought [him or her] sails away out of sight” (Malinowski, 1922, p.4) has long been repudiated and since the 1980s there is nothing revolutionary in doing ethnography in one’s own culture (see e.g. Messerschmidt, 1981; see also generally Marcus & Fischer, 1986 and Clifford & Marcus, 1986).

Yet, the dangers of “going native” (Hammersley & Atkinson, 2007, p.87; Frankfort-Nachmias & Nachmias, 2008), or in more politically correct terms, the dangers of “over-rapport” are still concepts that the ethnographer is criticized for, or at least warned against.

Over-rapport is a particular problem within ethnography, where researchers may spend long periods in close contact with the groups that are the focus of fieldwork, perhaps living and working within the group. The prolonged immersion within the social context being studied in order to explore behaviors and meanings, may lead to a loss of objectivity, sometimes referred to as “going native,” involving the adoption of the values, customs, and practices of the group. An example of the way in which over-rapport might be demonstrated includes identification with participants and the introduction of value judgments about their behavior, perhaps uncritically praising their achievements in the report of the research. (Ballinger, 2008)

Those critics are especially salient against those who do engaged or militant ethnographies, or activist research. D'Andrade, in a fierce defense of objectivity in research and a fierce critique of activist research, that he calls "moral models", writes:

"(...) moral models are counterproductive in discovering how the world works. This is not an argument that anthropologists should have no politics; it is an argument that they should keep their politics separate from the way they do their science" (D'Andrade, 1995, p.402)

Along with several feminist scholars and engaged ethnographers (e.g. Bourgois & Schonberg, 2009; Graeber, 2009; Juris, 2008; Coutin, 2002; Coutin, 2005; Hirsch, 2002; Coutin & Hirsch, 1998; Scheper-Hugues, 1995; Calavita, 2002), I disagree with these critics and I categorically refuse the pretense to objectivity. With my doctoral research, I attempt to challenge the idea that one cannot do good, rigorous ethnography while at the same time being an activist embracing the political goals of a social movement for social justice. "(...) [P]olitically engaged ethnographic practice not only allows researchers to remain active political subjects, it also generates better interpretations and analyses" (Juris, 2007, p.165-166).

Hence, if I am not striving for objectivity, I am nevertheless committed to accuracy. When ethnography is understood as a way of seeing the world, i.e. as ethnography-as-account, the deep engagement of the ethnographer with the research subjects is no longer a threat to good research, as some would put it, but it is an additional quality, and perhaps even a means to achieve good research (Coutin & Fortin, 2015). Marilyn Strathern (1999) writes that the ethnographic moment is "a moment of immersement that is simultaneously total and partial, a totalizing activity which is not the only activity in which the person is

engaged” (p.1). Total because the fieldwork experience is all encompassing, but also partial because it is only one portion of the double location of the ethnography. The rigor is found in this movement, figurative or literal, between those fields, and in the capacity to improvise. The ethnographer is the one who is dazzled by her data, ready to be surprised, open to collect a plethora of information and artefacts that do not appear immediately relevant. She is the one that is “open to being collected by the data” (Coutin, 2005, p.202). This engagement of the ethnographers, who must “be prepared to give some of their own agency over to that which they collect” (Coutin, 2005, p.203), is not a threat of too much closeness but a sign of rigorous research, especially when this practice is coupled with reflexivity once at the desk, the other location of the ethnographic moment. Improvisation and immersion “enhance, rather than detract from, ethnography’s accuracy” (Coutin & Fortin, 2015, p.75).

The engagement of the ethnographer with the research subjects can be illustrated by letting oneself being dazzled by the data but it can also be translated in a commitment to social justice and the deconstruction of research hierarchies (Coutin & Fortin, 2015, p.80). This again is no threat to the quality of the ethnography and rather almost amounts to a duty of the ethnographer. Nancy Schepper-Hugues (1995), who calls for a barefoot militant anthropology, talks about how her own informants got her accountable to her activist *companheira* (comrade) role: “they gave me an ultimatum: the next time I came back to the Alto do Cruzeiro it would be on their terms, that is, as a *companheira*, “accompanying” them as I had before in the struggle and not just sitting idly by taking field notes” (p.411). And she continues on the role of the anthropologist ethnographer:

Witnessing, the anthropologist as *companheira*, is in the active voice, and it positions the anthropologist inside human events as a responsive, reflexive, and morally committed being, one who will "take sides" and make judgments, though this flies in the face of the anthropological nonengagement with either ethics or politics. Of course, noninvolvement was, in itself, an "ethical" and moral position. (Scheper-Hugues, 1995, p. 419; see also Coutin & Hirsch, 1998; Juris, 2007)

Hence, I took sides in my doctoral project. I got involved in this project as an activist and a scholar. I have been since a long time involved in anti-globalization, social justice, and student movements, in Canada and in the United States, and as an activist I have always had strong views on the power of protests in public spaces. Hence, when I came back to Montreal after a few years in California, I was pulled in the local struggles and took on a very active role, volunteering with other activists (some of whom became very close friends) to document the repression during protests. I had also been involved in the defense of the homeless rights and the fight against their judicialization since 2004. I was still in law school at the time and during the summer of 2004 I started volunteering in a youth center as a legal information provider. Since then, I have always been close to the RAPSIM and the Clinique droits devant. Hence, when I heard in 2012 that the legal clinic needed someone to help them run the PAJIC program, I didn't hesitate and jumped in. As a scholar, I had identified sites and topics that I was interested in studying (public spaces in Montreal, municipal by-laws, various types of occupations), but as an activist, I decided to give my time according to the needs of the struggles, rather than only according to my own strict scholarly agenda. I did my best to be a *companheira*, and to practice "militant ethnography" (Schepper-Hugues, 1995; Juris, 2008). "Militant ethnography (...) refers to ethnographic research that is not only politically engaged but also collaborative, thus breaking down the divide between researcher and object" (Juris, 2008, p.20).

True to this tradition, you will rarely hear me speak of “my informants” or “my research subjects”. First, they are not “mine”. But more importantly, I prefer speaking of “the people I am working with”. I find this is an important distinction. Engaged ethnographic research is about building genuine relationships and joining the struggle, as a *companheira*. I like to think that I have relationships more than data. I see my research as being profoundly relational. And I am committed to that method, despite the messiness of the records it produces, as mentioned above. Plus, I believe that it makes for richer and more ethical research.

Hence, I was volunteering because I cared, but also because I could not imagine myself “sucking out” information without giving back. I was volunteering because I had the luxury of having time on my hands (doing doctoral research is a luxury when one is funded, even when one is only poorly funded!) and I wanted to make good use of that time, to advance the causes of those whom I was working with. In a context of austerity and major cuts in social spending, this donation of labor was especially welcome I must say. Finally, like Susan Coutin and myself write,

“[e]ngaged ethnographic research not only implies a commitment to social justice, but also potentially deconstructs research hierarchies such that ethnographers and the subjects of research are “in it together,” as partners. As a result, engaged researchers may distance themselves from the very concept of objectivity” (Coutin & Fortin, p.80).

So over the past 2-3 years, I have sometimes felt scattered, and overworked. I worked a lot. I was working with a lot of people, collecting a lot of information, and going with the flow of events that were happening. I was hanging out at the municipal court as

the trials were unfolding; working with activists on various labour-intensive initiatives as they evolved after mass arrests; working with lawyers who needed answers to specific questions but had no time to do the legal research because they were too busy with their case load (mostly comprised of activists having been arrested during the student strike); working at the legal clinic for the homeless that was trying to respond to the ever growing demand of the PAJIC; attending various events in solidarity, etc. As I was jumping from one place to another, collecting massive amounts of documents, I found myself often repeating to my roommate, who was sometimes confused by my schedule and the chaotic state of my office at home: “oh, it’s for my PhD...”. And she would sometimes respond, ironically: “it seems like everything is related to your PhD!”. She was kind of right. I did collect a lot of documents, pamphlets, articles, and I did work with a lot of people. And this was all “good for my PhD”, although I must confess it was not exactly clear at the time how it would turn out to be “good”.

I think this is precisely what Strathern meant, when she talked about “being dazzled”. Feeling lost in a sea of information, working numerous hours on an article for a blog, on the preparation of a workshop, or shredding files seem like irrelevant work sometimes. But this is what engaged ethnography is: theorizing issues in advance, joining the struggle, allowing oneself to be flexible, surprised and amazed, and reflecting back on it afterward. In the words of Paul Willis (2013):

But I insist that this pursuit of the “open arts” of ethnography is undertaken to discover materials of relevance to basic questions within the cultural world and ethnographic imagination of the ethnographer. It is that such materials are yet to be discovered, the *specific* theories yet to be developed, which makes it necessary to have the widest and loosest, ‘hunch-driven’ definition of ‘relevance’, not that

there should be no questions, nor that the world can somehow be directly presented.” (p.114).

Let me give another example here. A doctoral colleague once asked me how I was going about to recruit for interviews. As I proceeded to respond to his question, I realized that I did not really need “to recruit” for interviews. I knew the people I had to talk to – most of them at least– I was embedded in the milieu, and I was carrying out informal interviews all the time! I realized that I had in fact developed intense relationships with people over the past years. I have not been “recruiting for interview” (although there is nothing inherently wrong with that, even if this is not the choice I made, for the reasons explained above) because I have worked for/with a plethora of people, who, in the course of our work together, talked to me about various issues related to my doctoral research. That day, as I was trying to respond to my colleague, I jotted down this note in my journal:

This is engaged ethnography I think: immersion and exchange, in order to work towards a common cause and better understand the forces and processes at play. I might feel overworked and at lost sometimes in this sea of indirect information, but I am committed to it. I wouldn't want it any other way!

Yet, as engaged as I was (and still am), I was still a researcher, and not just an activist. For example, at many occasions I found myself taking two sets of notes in meetings... one for the minutes of the meeting, one for my research. A “mere” activist would not have taken “meta-notes” like I did, and in a way my role as a researcher distanced me from the position of an activist who is not also at the same time a researcher. Putting on my researcher hat and looking at the interactions with “outsider eyes”, I was sometimes literally drawing little boxes in my notebook during meetings, in order to signify that it was “researcher talk”.

In addition, I realize also that my position as a scholar, at the desk after the streets, puts me in a position of privilege. I have not been arrested or brutalized by the police, I am not rich but I am considerably more wealthy and privileged, as an educated white woman well surrounded by support networks, than the former homeless people and some activists I have worked with. And no question that there is some kind of “gap between the time of solidarity and the time of writing” (Juris, 2008, p.21, citing Routledge 1996:402). As Juris writes,

[i]f ethnographic methods driven by political commitment and guided by a theory of practice largely break down the distinction between researcher and activist during the moment of fieldwork, the same cannot be said for the moment of writing and distribution, when one has to confront vastly different systems of standards, awards, selection, and stylistic criteria¹⁴. (Juris, 2008, p.21)

This comes back again to the Strathern concept of the double location of ethnography. Hence as much as I wanted to reduce the distance in the field, it would be dishonest to deny that some amount of distance is always unavoidable; it is the essence of the endeavour of academic ethnography. In my case, the distance was one of double roles, one of socio-economic status, but also a more physical one, since as I mentioned, I went back and forth between Southern California and Montreal in the past few years. My home is in the field, or my field is at home, and my heart is definitely on the side of the struggles, but my laptop sometimes needed to travel to Southern California, where I could find an academic community (and warmer climes!) to help me make sense of my experiences as an activist

¹⁴ I should note here that some of my writing has been as an activist, notably the report *Repression, Discrimination and the Student Strike: Testimonies and Analysis* (Ligue des droits et libertés et al., 2013). This kind of writing though is not the one Juris has in mind. I must admit too that this kind of writing does not count easily as “academic” writing.

researcher. To help me take some time off from the struggle too, so that I could dedicate myself to writing. The ethnographic movement, literally and figuratively.

In addition to moving from French to English, from Montreal to Long Beach, from the field to the desk, I would also add that I have been moving from one discipline to the other. I am trained in law; it is my first academic identity, what I have learnt first, from when I was 19 until 23 years old. Law is also where I ended up, being now a law professor in the province of Quebec. But my graduate studies were in “law and society”, and I would now self-identify as a socio-legal scholar heavily influenced by anthropology. This double identity as a lawyer and a socio-legal scholar provided me this strange opportunity to be at once an insider and an outsider at the court, the legal clinic, or within the activist spaces. Being a lawyer and an ethnographer of the legal processes brought some tensions and I sometimes had to negotiate my two positions (i.e. seeing legal arguments with my lawyer’s eye —judging whether they were good, or bad— instead of seeing them as a mere social fact). This double role however became a strength; learning to move from one to the other, I could apprehend legal processes on their own terms and take them seriously. For example, as much as I draw on the work of the Marxist geographer Don Mitchell in this dissertation I believe that his characterization of the law is sometime falling into sweeping claims (“these laws seek simply to annihilate homeless people themselves, all in the name of recreating the city as a playground for a seemingly global capital which is ever ready to do an even better job of the annihilation of space” Mitchell 1997, p.305). Answering the call of Annelise Riles, I believe that my socio-legal training allows me “not to reduce [legal] technology to the politics, culture, history, or personalities surrounding it- that we take the

agency of technological form seriously, as a subject on its own terms, as the legal engineers among us do.” (Riles 2005, pp.1029-1030)

In addition, being a lawyer and an activist could also raise dual identity issues, although the practice of law goes more easily together with advocacy and activism. That being said, some activists are very weary of the law and especially of the lawyers, seeing the law as an oppressive social institution rigged in favour of the capital and the ruling class. I therefore also had to negotiate my role as an activist and a lawyer, sometimes showing more my activist side and letting go of the aura of expert in technical knowledge that comes with the “lawyer” title. Some other times, I tried to minimize my activist side to rely more on the authority and credibility of my legal title. “Yes barrister, I am a member of the Quebec Bar since 2007”, I found myself saying at a few occasions to Crown prosecutors as I knew that playing the card of the Bar would almost immediately give more legitimacy to my arguments.

Legal Ethnography

This negotiation of multiple roles brings me to a different kind of ethnographic engagement: engagement with the law in and of itself. Engaged ethnographic approach for me also translates into a deep commitment to studying legal processes on their own terms (see Coutin & Fortin, 2015). I pay attention to legal technicalities (Riles, 2005; Riles, 2011) because I think it is important to open the black box of law and study legal workings. I agree with Annelise Riles (2011) who argues that truly studying “legal knowledge as a phenomenon that is not simply reducible to (...) the produce of social and political forces”

allows us to conceive “law as part of a larger pattern of knowledge practices” (p.20). It is often not enough to say the law is oppressive; it is important to also show how it is oppressive. Like Mariana Valverde (2012), I believe that it is important to turn our “ant’s gaze” (p.6) (as opposed to bird’s view, which is also a pun inspired by Bruno Latour’s actor-network theory, *ant*) on “the areas of law that work without fanfare” (Valverde, 2012, p.7–8). “Hence Valverde’s engagement with the “everyday law on the street” reveals those areas of law that seem mundane and often remain invisible but nevertheless shape urban life” (Coutin & Fortin, 2015, p.81).

The fact that I pay attention to the small workings of the law (the devil is in the details!) is in connection with the “managerial justice” paradigm, as we will see in chapter 4. Examining the technicalities and the details of the procedures reveal the dangerous mechanics at play, under mundane appearance. As mentioned in chapter 1, under the appearance of inoffensive space management, serious exclusion of certain people happens, and I will argue this is related to the public space theory behind the application of the by-laws.

Conclusion

In conclusion, I believe, like Eve Darian-Smith, that :

legal ethnographers (...) are in a unique position to place themselves in new kinds of field sites, listen to and observe the life experiences and world-views of others, and begin to see with different eyes, hear with different ears, and feel with a new sensitivity. (...) This ability to appreciate the unexpected is vital if we are ever going to fully grasp the significance that law does not, and cannot, mean the same thing to all. (Darian-Smith, 2007, p.xviii).

Ethnography is a privileged mode of inquiry into law, and engaged ethnography is the ethical choice I have made. The following chapters are therefore partial truths (Clifford, 1986), coming from a totalizing experience (Strathern, 1999), which I hope will live up to the expectations of those I have work with, both in the field and in academia, in Montreal and in Southern California, in law, and in socio-legal studies.

CHAPTER 3 DEALING WITH PROTESTS AND HOMELESSNESS, ONE TICKET AT A TIME¹⁵

*“Police officers want to clear out the streets,
that’s why they give tickets”
A man in his forties, PAJIC participant*

Toxico-Tour – Seeing Montreal from a Homeless Man’s Perspective

May 4th, 2013,

It’s 9:45 AM, and I arrive at Cactus Montreal, on the corner of Sanguinet and Ste. Catherine. Cactus is a community organization that works with drug users, sex workers, and trans people. Its approach is pragmatic, humanistic and focused on harm reduction. Cactus is the meeting point for today’s Toxico-Tour, which is a walking tour organized by some students in Social Work at UQAM (a Montreal public university) in collaboration with Cactus. This activity is in fact a Jane’s walk and it is the first Jane’s walk that I have participated in. I know that these walks are inspired by the work and activism of urban scholar Jane Jacobs and that they are meant to be inclusive and participatory tours of neighborhoods on a walking scale. Dozens of these walks are occurring today and over the weekend in Montreal, and in many other Canadian cities. They are free, and open to all.

¹⁵ Portions of this chapter come from a paper I submitted to the Association for Political and Legal Anthropology Student Paper Competition. My paper was entitled “Homeless People in Montreal: In and Out of Spaces of Nonexistence”. I would also like to acknowledge the support of the UC Irvine Center in Law, Society, and Culture and its Peterson Fellowship program, which made the preparation of this chapter possible.

When I arrive, I recognize a few faces. One of the walk participants is H  l  ne,¹⁶ a social work student I worked with just a few weeks prior when we organized the launch of the report “Repression, Discrimination, and the Student Strike: Testimonies and Analysis”. Small world.

The man who is leading the walk is well known in the milieu of homeless activism. He is known as L’Oie (the goose).¹⁷ L’Oie is a man in his fifties and has spent a lot of his time on the streets in recent years. He worked as a trucker before he ended up on the street because of various problems with relationships and finances. In various forums, I have heard L’Oie comment on the number of tickets he has received and on the impossibility of his ever paying them. I’ve heard him talking about the rough aspects of life on the street but also the freedom and the fun of it! L’Oie is a funny and lively character and a very engaged citizen. I am delighted to see him leading this walk. What’s more, he seems to be in good shape this morning (I have sometimes encountered him intoxicated in the past.)

I am also happy to see Diane, a Cactus social worker. I know Diane because she, like me, works twice a month to the PAJIC. Diane is a really inspiring social worker who is always concerned with respecting the autonomy and agency of the people she works with. Diane is very close to L’Oie and she is there this Saturday morning as his moral support.

¹⁶ When not otherwise specified, all names are pseudonyms. Some of the pseudonyms were chosen by the participants themselves, some were made up by me.

¹⁷ I used a fake nickname, because it would be too easy to find his real identity based on his real nickname. L’Oie was somewhat of a public figure, often appearing in the media and speaking in public protests to defend the rights of the homeless. L’Oie died in June 2014 and it left a big void in the streets of Montreal and in our hearts.

After a few words of introduction about how this walk was planned to help us to see the city through the eyes of a homeless man, the 7 or 8 of us head south, prompted by L'Oie, who tells us jokingly to "Follow the guide!!" Our first stop is Viger Square. This park is a landmark for those homeless people who either refuse to go, or are denied access to the shelters. (If one has a dog, or is intoxicated, or is too late to register in the afternoon, one cannot access the shelters). The concrete structures of Viger Square provide some shelter from the rain, and a bit of welcome privacy as well, to the homeless people who occupy it. The police used to patrol this park quite heavily, sometime 2-3 times an hour at night. L'Oie was not specific with the date, but it seems that at a certain point the police started leaving the "camp" alone. Street workers have in fact told me that the police are now sending street people to Viger Square, and that this is the only place where they are somewhat tolerated.¹⁸ L'Oie mentions that it is a violent place and it is not uncommon to be beaten up by strangers or police officers in this park.

Leaving Viger Square, we head south on St-Denis, cross St-Antoine, and then make a left onto St-Louis. As we cross the street, L'Oie points out the security camera on a building. He then stops in front of a pink heritage house on St-Louis. He tells us a little bit about the history of the Maison Brossard-Gauvin, which was built in the 18th century, and comments that homeless people know the history of Old Montreal better than anyone because they take

¹⁸ I can't help thinking of this square as a de facto red zone, as described and advocated by the libertarian Robert Ellickson in his 1996 article. Ellickson, argued that chronic street nuisances — which occur "when a person regularly behaves in a public space in a way that annoys – but no more than annoys most other users, and persists in doing so over a protracted period" (p. 1169) — should systematically be controlled. Short of good police officers enforcing municipal norms, such chronic street nuisance, which include panhandling and bench squatting, should be controlled by public space zoning. He suggests to have three zones in the city (red, yellow, green) and chronic misconduct would only be authorized in the red zones. In other words, the good middle-class citizen would not be annoyed by the vision of poor people in most public space of the city.

the time to read the plaques. It occurs to me that the unique way that the homeless inhabit the city is like exiles; the city is familiar to them but they are excluded from it, in the manner of Agamben's 'homo sacer' (Agamben, 1998; Feldman, 2006).¹⁹

L'Oie tells us that he used to sleep in the park adjacent to this building. I realize that the presence of the security camera now means that this park is monitored and whoever sleeps there is more susceptible to receive a ticket for being in a closed park at night. We keep walking on St-Louis and L'Oie says a few words about the next building, the "Meurling Municipal Refuge" that was built at the beginning of the 20th century and was meant to provide shelter to the city's poor. As he is walking, L'Oie finds a can on the street that he sets aside, in a visible location so that a "poor person" (his words!) can find it. He then recalls how he once found \$50 on the street here.

When we pass by some tall, new condos, L'Oie tells us about the new millionaire residents in the neighbourhood, and how they keep complaining about the Accueil Bonneau, a homeless shelter located down the street from here. "It's a hundred year old place!!!" L'Oie

¹⁹ According to Agamben, the homo sacer, the sacred man, is literally the person that, after having been judged on account of a crime, may be killed by anybody but not sacrificed in a religious ritual. This limit figure is an individual who exists in the law only as an exile. Because the homo sacer owes his identity to Roman law, he is definitely tied to it. Yet at the same time he is excluded from the law itself, not being entitled to any protection from it, since historically Roman law did not apply to the homo sacer. "[The homo sacer] has been excluded from the religious community and from all political life: he cannot participate in the rites of his gens, nor (if he has been declared infamis et intestabilis) can he perform any juridically valid act. What is more, his entire existence is reduced to a bare life stripped of every right by virtue of the fact that anyone can kill him without committing homicide; he can save himself only in perpetual flight or a foreign land. And yet he is in a continuous relationship with the power that banished him precisely insofar as he is at every instant exposed to an unconditioned threat of death" (Agamben 1998:183).

says, implying that the poor and the shelter were there way before the millionaires decided to move in and gentrify the neighbourhood...

We continue our visit in front of Marché Bonsecours, a fine heritage building, and stop to use the restrooms. People who have spent time on the streets are the best ones to tell you where restrooms are available to the public in Montreal! As it happens, despite repetitive requests by homeless rights activists, public restrooms are extremely rare in the city, and one of the most common tickets homeless people get is for urinating in public.

As we walk west on St-Paul, L'Oie tells us a little more about his work with Toxico-Net. Toxico-Net is a daily paid job program. It is part of P.L.A.I.I.S.I.R.S. a support group and meeting space for drug users. P.L.A.I.I.S.I.R.S. is principally focused on civic involvement and popular education. I knew L'Oie had been involved in P.L.A.I.I.S.I.R.S. for a long time, and perhaps since it was founded. As for Toxico-Net, it is a community program set up in partnership with the City to provide those in need with temporary employment cleaning up the streets of Old Montreal. L'Oie explains how this employment allows the homeless to know and be known by business owners. On the surface, the program seems to create a win-win situation for businesses and the homeless that results in a better co-habitation in the neighborhood. Still, I am struck by a certain irony: if the judicialization of homelessness is often said to operate as a social cleansing of the streets (Mitchell, 1997; Sylvestre, 2010), in the case of Toxico-Net, it is those very individuals who are usually chased away (like dirt) who are mobilized to perform the physical clean-up of the streets...

We walk North on St-Vincent and then West on Notre-Dame, passing by the Palais de Justice (Court House) which L'Oie renamed the Palais de l'Injustice (Injustice house). I laugh, though this is a kind of black humour: I know all too well how the homeless people are treated by the criminal justice system and the injustices they daily suffer.

We are slowly making our way back downtown to Cactus. L'Oie, who seems to be getting tired (I am too), nevertheless keeps talking. He tells us about his "can run", where he would go to get cans and exchange them for money in convenience stores. As we pass by the Place de la Paix, a small urban park that is another hangout for homeless people, especially those from Indigenous communities, L'Oie tells us that this is where the "vendeux de roches" ("rock sellers") do business. I am pretty sure he means crack dealers but I always feel so ridiculously out of touch when people use street lingo for drugs...

We finish our walk back at Cactus and we all warmly thank L'Oie for this beautiful tour.

I say bye to Diane and Hélène, then hop on my bike to go home. We have covered 3 kilometers at a slow walk. It's almost noon now, and I'm getting hungry. As I bike home, I can't help thinking about how fortunate I have been in my life: I have easy access to food and a house to go back to... There was a time, not so long ago, when L'Oie couldn't claim as much.

Montréal la Répressive - Seeing Montreal from the Perspective of Activists

July 5th, 2014

1:05 PM. It's been a long time since I was last in Berri Square, or Place Émilie-Gamelin to use its official name. I am standing here along with a handful of other people who have gathered on this sunny warm July afternoon to attend "Montréal la Répressive", a special guided tour of the landmarks of political repression in the city. It feels good to be back in the square, but at the same time I am a little disturbed by my surroundings. Well, less disturbed than enthralled. This place always makes an impression on me. It is a vibrant, if relatively small, urban park in downtown Montreal. I used to live very close to here and the park has always fascinated me. Among other things, it is a common meeting point for homeless people and those involved in the illicit drug trade. No one has asked me "if I need anything" yet, but this is usually a common occurrence. It used to be a hangout place for punks and youngsters before the crackdown of the mid-2000s chased most of them off. Yet, it is still an important place for a wide range of people in need and an important stop for mobile soup kitchens. Moreover, as a gathering point for student protestors and other social movements, it has gained political significance in recent years. Situated in a very central place, it is next to the bus terminal, and to UQAM (Université du Québec à Montréal), an important francophone public university that was founded in the late 1960s to make higher education more accessible to Francophones in the province. It is also next to the National Library, Archambault (a multi-storey music shop which has become an institution over the years), and

Place Dupuis, a mixed-use complex hosting city government offices, legal aid offices, a big chain hotel, restaurants and boutiques.

Berri Square acquired its new name, Place Émilie-Gamelin, in 1992. Near the metro entrance located in one corner of the park, we can see a statue of Émilie Gamelin, who, in the first half of the 19th century, was known as the “prisoners’ angel”, visiting prisoners regularly to bring them food, support and consolation. Later, not far from the current Square, she set up a house for the poor and needy called the Asile de la Providence. There, she took care of the sick, the elderly and the needy, serving them millions of bowls of soup over the course of many years.

Still waiting for the tour to start, I observe some police officers approaching a group of middle-age quiet men, probably homeless, and handing them tickets, probably for “drinking in public”... and I can’t help thinking that Émilie must be turning in her grave! Today it is a very different sort of treatment that the poor receive on the site of the former Asile de la Providence...

I thought I had arrived late to the event but it is already 1:15 now and nothing has started... I should have known better: activist events never start on time! I do not know what to expect of this event, but when at one point a girl with over-sized pink plastic glasses attached to a fake plastic clown nose (!) hands me a piece of chalk to “embellish the landscape and express myself along the tour”, I understand. This tour is definitely more of an activist event than a touristy tour! What’s more, I recognize a few familiar faces, i.e. dedicated

activists that I see frequently at protests. I start chatting with Bobov, a man I worked with on different issues, mostly around police brutality. Bobov is an experienced activist who always has the most accurate analysis of police actions.

As I am looking for a place to sit while I wait, I bump into an old friend of mine I haven't seen in months. I will end up spending the whole tour with her, walking and chatting. My friend asks me to watch her bike while she goes to get coffee. As I stand there by myself, waiting with the bike, someone comes up to give me a little handout with the walk's itinerary. The man next to me looks at it, and exclaims: "oh, come on, 'my' kettle arrest isn't even on the tour!!". He seems a little disappointed, but mostly he's joking. Still he talks of "his" arrest location as a place that has symbolic meaning to him. Looking around, I have a feeling that almost everyone attending the tour has already been arrested in a protest in the past. "Definitely not a touristy thing", I'm saying to myself... I might actually be the most "touristy" person in this crowd since I have personally never been arrested at a protest (it's been close, but I've always managed to avoid it). I suddenly start to feel a little uncomfortable and self-conscious: people could think I'm an "indic" (French slang for someone who provides information to the police). People may have also seen me in protests with pens and notebooks, scribbling tirelessly. In order to avoid being perceived as an "indic", I developed the habit of being visible when interacting with long-time activists. My idea was that if people saw me being friendly with so-and-so, who were "recognized" activists, then my presence as a "non-indic" and a trustworthy individual would be established. In other words, if those recognized activists would recognize me, that would mean that I was one of them.

I become less worried about how people are perceiving me standing there alone with a bike when I remember that I was chatting with Bobov just a moment ago. He's a well-known activist; I should be fine. Yet, when my friend, also a long-time activist, gets back with her coffee, I tell her my concerns. She starts laughing: "You look a little bit like a reporter or an undercover today with your sunglasses and your hat!" I laugh too, and assume it will be fine.

The tour finally kicks off around 1:45 PM. The first stop of the day is Berri Square, where we are all gathered. The speaker reminds us that this territory is in fact land that had been stolen from the Mohawks. Good point. (It has become common, at least in activist circles, to acknowledge we are on Indigenous lands before speaking.) He then tells us how over the years Berri Square has become a "Carrefour de vie politique" (a hub for political activity), despite the "social cleansing" that occurs here on a daily basis (referring to the judicialization of homeless people, notably). He goes on to talk about his own experience of repression in Berri Square during the "Midnight snack" protest of 1996. I am familiar with this event because Bobov has told me about it at length (he had been arrested there) and also because I have read about it a while back (Thomas, 2000). In March 1996, an urban planning committee suggested the City should close the park at night in order to "clean" it. The next month, police started issuing tickets and fines to youth who were hanging out in the park. Police complained that panhandlers in and around the park displayed an aggressive attitude while city officers claimed that the punks who congregated here incited fear, deterred potential customers and negatively affected businesses in the area. Other sources maintained that the storekeepers' complaints were groundless, and that the police may in fact have fabricated them. To challenge this crackdown, a group of young people, supported by social

workers and other activists including the Food Not Bombs Committee and the Collective Opposed to Police Brutality (in French COBP), organized a peaceful civil disobedience activity and occupied the park on the night of July 29th, 1996. As a result, 70 people were arrested, detained several hours, and charged with the offence of “being in a park at night”. Interestingly enough, those who decided to plead not guilty to the charge were acquitted on the grounds that a proper by-law had not yet closed Place Émilie-Gamelin at night. And in 2011, following a class action filed by the group of arrestees, a court ordered the city to compensate the plaintiffs. This decision was confirmed by the Court of Appeal in 2013, although the damages owed to the plaintiffs were reduced (Montreal (Ville de) c. Kavanaght, 2013).

The speaker has a lot to say and his presentation lasts 15-20 minutes. The crowd then is invited to walk through the park, turning left onto Maisonneuve (in front of the Public Library) and then right onto Sanguinet, which we follow up to Ontario. Significantly, as we turn onto Sanguinet, people want to “take the streets” and walk in the middle of the road rather than on the sidewalk. Is this a protest or a guided tour? It’s unclear. At any rate, the police are monitoring us and we are soon followed by four police officers from the mediation team, as we can identify from their red caps and yellow pinnies. Really, it would be too ironic to get arrested on a walk that was meant to show police repression of activism...

Before long, we are at the Cegep du Vieux Montréal, a higher education institution (Cegeps are pre-University, post high school education institutions in Quebec), known for its long tradition of producing social justice activists. The cops are at a distance, and someone I

don't know speaks about repressive policies in educational institutions during the student strike. This stop is shorter than the last one and when it is over, our small group — there are maybe twenty of us now — heads for the municipal courthouse, passing by Viger Square. As we walk, someone takes the megaphone and mentions that Viger Square is a site of social profiling, and another man walking next to me says he has heard that once the new hospital they are building in this vicinity is completed, the square will be turned into a commercial center. I'm worried that if Viger square disappears, there will be literally nowhere else to go for marginalized people in the downtown.

Our third stop is at the Municipal Courthouse, the site of an ongoing saga where protesters have been challenging the tickets they have been issued under city by-law P-6 for participating in an unlawful protest (By-law Concerning the Prevention of Breaches of the Peace, Public Order and Safety, and the Use of Public Property, "P-6"). We sit on the steps in front of the building's Gilford street entrance, and I take this opportunity to put on another layer of sunscreen, offering some to my redheaded neighbor who looks quite sunburnt. It's pretty hot and we're directly under the sun. (It seems apt that we are in those conditions... just like the homeless and the protesters, who are in the streets, rain or shine!) The speaker at the Municipal Court describes the history of P-6 in Montreal, dating back to 1969. She calls the court employees the "lackeys of the City", implying, I think, that they don't just objectively apply the law but are working at the behest of the ruling class to serve its interest.

We make our forth stop not far from the Municipal Court, at the provincial Courthouse. It is here that more serious offenses are tried. Before the two COBP activists who are set to

As the speakers speak here make their presentation, the tour organizer endeavors to attract the tourists and passers-by, calling like a circus announcer in a sing-song voice: "Come, come join the tour to learn more about the hot spots of political repression in Montreal!" People stare at our little group, but no one joins us. Oh well. Bobov then speaks first of his experience with COBP. He recalls that on March 15, 2002, the protest against police brutality was stopped quickly and 371 people were arrested and charged for unlawful assembly (s. 66 of the Criminal code). In those days, tickets were not issued to protesters: instead people were arrested and criminally charged. On that particular day, they were then transferred to the police station and locked down in overcrowded holding cells for 24 hours before they could see a judge. As Bobov is telling the story, I remember reading a chapter that he wrote in a book on this very subject. March 15, 2002 was kind of a game changer in protest policing and protest judicialization in Montreal. The legal proceedings in this case were so costly and time-consuming for the government that nowadays it is rare for the police to quash protests with criminal charges. Instead, they prefer to resort to by-law infractions and to issue tickets.

When Bobov is done, a second speaker stands up and addresses us on the steps of the Court House. Bobépine is a well-known anti-police brutality activist in Montreal. She is young, in her early twenties maybe, has colored hair (it was pink that day if I recall accurately) and for as long as I have known her she has adopted punk culture and punk fashion. I will learn later today that she has been an activist since she was 13 or so, so one could say that she was raised and came of age in anarchist and activist circles. She talks about March 15, 2014, arguing that the police used scare tactics and set the activists up that day. Unlike in previous years, the protest was scheduled to be held in Villeray, a neighbourhood that is maybe an hour

(walking distance) north of the usual rallying point at Emilie-Gamelin Square downtown. But it appears that a few days before March 15, the police visited residents in the neighborhood and told them not to go out on March 15 “because it will be very dangerous in the streets”. After this, some 300 people were arrested on the 15th, when the protest barely started. Bobépine claims the police had planned this intervention long in advance and that they had instigated fear among the population. She argues that these arrests were clearly the result of political profiling (I happen to know there is a class action before the court for this incident and the lawyers who are presenting it have told me they will argue political profiling). Bobépine goes on to relate her own personal experience of political discrimination. In the last few months, she has been harassed and assaulted by police officers who recognize her on the streets. The media jumped on her case and it has been very difficult to cope with all this harassment and media attention (plus, she’s still suffering from her police-inflicted injuries). Being recognized by the cops on the streets is a phenomenon I’m familiar with: a number of homeless people and some sex workers, who spend most of the time on the streets and encounter police officers daily, have on multiple occasions told me terrible stories of harassment.

Our next destination is Victoria Square, which was renamed People’s Square during the Occupy Montreal movement in October 2011. A man describes how the protesters’ tent city was evacuated following an eviction order, and as he leads into this he takes a moment to recall the positive aspects of living at the camp, such as the people’s kitchen, the meetings and discussions, the artwork, and the connection with a global movement... He also refers to some of the problems within the camp involving the security, the hygiene, etc... When the camp was

ultimately dismantled in November of 2011, the occupiers felt betrayed by the City, which had led them to believe it was ready to work with them and negotiate the terms of their occupation. No tickets were handed out the day of the eviction, but lots of material was destroyed. Interestingly, the speaker makes no mention of the problems involving cohabitation with some homeless people within the camp (see Fortin, 2015, for more details).

It's about 4 PM and because the tour is starting to drag on and the crowd is shrinking, the organizers decide to stay here while they talk about another case of repression that occurred in a different part of the city. Bobépine picks up the megaphone again and tells us about the Overdale/Préfontaine Squats which she was active in when she was 13. In July 2001, hundreds of activists entered the Overdale building and decided to occupy it to draw attention to the housing crisis that was then rampant. Following negotiations, the mayor gave the green light to the activists to squat another city-owned building known as the Préfontaine Center, and the occupation lasted until October of that year, when it was dismantled. That squat was and still is an important example of autonomous and self-managed collective experience.

It is already 4:30 PM and I have to leave and miss the two last stops. The group has shrunk anyhow, and there remains only a handful of participants on the walk. I say bye to my friend and head to the metro. Lost in my thoughts in the metro, I silently review all the other sites of repression in Montreal... St-Louis Square, which saw a "clean-up" of the undesirable population in the 1990s, Cabot Square where Indigenous homeless people are frequently chased away, the corner of Ontario and St-Denis where a man struggling with mental health

issues was shot dead by the police, and metro Berri, where the repression of homeless people occurs on a daily basis. I ask myself whether the repression of homeless people is also a form of political repression and I wonder how the organizers of the walk chose the spots we visited and how myself would go about organizing such a tour of the city. It turns out that the organizers have given me lots to think about.

Public Spaces: Regulated Spaces

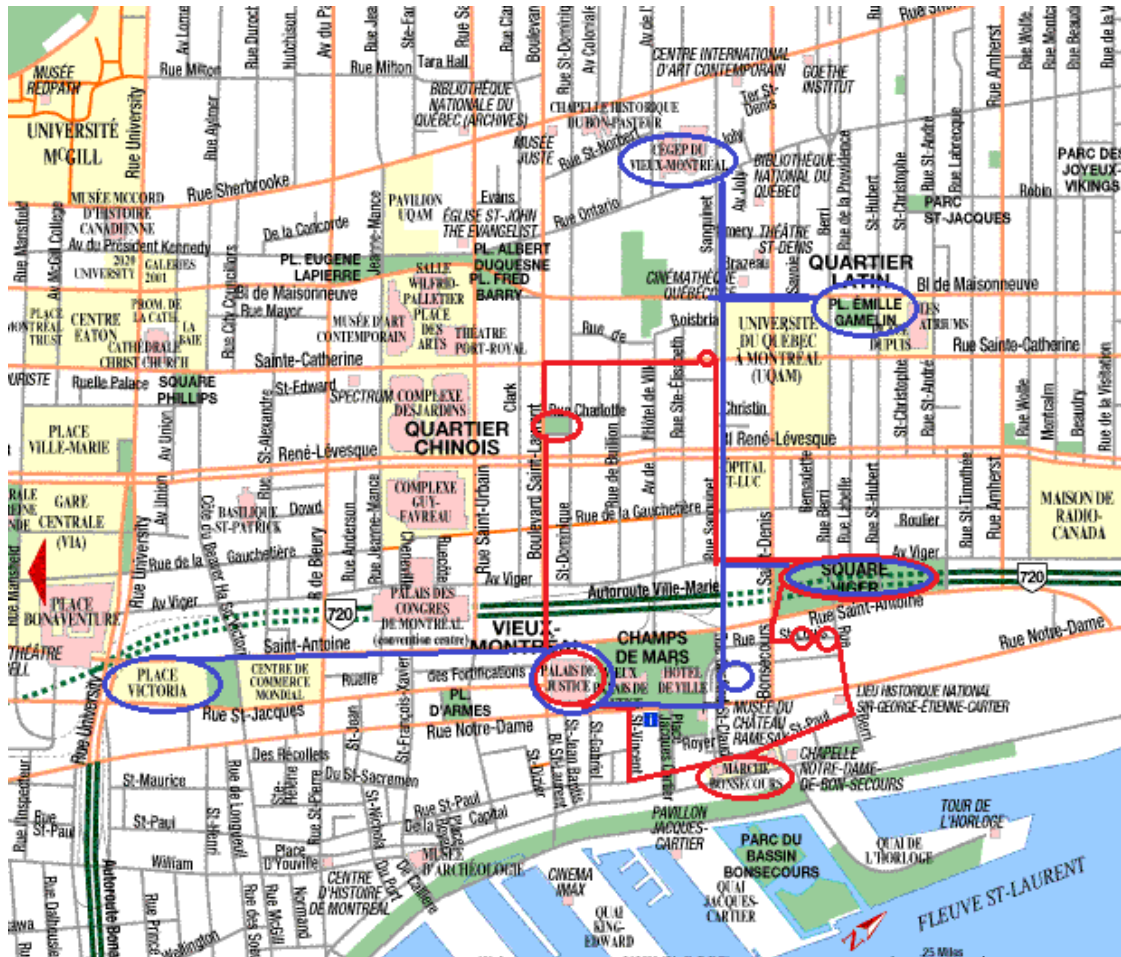


Figure 2 Map of the two walks
(Montreal la repressive in blue and Toxico-Tour in red)

These two parallel –and rather long– vignettes show how people’s lives, especially if they are homeless and/or protesters, are inextricably linked to geographical locations in a city. The narratives evoke issues such as gentrification, sense of place, habitus, police discrimination, social cohabitation, inequality, judicialization, freedom of expression,

survival, trajectory, historical landmarks, injustices, and more. It is in fact noteworthy how the itineraries of the two tours somewhat overlap. Both tours covered portions of downtown and Old Montreal and both stopped at the Provincial Courthouse, which is an important symbol of the entanglement of both the protesters and the homeless with the justice system. The similarities between the two tours are not really surprising, considering that both protesters and homeless people need high-density places to meet their needs, which could be broadly defined as getting their respective demands (be they for spare change or social justice, or both) heard by the greatest amount of people. Hence, spatial experiences of the law in the city by homeless people and protesters tell us much about the normative regulatory logic that is at play in public spaces. (For example, the repression is more important in places where disorders are seen as more threatening, like downtown). As Blomley and Collins (2003) write, “if we want to make sense of regulations, we need to know something of the dynamic, material contexts in which they are (...) enforced” (p. 41). The above vignettes spatialize the judicialization that burdens marginalized populations; they also provide socio-spatial perspective on municipal by-laws. This is because public spaces are also regulated spaces, as we will see in the next section.

Public spaces in Montreal, as in many other North American cities, are heavily regulated by city authorities (e.g. Seattle (Beckett & Herbert, 2010); Vancouver (Blomley, 2011); Toronto (Chesnay, Bellot & Sylvestre, 2013), Ottawa (Sylvestre, Bellot, Couture-

Ménard & Tremblay, 2011), New York (Vitale, 2008) and Berkeley (Mitchell, 2003)).

Examples of laws governing what one can and cannot do in Montreal public spaces include by-laws concerning *Noise* ("B-3"); *Dog and Animal Control* ("C-10"); *Peace and Order on Public Property* ("P-1"); *Parks under the Authority of Montreal City Council* ("B-10"); *Parks* ("P-3"); *the Prevention of Breaches of the Peace, Public Order and Safety, and the Use of Public Property* ("P-6"), *Cleanliness and Protection of Public Property and Street Furniture* ("P-12.2"); *Civic Behavior, Respect, and Cleanliness* ("CA-24"),²⁰ *the Terms and Conditions on the Possession and Use of Any Transit Fare Issued by the Société de Transport de Montréal* ("STM R-105") and *the Standards of Safety and Conduct to be Observed by Persons in the Rolling Stock and Buildings Operated by or for the Société de Transport de Montréal* ("STM R-036").

These by-laws prohibit behavior such as:

- Making noise, clamors, cries or any other forms of uproar that can be heard outside and that constitute disruptive noise contrary to peace and order (B-3, s. 9 (4); fine: \$100)²¹
- Keeping a dog without a leash (C-10, s. 14 (4); fine: \$100)
- Keeping a dog without a licence (C-10, s. 2; fine: \$100)
- Not immediately removing the feces discharged by dogs and disposing of them in a sanitary way (C-10, s. 24; fine: \$100)

²⁰ This by-law is only applicable in Ville-Marie borough, which is downtown and includes Berri and Viger squares. This Ville-Marie by-law precedes R.B.C.M. P-12.2.

²¹ The fine indicated for each of the offence is the minimum fine for a first offence for a physical person (as opposed to a corporation), not including administrative fees which are in the range of \$137 for a \$500 ticket.

- Impeding or obstructing pedestrian and vehicular traffic by standing still or loitering on public thoroughfares and places (P-1, s. 1; fine: \$100)
- Lying or loitering drunk (P-1, s. 2; fine: \$50)
- Drinking alcoholic beverages on public property (P-1, s. 3; fine: \$100)
- Being in a closed park (at night, most often between 00h00 AM and 06h00 AM) (P-3, s. 3; fine: \$100)
- Assembling in parks or on other public property so as to disturb the peace, public order and safety (P-6, s. 2; fine: \$500)
- Assembling without giving the itinerary (P-6, s. 2.1; fine: \$500)
- Participating in an illegal demonstration (P-6, s. 6; fine: \$500)
- Urinating or defecating on the public domain (CA-24, s. 20; fine: \$250; and P-12, s. 2 and 3; fine: \$60)
- Dirtying pavements (CA-24, s. 11; fine: \$125; P-12, s. 2; fine: 60\$)
- Misusing street furniture (CA-24, s. 28; fine: \$250; and P-12, s. 20; fine: \$60)
- Obtaining or attempting to obtain a trip on public transport without paying the fare (STM R-105, s. 57; fine: \$150)
- Not retrieving and retaining the fare media as evidence of payment of a trip (STM R-105 s. 6; fine: \$150)
- Behaving in any way that hinders or impedes the free circulation of people within a building owned or operated by the STM (i.e. a metro station) (STM R-036, s. 4 (a); fine: \$75)

- Lying on or across a bench, on a seat or on the ground, sitting on the ground or occupying the place of more than one person; (STM R-036, s. 4 (c); fine: \$75).

City police can also rely on another potent legal tool to control behavior in public spaces: the *Highway Safety Code*. The provisions of this legislation allow police to give tickets not just to motorists but also to pedestrians and cyclists for offences including jaywalking, crossing a street without complying with traffic lights, dealing with the occupant of a vehicle (e.g. squeegeeing or panhandling at street corners), and riding a bike without the required reflectors, etc. (fine: \$15).

So if we read the by-laws literally, we may conclude that on Montreal's public domain, one should walk, whisper, be sober, wait for the green light, cross at street corners, walk his or her licensed and leashed dog in proper places, be in bed (or at least not in parks!) between 12 AM and 6 AM, and, if resting somewhere, only do so by decorously sitting on a bench for a few minutes! (Sylvestre, 2010; Thomas, 2000) It is noteworthy that, as we can see from the list, being homeless is not defined as an offence; nobody can get arrested for the mere fact of being homeless, and in a similar vein protesting in the streets is not an offense per se either. But, as Randall Amster (2004) says, "If you want to eliminate a particular social class or subculture or deviant group, locate some behavior that is largely unique to that group and make it illegal" (p. 116). Anatole France (1894), writing long before Amster, made the same point, stating that "the law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread" (p. 118, my translation).

However, in earlier days, to be vagrant in public space in and of itself was a crime. William Chambliss is perhaps the first author to have studied vagrancy laws from a socio-legal perspective. In 1964, he wrote an influential piece called "A Sociological Analysis of the Law on Vagrancy". In this article, Chambliss provides the sociological context surrounding the various historical changes in the Anglo-American law on vagrancy, which as early as the 14th century made idleness and the refusal to work a punishable offense. Chambliss (1964) connects the labor dynamic to the laws and for him:

There is little question but that these first statutes were designed for one express purpose: to force laborers (whether personally free or unfree) to accept employment at a low wage in order to insure the landowner an adequate supply of labor at a price he could afford to pay. (p. 69)

However, the focal concern of the laws changed over the centuries: with the breakup of feudalism and as the labor and social context was evolving, the vagrants targeted by the laws became an expanding category of undesirable people with "criminalistic potential". This change occurred as a new powerful interest group replaced the landowners and demanded protection. Vagrants were becoming undesirable not because of their idleness, but because of their supposed likelihood to commit crime.

Chambliss' conflict analysis proved tremendously important for future studies of the criminalization of the poor. Writing some 25 years later, radical criminologists Barak and Bohm (1989) argue in the same vein: "vagrancy and curfew laws, (...) and identification of vagrants and homeless people as "criminals" and a threat to social order, reflect the needs

to control, regulate, or surveil the marginal classes of capitalist accumulation and to resist reform and expansion of the welfare state” (p. 278).

Beckett and Herbert (2010) describe in their book *Banished: The New Social Control in Urban America* how vagrancy laws have been struck down by the courts because of their vagueness and over-breadth. But according to the authors these laws have now been replaced by what they call civility laws, which are presented as being less discriminatory because they control public spaces instead of people. They write: “Unlike vagrancy laws, however, these criminal laws proscribe specific behaviors (e.g. sitting) rather than status (being transient or homeless)” (p. 14). But since some of those civility codes have also been found to be unconstitutional, cities have crafted new social control practices (e.g. red zones and creative application of trespass law) that rest upon a mixture of civil, administrative and criminal laws, and not only on the typical civility codes to control the “undesirables”. So at the end of the day, the homeless remain banished from certain spaces in the city (Beckett & Herbert, 2008; Beckett & Herbert, 2010). As Feldman (2006) writes, “Whereas vagrancy statutes stressed the need to incorporate the idle into the civilization of productivity, panhandling and sidewalk-sitting laws seek to exclude abject poverty from “prime” consumptive spaces” (p. 43).

In the past two decades or so, several scholars have written on the connection between homelessness and the regulation of public space, and many have emphasized the spatial underpinnings of social control. For example, Marxist geographer Don Mitchell (1997) underlines the role of the law in the oppression of homeless people and the

protection of the powerful classes, arguing that public space in our cities is annihilated by law in the context of globalization, capital mobility and competition to attract long-term investments in fixed capital. Mitchell goes even further and contends that anti-homeless laws —such as those prohibiting actions that the homeless *must* do in public spaces (eg. sleeping, urinating, panhandling)— are not only annihilating the spaces in which homeless people must live but are annihilating the persons themselves. His argument is that anti-homeless laws reflect and reinforce the exclusionary sense of modern citizenship and that the discourse surrounding it is tainted with urban aesthetic (landscape) concerns. “Image becomes everything” and cities “prostrate themselves before the god Capital” to induce “Him” to come and stay (p. 304). He concludes rather powerfully in these terms:

Indeed, anti-homeless laws indicate the degree to which the public sphere, modelled as it is on the palpable fears of the bourgeoisie, has become less a place of critique, debate, and struggle, and more an arena for legitimizing a political economy – and landscape – so brutal as to convince us that calling for a pogrom against homeless people is just. (Mitchell, 1997, p. 328)

Liberal author Jeremy Waldron (1991), a well-known American law professor, frames the issue in a different way: he focuses on the question of freedom and criticizes the anti-homeless ordinances for their illiberal character. In a famous article, he argues that these regulations prohibit the homeless from being free, and in the end from simply existing. He posits that in order to exist, one needs to exist somewhere. One cannot exist in a spatial vacuum. Homeless people are by definition people who do not have access to private spaces without permission from the owner, and they are therefore forced to be in public space if they cannot obtain such permission. Humans, in order to exist, must also perform certain actions and meet certain needs, like eating, sleeping, urinating, and washing themselves. If they don't get authorization to perform these acts in a place

governed by private property rules, then homeless people will, as a matter of survival, be forced to perform them in public spaces. But if sleeping and urinating are prohibited in public spaces, then they are confronted with the stark choice of acting illegally to ensure their survival, or of dying. As Waldron writes:

Since private places and public places between them exhaust all the places that there are, there is nowhere that these actions may be performed by the homeless person. And since freedom to perform a concrete action requires freedom to perform it at some place, it follows that the homeless person does not have the freedom to perform them. If sleeping is prohibited in public places, then sleeping is comprehensively prohibited to the homeless. If urinating is prohibited in public places (and if there are no public lavatories) then the homeless are simply unfree to urinate. These are not altogether comfortable conclusions, and they are certainly not comfortable for those who have to live with them. (p. 315)

In the end, Waldron exhorts us to see homeless people as agents, as “*persons* whose activity and dignity and freedom are at stake” (p. 324) because of the law.

Legal geographer Nicholas Blomley (2009 and 2010) however cautions us against framing these arguments in mere liberal terms. He criticizes Waldron for directing his anger only at public law while obscuring the dramatic impact that private law and especially the geographies of property exert on homeless people’s lives. For Blomley, the homeless are not outside property, as Waldron argues, but they are overly entangled in it. Blomley (2009) calls for a greater recognition of the role of property rules in the production, the regulation and the legitimization of homelessness. After demonstrating how property interests not only drive people from their homes through eviction but also drive them into illegality through the influence they exert in the drafting of anti-homeless legislation, Blomley (2009) calls for a “more expansive politics of hope” (p. 586), one that goes beyond a mere critique of anti-homeless ordinances. He writes:

If we wish to prevent the “torture” under which the homeless live, halting the punitive regulation that proscribes their lives is a first step. But if the proscribed condition of the homeless can be partly explained by the geographies of property, one solution is to remake those geographies. (p. 586)

More locally, in the context of Montreal, the judicialization of homeless people has also been a topic of interest for socio-legal scholars. For example, Ghyslaine Thomas, in a chapter published in 2000, listed and analyzed the various by-laws governing public space and private property in Montreal. Based on a case study of the transformation of a specific public space in Montreal (Berri Square) and the judicialization of activities in that space at night, she concluded that:

Every form of behavior a free person could exercise in one’s home, such as sleeping, being idle, lying down, being drunk, or meeting other people, becomes a risky form of behavior for those who do not have access to private space. This kind of regulation forces homeless people to hide and it allows the rest of the population to bury its head in the sand. (p. 308, my translation)

Urban scholar Michel Parazelli’s work on issues of cohabitation in public spaces in Quebec City and Montreal has also greatly contributed to the field. In a recent study conducted for the benefit of the Ministry of Municipal Affairs and Land Occupancy, Parazelli and his team examine how management strategies vary depending on the perceptions that the actors have about public space and about homelessness. There are the ecosanitary approach (marginalized people are nuisance in public places and should be expelled); the salutary approach (marginalized people should not have to suffer by live on the streets and should be rehabilitated for their own good) and the democratic approach (in the pursuit of social justice, public spaces are open spaces for the exercise of citizenship and marginalized people must not be excluded). He concludes that management practices in Montreal span a continuum ranging from expulsion (via judicialization and repression) to dilution (via

activities bringing more affluence into public spaces to “dilute” the marginal populations) and finally to inclusion (via activities where marginal populations are empowered as full citizens). He calls for many courses of action to achieve a better management of public space and in his view the first priority is to promote a public exchange of opinions, making sure to include the perspectives of marginalized people so they can participate in the conversation about how to arrive at a sane cohabitation in public spaces in democratic ways.

Two other experts on homelessness and public space in Montreal are Marie-Ève Sylvestre and Céline Bellot. By way of extensive quantitative and qualitative research (for a summary of their multiple research projects see, Bellot & Sylvestre, 2012), they have studied the phenomenon inside and out. They conclude that the targeting of the homeless through various forms of civility codes can be explained by the extreme visibility of this segment of the population (Bellot & Sylvestre, 2012; Sylvestre & al., 2011). They argue that that the criminal justice system, as opposed to social policies and public health measures, is the number one tool nowadays to intervene towards the homeless (Bellot & Sylvestre, 2012). Marginal and at risk populations are no longer protected but repressed, with a view to disciplining and hiding a nuisance (the homeless population) that is seen as altogether too visible in the public space (Sylvestre & al., 2011). But once they are entangled in the criminal justice system, it is striking how the homeless become invisible. In the end, underlining the multiple rights violations the homeless are subject to, Sylvestre *et al.* (2011) advocate for a greater recognition of the agency and power of homeless people

within the judicial system (less invisibility) and at the same time reduced surveillance and repression of this population in public spaces (less visibility).

Social control of the homeless goes beyond the enforcement of formal regulations though. As Sylvestre (2010) writes,

Agents in the field rely on statutory state law, though not exclusively, to control disorder and impose restrictions on the use of public spaces. Whereas the multiple legal instruments provide a toolbox whereby local officials and police can pick and choose, the appropriation and domination of space largely depend on the adoption of a directional statement by the police against antisocial behaviour—based on political demands expressed by interest groups and city officials, the establishment of local priorities, and police discretion in their daily dealings with people on the streets. (p. 819)

She concludes that law reform will not be enough to alter the experience that homeless people have of public spaces and to end their banishment.

In a parallel vein, scholars of public space have likewise criticized the regulatory regimes that confront protesters taking to the streets. For example, Margaret Kohn (2004), author of *Brave New Neighbourhoods: The Privatization of Public Space*, laments the loss of public space and its impact on democratic life. She argues that since the second half of the 20th century, “protest has become a routinized, scripted activity” (p. 28) and that the state has become very wary of anything occurring outside of this tightly regulated box. According to her, all sorts of regulations targeting protests, as well as the proliferation of speech free zones (e.g. the erection of fences creating large no-go zones during the Summit of Americas in Quebec city in 2001 or at the G20 Summit in Toronto in 2010) aim at preventing “protesters from symbolically appropriating salient sites and to isolate

protestors from those they might disturb” (Kohn, 2004, p. 32). In the wake of the Occupy Wall Street protests, Kohn (2013) analyzed the court order mandating the eviction of the Occupy Toronto camp in terms of theories of the “public”. She challenged the dominant vision —that sees activist occupations as an unfair appropriation of space— and calls for public spaces that are “not only for recreation, consumption and leisure [as it is the case now], but also for survival, communication and dissent” (p. 107). She recasts occupations of public space as strategies that foster a healthy democracy by encouraging public debate.

Law professor Timothy Zick (2006) also argues that the spatial tactics²² employed by various levels of government, such as the “utilization of pens, cages, and other architectural tactics to (dis)place political dissent” (p. 587) are not merely mundane regulations of space but in fact greatly threaten the freedom of speech. Zick (2006) challenges the common view that “speech and spatiality are entirely separate and distinct, that place is merely a background or context for expression, and that place is presumptively partitioned without regard to the content of expression” (p. 588). In short, Zick urges us to consider that places matter, that they are constructed by laws, and that political dissent as well as freedom of speech more broadly should not be seen as potentially being exercised in any given inert *place-as-res*. If the medium is the message in some circumstances, the place is too; a place is not only the container of a message, it is inextricably connected to the content of the expressive activity.

²² By spatial tactic, Zick refers to the definition of Low & Lawrence-Zúñiga (2003): “use of space as a strategy and/or technique of power and social control” (p. 30).

In his book *The Right to the City*, critical geographer Don Mitchell (2003) also examines how American courts have imposed liberal notions of democracy and speech, with the common image of the “marketplace of ideas”. These notions, he argues, have given rise to specific regulations of public space which limit speech considerably:

According to the democratic ideology enshrined in what the Court has come to call “public forum doctrine,” the free exchange of ideas can occur only when public space is orderly, controlled (by the state or other powerful interests that can maintain order), and safe. (p. 48)

However, that order and rationality can only be maintained through the exclusion of some people and forms of conduct (especially so-called violent conduct) from the space the public moves in. As Mitchell (2003) summarizes, in this world of exclusion and power imbalance, “Being “unruly” often is a prerequisite for getting heard at all: mere speech is not enough –but it is all that is protected by the Court” (p. 54).

Critical legal scholar David Kairys (1998) also finds the American celebration of free speech unsettling, considering the chasm that exists between this apparently sacrosanct democratic value that everyone cherishes, and the actual state of freedom of speech as it is currently available to people of ordinary means.

People of ordinary means must rely on the Constitution for a means of communication and organization. People with power and money do not need to picket, demonstrate, or distribute leaflets on the street. The mass media continuously express their perspectives (...). (p. 200)

Freedom of speech doesn’t exist in a vacuum, and it needs access to places, and forums, to be meaningful and powerful. Waldron (1991) had said more or less the same thing: to be

free, one has to be free *somewhere*. So when access to public spaces is restricted, or heavily regulated, freedom of speech becomes quite limited.

On the local scene, certain Quebec authors have also pointed out the impact that the regulation of public space regulation and legal doctrines have on the freedom of expression and protest. In the context of the student strike, Lemonde *et al.* (2014) argue that the judicialization of the protesters through the application of various municipal by-laws and the *Highway Safety Code* has had the effect of moving the debate from the public sphere into the courts territory. The use of the judicial system to censor political activists—who, after being charged, are forced into a defensive position—thus becomes one further repressive tactic that the state uses to silence dissent (p. 325).

Other authors (Babineau, 2012; Forget, 2005) underline the law's ambivalence regarding the collective character of protests in public space. Patrick Forget (2005), author of the only legal monograph on protests in Quebec, shows in his book that the law has always been wary of collective action in public spaces, even when these were peaceful. Because capitalist diktats protect private property from protesters²³ (p. 167), the latter are forced into public spaces. And there, they are subjected to several legal requirements (p. 168) that dramatically curtail their freedom of speech and right to peaceful assembly. Francis Dupuis-Déri (2014) even argues that protesters are the targets of profiling in public space. Political profiling, modeled on racial profiling and social profiling occurs when the police treat a person in a discriminatory way on the basis of that person's political

²³ The question of picket lines at the workplace will not be addressed here as it is beyond the scope of this dissertation.

convictions. However, unlike with social and racial profiling, City authorities refuse to recognize the existence of political profiling in public spaces (p. 50)

Jennifer Beth Spiegel (2014) casts another light on the spatial experience of protesters in public spaces. In a brilliant article on the 2012 Quebec Student strike, she shows how creative strategies of protest employed during the strike reconstructed the relationships between public and private spaces. Despite heavy police brutality and judicialization of people occupying public spaces, the daring utopic views of those engaged in the struggles managed to transform public spaces. She writes:

The extended duration of the Quebec student strike offered the time for cultures of care to be extended and the generation of techniques of “togetherness” to be developed that not only brought people out into the streets, but also re-invented the ways in which divisions between “private” and “public” unfolded. In such recreated space–time divisions, the “private time” of caring for self and the family was able to be extended into collective political space. The affective power of collective political acts of solidarity, sensitive to differences in positionality and modes of engagement, thus helped to generate spaces of care that may form the basis of future political collectivities (p. 786).

As we can see from these several scholars of homelessness, freedom of speech and public space, both protesters and homeless people are in theory forced to be in public spaces. Though the first group typically occupies public space more permanently, and the second on a more temporarily basis, they nevertheless invest the space for purposes that go beyond the typical uses of transit or leisure activities. As Don Mitchell (1995) writes, “[p]ublic spaces of spectacle, theater, and consumption create images that define the public, and these images exclude as “undesirable” the homeless and the political activist” (p. 120). While the homeless must harmonize survival and illegality (they are forced to be illegal if

they want to survive), protesters are often caught in a similar (although perhaps less tragic) dilemma: having their cause heard, or being illegal. When we look closely, we see also that the same practices of control are applied, at the municipal level, to both the homeless and to protesters who occupy public spaces in Montreal. The following sections of this chapter will weave together several stories of judicialization of homeless people and protesters for their uses of public space.

“Ticket Stories” of the Homeless and Protesters in Montreal

By studying the ticket, the legal document that lies at the root of the judicialization process, I will show in this section how public space is controlled and normalized, subtly, one ticket at a time. The goal here is not to explain why public space is controlled, but starting from the occupier’s perspective, to show how this control occurs. I intend to reveal the full power of the ticket, in and of itself. Informed by my ethnographic research, I will allow the tickets to speak for themselves. In this, I am inspired by socio-legal scholars such as Bruno Latour (2004), Annelise Riles (2006) and Susan B. Coutin (2000) who pay special attention to legal documents and legal discourses (Blomley, 2010; Valverde, 2005). Nick Blomley (2010), for example, decided to examine the *Safe Streets Acts* in British Columbia and Ontario (and what he called the related Safe Streets Talk), on their own terms in order to understand the regulation of public space (and especially its impact on panhandlers). For him, “in order to challenge such laws, it is insufficient to simply impugn the motives of legislators, or dismiss their arguments as a convenient cloak. They need to be confronted on their own terms” (p. 334). In the same vein, I want to examine tickets issued to homeless people and protesters in order to confront them, and the logic that lies behind

them, on their own terms. In the next chapter of this dissertation, I will attempt to develop explanatory frames for the judicialization, but for now my goal is to show that this seemingly mundane ticket is much less mundane than it appears. Like Latour who found beauty and interest in grey, dull legal files and the “ceaseless movement of documents” (Latour, 2010, p. 277), I believe that there is much to learn about legal processes and their relationship to space if we look at an everyday instrument, the ticket.

Some Penal Law to Start With

Violations of municipal by-laws, STM by-laws and some laws such as the *Highway Safety Code*, are usually punished by the issuing of “tickets” (more officially called “statements of offence”) by police officers:

A peace officer who has reasonable grounds to believe that a person has committed an offence may require the person to give him his name and address, if he does not know them, so that a statement of offence may be prepared” (*Code of Penal Procedure, “CPP”, s. 72*).

Penal proceedings are instituted by way of a statement of offence (*CPP*, s. 144). As per the *CPP* and the regulation regarding the form of statements of offence, the ticket shall contain, among other things: the name and address of the prosecutor (in this context generally the City of Montreal); the date of service of the ticket and the date of the commission of the offence if it is delivered after the fact; the description of the offence; the minimum statutory sentence for a first offence; the name and function of the person attesting to the facts; and, if the person is a peace officer, (and they mostly are) his or her number.

The minimum statutory sentence for a first offence is a fine, ranging from \$15 to several hundreds dollars. On top of the fine, there are administrative fees that are automatically added. These fees vary according to the amount of the fine (see *Tariff of Court Costs in Penal Matters*). The total amount owed by the defendant, if he or she were to plead guilty or to be found guilty, is indicated on the ticket. On the back of the ticket, is a written warning:

If the defendant fails to enter a plea or to pay the whole or any part of the fine and costs requested, within 30 days of service of the statement, the defendant will be deemed not to contest the proceedings and may be convicted of the alleged offence in absence and without having an opportunity to be heard. (*CPP*, s. 146).

In other words, when a defendant is issued a ticket, he or she has three choices: plead guilty and pay the fine; plead not guilty and wait for a court date to present a defense; or do nothing, in which case a court date will be fixed but the defendant may be convicted in his or her absence.

Over the years, first through my activism and my close ties with RAPSIM, and then through my ethnographic research, I got to hear about many stories of judicialization of homeless people and activists. My work at the legal clinic in particular allowed me to view many tickets that had been given to homeless people due to their occupation of public space. I did not have the same kind of access to tickets issued to protesters (since, in contrast to the tickets collected by the legal clinic, these are not collected physically in one location other than at the courthouse) but I did gather a few stories (and tickets) over time.

In the next section, we will view several tickets issued to protesters and homeless people and examine some narratives that will provide a little context to the tickets themselves²⁴.

²⁴ The ticket stories below the picture of a given ticket in the next section don't necessarily pertain to the ticket in the picture, but they illustrate a similar event.

Noise

ACTE D'INFRACTION
PROCEDE JUDICIAIRE DE MONTRÉAL

26 [REDACTED]

Poursuivant: ville de **MONTRÉAL** VOIR AU VERSO

C.P. 11566 SUCCURSALE CENTRE-VILLE
 MONTRÉAL (QUÉBEC) H2Z 4Y2

STM
 1265, RUE DERRIS, 10^E ÉTAGE, MONTRÉAL (QUÉBEC) H2L 4X2

Défendeur

1. M. Nom [REDACTED]
 2. JMC. Prénom(s) [REDACTED]
 3. P. Adresse [REDACTED] App. [REDACTED]
 4. P. Localité **MONTRÉAL**

Prov. d'nat. **QUE** Code postal [REDACTED] Mineur Date de naissance (a-m-j) **72** [REDACTED]

Permis de conduire Certificat Licence Autre permis FCE Prov. d'nat.

Loi / Règlement **R.R.U.C. B.3**

Article(s) **ART. 9 PAR. 4** Codification **2010**

Description de l'infraction
**EN AYANT ÉMIS ON
 BROIT AVOIR À L'EXTÉRIEUR
 DE CRIS.**

Date de l'infraction (a-m-j) **09.06.10**
 Heure (h-m) **06.35**

Endroit **SHERBROUKE / PRESSIS
 MTL**

Ville **UM22**

PEINE Peine minimale **100 \$** Frais minima **44 \$** Montant total réclamé **144 \$**

ATTESTATION

Je, soussigné, attesté avoir moi-même constaté les faits mentionnés en: A B C

J'ai, de même que le poursuivant, des motifs raisonnables de croire que l'infraction décrite a été commise par le défendeur.

Personne autorisée par le poursuivant, à délivrer le constat. Nom (lettres moulées) **C. LAVERGNE**

QUALITÉ **5566 122**

Agent de la paix **P.O.L.**

Autre (spécifiez)

Service

Je n'ai pas remis un double du constat.

SIGNIFICATION

J'ai signifié avant de la perpétration de l'infraction
 après la perpétration de l'infraction

un double du constat par le remisier:
 au défendeur autrement

Nom (lettres moulées) Même que attestation

Agent de la paix Huissier

Date de signification (a-m-j) **09.06.10** Heure (h-m) **06.40**

Si la signification a été faite par la poste, la date et l'heure de signification sont celles indiquées sur l'avis de réception et de livraison.

Signature [REDACTED]

The defendant (...) is charged with having violated s. 9(3) of the City of Montreal's By-law concerning noise, R.B.C.M. 1994 c. B-3 (By-law) by making noise from cries that could be heard from the outside. On October 15th, 2012, Ms Nelson participated in a demonstration held on the anniversary of the "Occupy" movement. At 2:21pm, she was arrested by a police officer near the corner of Ste. Catherine and Bleury streets in the heart of downtown Montreal. She was handcuffed, detained for half an hour and then released.

Judge Randall Richmond, *Montreal (City of) c. Nelson* (2015), para 1 and 2

"What does it mean, "to emit an audible sound"? What if people sneeze? Is it prohibited to sneeze on the streets?"

Gabrielle, a social worker working with judicialized homeless people in Montreal

As Gabrielle expresses here, the practice of giving tickets for making noise in the public domain admits of several contradictions. The ticket above pictured was issued near Notre-Dame Hospital, in front of Parc Lafontaine in Montreal, at 6:35 AM on June 9th, 2010, apparently for having "emitted an audible noise outside of cries (shouts)". The minimum fine for such an offense is \$100 plus a \$44 for administrative fees for a total of \$144. As it happens, the description of the offense literally doesn't make any sense here. It would be easy to think of it as a simple typo, but I have seen the exact same description too many times to think of it as an aberration. First, is there any noise that is not audible? Or does this mean that the person can emit audible noises other than cries (shouts)? The by-law it pinpoints to reads:

The following noises, where they can be heard from the outside, are specifically prohibited: (4) noise resulting from cries, clamors, singing, altercations or cursing and any other form of uproar. (B-3, art 9(4))

The wording of the by-law is easier to understand, but it remains that the description of the offense by the police officer is absolutely incoherent and it shows that police issue tickets without seriously thinking about them. By referring to the by-law, rather than the ticket

itself, we can infer that the person was accused of having shouted and that this noise was audible outside... But when the person lives on the street, and is outside all the time, isn't it inevitable that his or her vocalizations will be heard in the out of doors?

Similarly, cases where tickets for noise are given to protesters, who have been handcuffed and detained for this offense, are extremely puzzling. (It is interesting to note that to sanction individual disturbances of the peace, the police officers have to focus on the audibility of the action rather than on the collective character of the disturbance, which is required under P-6 for example). How can one protest if not by making noise that can be heard in the out of doors? Isn't it reducing the protest to a non-event and depriving freedom of expression of its substance if one cannot shout in a way that will be heard when protesting? Justice Richmond was of this opinion. He acquitted the defendant Ms Nelson and wrote:

Demonstrations and picketing are **supposed** to cause **some** degree of nuisance. If that is true for labour disputes, it should be true for political demonstrations as well. **Some** degree of chanting or yelling is to be expected at a political demonstration. That is one of the ways the message is expressed. And that is part and parcel of freedom of expression. (*Montreal (City of) c. Nelson (2015)*, para. 99, original emphasis)

Though Ms. Nelson's case ended up with an acquittal, it remains that she had to fight for this victory. Even if, according to Justice Richmond, loud protestations are permitted during a protest and are protected by the constitutional right to freedom of expression, the defendant still had to fight her ticket in court and to defend herself against the prosecutors and the testimony of the police officers to get justice done. Yes, she was found not guilty, but what about the violations of her rights? Short of a civil lawsuit by Ms. Nelson, the police

officers who proceeded to arrest her will face no consequences for the fact that they violated her rights. The problem here is not just that the police issued a ticket for which the defendant was found not guilty; it is that by doing so, they curtailed Ms. Nelson's right to protest.

Alcohol

VOIR AU VERSO

Montreal

STM
1265, RUE BERRI, 10^E ETAGE, MONTREAL (QUEBEC) H2L 4X2

Nom: [REDACTED]
Prénoms: [REDACTED]
Adresse: [REDACTED]
Localité: Montreal
Code postal: [REDACTED]
Région/État: QC
Date de naissance (a-m-j): [REDACTED]
Permis de conduire: [REDACTED] Certificat [REDACTED] Licence [REDACTED] Autre permis [REDACTED] FCE [REDACTED] Prov./État: QC

Loi / Règlement: RRVM C.P.1 (CBaix)
Article(s): 3
Description de l'infraction: Aient consommé des boissons alcooliques sur le domaine public
Date de l'infraction (a-m-j): 11.05.03
Heure (H-M): 22.40
Endroit: Face au 1417 de Chambly
Ville: MTL

Peine minimale: 100 \$
Frais minima: 46 \$
Montant total réclamé: 146 \$

ATTESTATION
Je, soussigné, atteste avoir moi-même constaté les faits mentionnés en: A B C
J'ai, de même que le poursuivant, des motifs raisonnables de croire que l'infraction décrite a été commise par le défendeur.
Personne autorisée par le poursuivant, à délivrer le constat. Nom (lettres moulées): PERRIERE ADAM
Qualité: [REDACTED]
Agent de la paix: [REDACTED] Matricule: 578223
Huisier: [REDACTED]
Date de signification (a-m-j): 11.05.04
Heure (h-m): 00.30
Signature: [Signature]

SIGNIFICATION
J'ai signifié: lors de la perpétration de l'infraction après la perpétration de l'infraction
un double du constat par la remise: au défendeur autrement
Nom (lettres moulées): ENVELOPPE DETEM
Même que attestation:
Date de signification (a-m-j): 11.05.04
Heure (h-m): 00.30
Signature: [Signature]

COUR

VOIR AU VERSO

MONTREAL

STM
1265, RUE BERRI, 10^E ETAGE, MONTREAL (QUEBEC) H2L 4X2

Nom: [REDACTED]
Prénoms: [REDACTED]
Adresse: [REDACTED]
Localité: MONTREAL
Code postal: [REDACTED]
Région/État: QC
Date de naissance (a-m-j): 6.7
Permis de conduire: [REDACTED] Certificat [REDACTED] Licence [REDACTED] Autre permis [REDACTED] FCE [REDACTED] Prov./État: QC

Loi / Règlement: RRVM C.O.O.1
Article(s): 2
Description de l'infraction: EN AYANT ETE TROUVE FLAUNT IVERE SUR UNE VOIE PUBLIQUE
Date de l'infraction (a-m-j): 08.11.17
Heure (H-M): 0.44.0
Endroit: WOLFE / MAISONNEUVE
Ville: VM
Unité: 22

Peine minimale: 50 \$
Frais minima: 25 \$
Montant total réclamé: 75 \$

ATTESTATION
Je, soussigné, atteste avoir moi-même constaté les faits mentionnés en: A B C
J'ai, de même que le poursuivant, des motifs raisonnables de croire que l'infraction décrite a été commise par le défendeur.
Personne autorisée par le poursuivant, à délivrer le constat. Nom (lettres moulées): A. BELINAS
Qualité: [REDACTED]
Agent de la paix: [REDACTED] Matricule: 649024
Huisier: [REDACTED]
Date de signification (a-m-j): 08.11.17
Heure (h-m): 04.44
Signature: [Signature]

SIGNIFICATION
J'ai signifié: lors de la perpétration de l'infraction après la perpétration de l'infraction
un double du constat par la remise: au défendeur autrement
Nom (lettres moulées): [REDACTED] Même que attestation:
Date de signification (a-m-j): 08.11.17
Heure (h-m): 04.44
Signature: [Signature]

COUR

Lucy was struggling with alcoholism and other mental health issues and she went through a period of homelessness. She spent five years on the street. "To survive in the streets, everyday, is in and of itself a challenge" she once told me. "Where did you want me to drink?! I was on the street!"

Lucy, PAJIC participant in her fifties

Jean has lived on the street for a long time. He has drinking problems. He sees the tickets he gets as part of the price he has to pay for drinking in the public domain. When he gets tickets, he jokingly says: "Put this on my tab!"

Jean, user of the Clinique Droits Devant services, in his fifties.

(Chris is in Berri Square... He just got a ticket, which he shows to the camera. He's really angry...)

"\$141!!!!!!! Damn it!!!! (...)"

(Pretending to talk to the police officer, he looks straight at the camera).

"Why do I owe you \$141, hey? Where does it come from this \$141 man? Where does it come from? It doesn't come from anywhere!! What a fucking shit! I haven't done any harm to you man!!! I haven't fucking bothered you; I haven't done anything to you man! I haven't done anything to you and you tell me I owe you \$141?!! Just to fucking piss me off, hey?! What's this...? What pleasure do you take... from looking at my beer and telling me that I don't have the right to drink?"

(Chris takes a sip of his beer, his voice softens...)

"How am I hurting you man? \$141?? How am I hurting you? I am not hurting you. Do you know what man? Just leave me alone..."

Chris, a young man with a punk look, who appears in the documentary of Eric "Roach" Denis, *Les tickets: L'arme de répression* (Denis 2011, my translation).

The two tickets pictured above are for drinking on the streets and being drunk on the streets. The ticket on the left was issued for consuming alcoholic beverages in the public domain, for a \$146 fine. The statute it refers to is *By-law concerning Peace and Order on Public Property*, s. 3:

3. No liquor may be consumed on public property unless it is:
 - (1) in outdoor cafés set up on public property where the sale of liquor is authorized by law;
 - (2) at meals in the open air in a park section where picnic tables have been set up by the city;
 - (3) in certain circumstances or at events, celebrations or demonstrations, in accordance with an authorization given by ordinance.

Now, as we can see, the act of drinking in public is in itself not the problem here, as this is allowed in outdoor cafés, in parks with meals, and during the many festivals for which Montreal is famous. So drinking alcohol in public is not what offends public morality.

Apparently what offends public morality is to drink outside of the bourgeois parameters of the law. The offence is not having enough money to afford what will be considered a proper meal so to drink in the public domain. To put it graphically, young professionals enjoying a bottle of chic wine with their bread and expensive cheese in the nice and trendy Parc Laurier are far less likely to get ticketed for drinking in public than the young Chris drinking beer with his hotdog in Berri Square downtown! Chris sums up the problem in the most compelling way: how is he hurting anyone? Why doesn't *he* have the right to drink? And as Lucy said: "where are people supposed to drink if they have no place to live?" What's more is that several alcoholic persons *have* to drink to survive, and severe health conditions, like delirium tremens, may occur with heavy drinkers who drastically reduce their alcohol intake. But they can't drink in public... Although to my knowledge s. 3 of P-1 by-law has never been challenged in court, I believe it is inherently discriminatory (on the basis of one's social condition) and violates s. 10 of the *Quebec Charter of Human Rights and Freedom*.

The other ticket above, to the right of the first one, was issued for "being drunk in the public domain" since, as per section 2 of by-law P-1, "Any person found lying or loitering drunk on a public thoroughfare or place, or any other place in the city, contravenes this by-law". This ticket was issued in a location slightly east of downtown, close to Berri Square, in an area which at the time was frequented by sex workers but which has since then been slightly gentrified. As per s. 12 and 13 of P-1, violation of section 2 is sanctioned with a \$50 fine, as opposed to the \$100 fine for violation of section 3. Again, this by-law is highly problematic, as Lucy pointed out, considering that alcoholic homeless

people have nowhere to drink, and are mostly forced to be in the public domain when they are drunk (they are usually not accepted in shelters). For years there was talks of having a “sobering up center” in Montreal for people who were highly intoxicated or were expelled from the shelters and there was heated discussion on what the mission of such a center should be and how it would cooperate (or not) with the police. It appears that in February 2013, a respite and sobering up center, Centre Alpha, finally opened its doors on Clark Street, a little north of downtown. But I haven’t heard much about it.

Metro

CONSTAT D'INFRACTION

MONTREAL
MONTREAL (Quartier) NO. 497

NOM: [REDACTED]
PRENOM: [REDACTED]
LANGUE D'EXPRESSION: Français
CELLULAIRE: [REDACTED]

NO. PERMIS CONDUIRE: [REDACTED] RANG: [REDACTED] AUTRES: [REDACTED] DATE D'EXPIRATION LA 19.02.08
MINEUR: NOM DU PARENT OU TUTEUR: [REDACTED]

ADRESSE DU PARENT OU TUTEUR: [REDACTED] APP: [REDACTED]

LOCALITE: [REDACTED] LANGUE D'EXPRESSION: [REDACTED]
PROVINCE: [REDACTED] CODE POSTAL: [REDACTED] TELEPHONE: [REDACTED]

B DESCRIPTION DE L'INFRACTION

HEURE DE L'INFRACTION: 21:23 JOUR: Vendredi DATE DE L'INFRACTION (A.M.): 2008 04 18
L'ON / REGLEMENT: R-036 R-037 LRQ CS.30.01 CLASSIFICATION: 313.19

C INFRACTION

En obtenant ou tentant d'obtenir un voyage sans avoir acquitté le prix (Art. 71)
 En utilisant, sans droit, un titre de transport (Art. 72)
 En entravant le travail d'un inspecteur dans l'exercice de ses fonctions (Art. 143)
 En souillant un bien (Art. 6-a)
 (Art.)

D LIEU

ENDROIT DE L'INFRACTION: Station local, 106e Ave St
MONTREAL L3H 9G7 VILLE OU ARRONDISSEMENT: JM
ATTENTION - NON PAYABLE - DANS LES INSTITUTIONS FINANCIERES (VOIR AU VERSO)

E PEINE

PEINE MINIMALE: 150 \$ + 64 \$ + - s = 214 \$ MONTANT TOTAL RECLAME: 214 \$

F ATESTATION

J'AI, SOUS SERMENT, ATTESTE AVOIR MOI-MEME CONSTATE LES FAITS MENTIONNES EN: A B C
ET J'AI DE MEME QUE JE POURSUIVANT DES MOTIFS RAISONNABLES DE CROIRE QUE L'INFRACTION DICTEE A ETE COMMISE PAR LE DEPENDANT

NOM (EN LETTRES MOULEES): [REDACTED] MEME QUE ATTESTATION: AGENT DE LA PAIX HERISSIER

PERSONNE AUTORISEE PAR LE POURSUIVANT A COMPLETER LE CONSTAT, NOM (LETTRES MOULEES): [REDACTED] QUALITE: [REDACTED] ANITE: [REDACTED]

AGENT DE LA PAIX AUTRE (SPECIFIEZ): [REDACTED]
 JE N'AI PAS REMIS LE DOUBLE DU CONSTAT

DATE DE SIGNIFICATION (A.M.): 05.10.41.8.2.12.17
SI LA SIGNIFICATION A ETE FAITE PAR LA POSTE, DATE ET L'HEURE DE SIGNIFICATION SONT CELLES INSCRITES SUR L'AVIS DE DELIVRATION DU DEPENDANT

308488762
SIGNATURE: [REDACTED] ORIGINAL - COPIE

Pierre, a homeless man living with HIV and residing in shelters, used to jump the turnstiles of the Metro to go see his doctor.

Pierre, PAJIC participant in his fifties

"I used to jump the turnstiles in the Metro to go eat at Chez Pops (a local soup kitchen and drop-in center for street youth)."

Patrick, PAJIC participant in his twenties

In recent years, many homeless have received tickets for riding or attempting to ride the bus or the metro without paying the fare. To put this in context, it should be understood that in the winter, the warm parts of metro stations are generally located underground past the turnstiles. In other words, even if somebody doesn't want to ride the metro but just to warm up for a bit during the tough winter months, this is still going to cost the person \$3.25 (the fare in 2015), which is a considerable amount when one is homeless (and even when one is not homeless!). For this reason, a number of people will take their chances jumping the turnstile to get into the metro without paying, and as we will see later in this chapter, in recent years many of them have been caught. Needless to say that for someone who doesn't have \$3.25 to spend, a \$214 fine is a significant burden.

Cleanliness

Poursuivant: ville de **MONTREAL**
 C.P. 1104 SUCCURSALE CENTRE-VILLE MONTREAL (QUEBEC) H3C 4Y2
STM
 1265, RUE BERRI, 10^e ETAGE, MONTREAL (QUEBEC) H2L 4X2

Défendeur: Nom [REDACTED], Prénom [REDACTED], Adresse [REDACTED], Localité **MONTREAL**, Prov./Etat **QVE**, Code postal [REDACTED], Date de naissance (a-m-j) **6.7.1980**

Loi / Règlement: **R.R.U.M. CP-3**
 Article(s): **ART 3 C17**
 Description de l'infraction: **AUANT ETE PRESENT DANS UN PAYS LORSQUE CE PAYS EST FERME**
 Date de l'infraction (a-m-j): **11.09.13**
 Endroit: **PARC EMILIE-GAMBLIN**

Ville: **V.M.21** Unité: [REDACTED] Montant total réclamé: **146\$**

PEINE Peine minimale: **100** Frais minima: **46** \$ = **146\$**

ATTESTATION
 Je, soussigné, atteste avoir moi-même constaté les faits mentionnés en: A B C
 et j'ai, de même que le poursuivant, des motifs raisonnables de croire que l'infraction décrite a été commise par le défendeur.

Personne autorisée par le poursuivant, à délivrer le constat. Nom (lettres moulées): **LACOMBE**
 QUALITE: **QUALITE**
 Agent de la paix: Agent de la paix Matricule: **65141024** Unité: [REDACTED]
 Autre (spécifiez): [REDACTED]
 Service: **P.O.L.**

SIGNIFICATION
 J'ai signifié lors de la perpétration de l'infraction après la perpétration de l'infraction un double du constat par la remise: au défendeur autrement
 Nom (lettres moulées): **Même que attestation**
 Date de signification (a-m-j): **11.09.13** Heure (h-m): **0.12.3**
 Si la signification a été faite par la poste, la date et l'heure de signification sont celles indiquées sur l'avis de réception ou de livraison.

Signature: [REDACTED] **COUR**

Poursuivant: ville de **MONTREAL**
 C.P. 1104 SUCCURSALE CENTRE-VILLE MONTREAL (QUEBEC) H3C 4Y2
STM
 1265, RUE BERRI, 10^e ETAGE, MONTREAL (QUEBEC) H2L 4X2

Défendeur: Nom [REDACTED], Prénom(s) [REDACTED], Adresse **SANS ADRESSE FIXE**, Localité [REDACTED], Prov./Etat **QVE**, Code postal [REDACTED], Date de naissance (a-m-j) **8.5.1980**

Loi / Règlement: **RACA-24-085**
 Article(s): **11**
 Description de l'infraction: **En ayant sali le domaine public**
 Date de l'infraction (a-m-j): [REDACTED]
 Endroit: **ST-LAURENT / ST-ROBERT**

Ville: **V.M.21** Unité: [REDACTED] Montant total réclamé: **169\$**

PEINE Peine minimale: **125** Frais minima: **44** \$ = **169\$**

ATTESTATION
 Je, soussigné, atteste avoir moi-même constaté les faits mentionnés en: A B C
 et j'ai, de même que le poursuivant, des motifs raisonnables de croire que l'infraction décrite a été commise par le défendeur.

Personne autorisée par le poursuivant, à délivrer le constat. Nom (lettres moulées): **CAMUS**
 QUALITE: **QUALITE**
 Agent de la paix: Agent de la paix Matricule: **5667021** Unité: [REDACTED]
 Autre (spécifiez): [REDACTED]
 Service: **P.O.L.**

SIGNIFICATION
 J'ai signifié lors de la perpétration de l'infraction après la perpétration de l'infraction un double du constat par la remise: au défendeur autrement
 Nom (lettres moulées): **Même que attestation**
 Date de signification (a-m-j): **09.09.13** Heure (h-m): **23.30**
 Si la signification a été faite par la poste, la date et l'heure de signification sont celles indiquées sur l'avis de réception ou de livraison.

Signature: [REDACTED]

“You wouldn’t believe the ridiculous tickets I got while being on the streets! For having peed against a wall, for having slept on a bench...”

François, PAJIC participant in his twenties

“The cops sent me to Viger Square so I went there. Then, they came over and took all my belongings and toss them all over the place! I was mad but picked them up... and they ended up giving me a ticket for littering”.

Julien, PAJIC participant in his forties

In the ticket on the right, the officer has written “sans adresse fixe” (“no fixed address”) in the address box. This specific ticket was issued at night, on September 23rd, at the corner of St-Laurent and St-Norbert, which is a small street, resembling an alleyway that crosses St-Laurent Boulevard, which is also called “the Main”. Just one block north of there, the intersection of Sherbrooke and St. Laurent is known as a major hub for squeegee activity. The description of the offense written on the ticket is “having dirtied the public domain”. This charge refers to the downtown (Ville-Marie) borough by-law entitled *By-law pertaining to civic behaviour, respect, and cleanliness*. Julien probably also got a ticket like this one. Julien’s story is rather typical, though in his case the bad faith attitude of the police officer seems surprising and uncommon.

François might have been issued the same ticket for urinating on the public domain, although there is a more specific section that prohibits urinating under the Ville-Marie By-law (CA-24, s. 20). Under this article, the minimum fine before fees for urinating on the public domain is \$250 instead of \$125. Experience has taught me that the article against dirtying the public domain (CA-24, s. 11) is often applied to urinating on the public domain but, that being said, it is impossible from the ticket itself to determine what action exactly

led to the ticket being issued. One could however suppose that the police officer might have decided to use the more general prohibition instead of the specific one to impose a smaller fine. Another common article used for “urinating on the public domain” is s. 3 of the general City of Montreal *By-law concerning cleanliness and the protection of public furniture*, which reads: “(...) no person may spread a liquid on public property”. This section is also sometimes used to sanction spitting. The fine for this offense is \$60 but it is not applicable downtown (where the Ville-Marie by-law pertains).

The ticket on the left was issued for being in a park at night. This doesn't mean the person was necessarily sleeping on a bench, as in François' case, but it might have been for having tried to sleep somewhere quiet at night. That said, many people do get tickets for sleeping on benches, which in the eye of the police is using “street furniture for a purpose other than the one for which it is intended” (P-12, s. 20). The irony in this case is that the ticket was issued at Viger Square, which is in fact where the police usually send homeless people at night, as Julien tells us.

Loitering

CONSTAT D'INFRACTION
DISTRICT JUDICIAIRE DE MONTRÉAL

34 [REDACTED]

COCHER Poursuivant
VILLE DE MONTRÉAL
775, RUE GOSFORD, MONTRÉAL (QUÉBEC) H5Y 9B6
STM
1265, RUE BERRI, 10^E ÉTAGE, MONTRÉAL (QUÉBEC) H2L 4K2

VOIR AU VERSO

Prénoms [REDACTED] Nom [REDACTED]
Adresse [REDACTED] App. [REDACTED]
Localité VERDUN

Permis de conduire [REDACTED] Certificat [REDACTED] Licence [REDACTED] Autre permis [REDACTED] P.C. [REDACTED] [REDACTED]

Lit / Règlement AM 29
Articles 11.6, 12.1
Description de l'infraction: A ÉTÉ TROUVÉ ERRANT SANS POUVOIR JUSTIFIER SA PRÉSENCE

Date de l'infraction (a-m-j) 07/08/04
Heure (h-m) 20:13:06

Endroit 9199 AIRIE (FACE)

Arrondissement L3 Unité 13

PEINE Pénalité minimale 100\$ Frais minima 41\$ Montant total réclamé 141\$

ATTESTATION
Je, soussigné, atteste avoir moi-même constaté les faits mentionnés en [REDACTED] et j'ai, de même que le poursuivant, des motifs raisonnables de croire que l'infraction décrite a été commise par le défendeur.
Personne autorisée par le poursuivant, à délivrer le constat. Nom (lettres mouillées) OLIVIER
QUALITÉ [REDACTED]
Agent de la paix [REDACTED] Unité 5424/13
Autre (spécifiez) [REDACTED]
Service P.O.L.

SIGNIFICATION
J'ai signifié lors de la perpétration de l'infraction après la perpétration de l'infraction
un double du constat par la remise: au défendeur autrement
Nom (lettres mouillées) GUILLETTE
Agent de la paix [REDACTED] Matricule 15820/13
Huissier [REDACTED]
Date de signification (a-m-j) 07/08/04 Heure (h-m) 21:15:1

Je n'ai pas remis un double du constat.

Signature [REDACTED] [REDACTED]

COUR

"I got a few tickets for loitering on St-Laurent Blvd. You know, it's very stressful to get tickets for living on the streets..."

Michael, PAJIC participant in his forties

Loitering is another offense homeless people, like Michael, are charged with frequently. On the above ticket, the description of the offense description is quite shocking: "was found wandering without being able to justify his presence". Since when do human beings have to justify their presence in the public space? Why are people not simply

allowed to be in public space? Do I have to justify my presence if I'm walking down a busy and commercial artery like St. Denis Street? And what if I can't tell if I want to buy a t-shirt or a blouse? Am I "wandering without being able to justify my presence"? I'm exaggerating of course, but you see the point. This is dangerously close to the vagrancy offenses described by Chambliss (1964). This particular ticket was given in 2007, under an old by-law that applied in this part of Montreal. The current by-law section concerning loitering reads: "No person may impede or obstruct pedestrian and vehicular traffic by standing still, prowling or loitering on public thoroughfares and places, and by refusing to move on, by order of a peace officer, without valid cause." (P-1, s. 1). But again, what is a valid cause? Is the fact of having no house to go to a "valid cause"? There is almost no case law interpretation of this section, and in the meantime, people still get tickets, and hundreds of dollars in fines.

Panhandling and Squeegeeing

CONSTAT D'INFRACTION
DISTRICT JUDICIAIRE DE MONTRÉAL

34 [REDACTED]

VOIR AU VERSO

COCHER Poursuivi(e) de [REDACTED] Pointe Claire

P.P. 1000 POURSUIVUE(E) EN VILLE
MONTRÉAL (QUÉBEC) H3L 4K2

STM
3265, RUE BERTY, 10^E ÉTAGE, MONTRÉAL (QUÉBEC) H2L 4K2

Defendeur

Nom: [REDACTED] Prénom: [REDACTED] Age: [REDACTED]

Adresse: [REDACTED]

Localité: **MONTRÉAL**

Sexe (M/F) [REDACTED] Date de naissance: [REDACTED]

Permis de conduire Certificat Licence Autre permis P.L.C. Procédant

Infraction

Loi / Règlement: **RM 1495 (NOISSANCES)**

Article(s): **1 AA** Qualification: [REDACTED]

Description de l'infraction: **En AYANT QUÊTE DANS les limites de la ville**

Date de l'infraction (a-m-j): **14 05 20**

Heure (h-m): **13 30**

Lieu

Endroit: **755 Boul St Jean**

Ville: **PC** Unité: [REDACTED]

PEINE

Pénalité maximale: **30 \$** Pénalité minima: **20 \$** **30 15** **Montant total réclamé**

ATTESTATION

Je, soussigné, atteste avoir moi-même constaté les faits mentionnés en:

A B C

et j'ai, de même que le poursuivant, des motifs raisonnables de croire que l'infraction décrite a été commise par le défendeur.

Personne autorisée par le poursuivant, à délivrer le constat. Nom (lettres moulées): **BOUCHER**

QUALITÉ

Agent de la paix Matricule: **5977** Unité: **105**

Autre (spécifiez): [REDACTED]

Service: **P.O.L.**

Je n'ai pas remis un double du constat.

Signature: [REDACTED]

SIGNIFICATION

J'ai signifié lors de la perpétration de l'infraction après la perpétration de l'infraction

un double du constat par la remise:

au défendeur autrement

Nom (lettres moulées): [REDACTED] Même que attestation

Agent de la paix Matricule: [REDACTED] Unité: [REDACTED]

Huissier Matricule: [REDACTED]

Date de signification (a-m-j): **14 05 20** Heure (h-m): **15 40**

Si la signification a été faite par la poste, la date et l'heure de signification sont celles indiquées sur l'avis de réception ou de livraison.

Signature: [REDACTED]

COPIE DU DÉFENDEUR (REÇU)

312846413

STATEMENT OF OFFENCE

DEFENDANT
 Prosecutor: Ville de Montréal
 Mr. [REDACTED]
 Last Name: [REDACTED]
 First Name: [REDACTED]
 Address: [REDACTED] Postal code: [REDACTED]
 Location: montreal
 Prov/State: QC Country: Canada
 Identification: Licence: [REDACTED] Other document: RAMO [REDACTED]
 Prov/State: QC Country: Canada
 Date of Birth: 1961- [REDACTED]

VEHICLE
 Plate: [REDACTED] Country: [REDACTED]
 Make: [REDACTED] Model: [REDACTED]

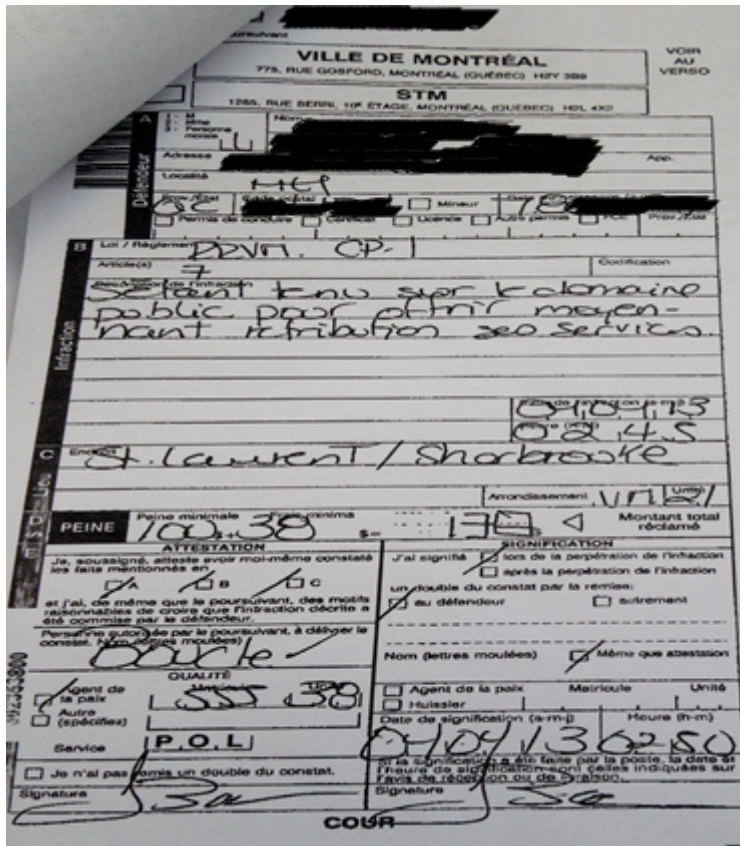
OFFENCE
 Highway Safety Code Code: P043
 c. C-24.2 Sect. 448 Def. Code: PI
 Description of offence:
 being a pedestrian and standing on the roadway to deal with the occupant of a vehicle

PLACE
 Date: 2011-08-22 Time: 10:29
 City or Borough: VILLE-MARIE Unit: 22
 Place: RUE SHERBROOKE E / AVEN PAPINEAU
 Location: Intersection Side: North Direction: [REDACTED]

Minimum fine	Costs	Contribution	Towing	Total amount
15 \$	+ 12 \$	+ 10 \$	+ 0 \$	= 37 \$

ATTESTATION	SERVICE
I, the undersigned, certify that I have personally observed the facts mentioned in: <input checked="" type="checkbox"/> A <input checked="" type="checkbox"/> B <input checked="" type="checkbox"/> C <input checked="" type="checkbox"/> D <input type="checkbox"/> E and (if applicable) certify that: Peace officer, Badge no. [REDACTED] as observed the facts mentioned in: <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> E and I have reasonable grounds to believe that the offence described in C has been committed. Name: Paquin-Petitjean E. Badge no: 5739 Peace officer Unit: 122	I certify that I have remitted a copy of the statement of offence when the offence was committed to the defendant. Date of service: 2011-08-22 Time: 10:35 Name: Paquin-Petitjean E. Badge no: 5739 Peace officer Unit: 122

IMPORTANT



"I used to panhandle to be able to eat... and to pay my tickets!"

Adrien, PAJIC participant in his fifties

"I was squeegeeing at the corner of Sherbrooke and St-Denis to get money to take the bus, when police officers came over, seized my squeegee and gave me a ticket... What do you think I can do? Do I have to steal a squeegee, and go back to squeegeeing to pay this ticket??!! It's nonsense!"

Stephane, PAJIC participant in his twenties

Making a living on the streets is not an easy task. Many people try to panhandle to get a few dollars. Other wash windshields with a squeegee, which is why they are called the "squeegee people" (and in French simply "squeegees"). Squeegee people are typically, though not exclusively, young people embracing the punk rock aesthetic. Squeegeeing and

panhandling are however totally (for the former) and partly (for the latter) prohibited by the law.

Squeegee people often get tickets resembling the last two in the trio pictured above. These tickets describe basically the same action but refer to two separate items of legislation. Police officers can decide to issue tickets on the basis of the *Highway Safety Code*, a provincial law (in which case the fine is \$37) or on the basis of Montreal By-law P-1 (in which case the fine is \$138 or more). The *Highway Safety Code* offense is basically "being a pedestrian and dealing with the occupant of a vehicle" (see the second of the three tickets above). In the last few years, the tickets issued under the *Highway Safety Code* have been printed by computer, given the high volume of tickets handed out (considering that all speeding tickets and vehicle tickets are also handed out under this same law). This is what explains the different look of the 2nd ticket. These tickets are also dealt with differently by the municipal court (different computer systems, different delays for the proceedings, etc.), and they incur a distinct set of sanctions, such as the suspension of a driver's license.

But in addition to the *Highway Safety Code*, there are two by-law provisions that police officers can use to ticket squeegee people or panhandlers who go from cars to cars at stop lights. These are section 1 of By-law P-1, which states that it is prohibited to obstruct vehicular or pedestrian traffic by standing still on public thoroughfares, and section 7 of the same By-law, which prohibits being present on public property to offer, for consideration, his services or those of others to any person (s. 7) (see above ticket number 3).

The first ticket of the three above is particularly surprising as it describes the offense as "having panhandled within the limit of the city". This was issued on the basis of a City of *Pointe-Claire by-law on nuisances*. The fact that a poor person may be considered under the title "nuisance" is in and of itself disturbing enough. Section 1 of this by-law reads:

SECTION 1. The following shall constitute a nuisance and are hereby prohibited, to:
(aa) To beg within the limits of the City without a permit issued by the Director of Police.

The City of Pointe-Claire, which is located in the West Island, a more suburban, more Anglophone, and more conservative part of the Island of Montreal, enjoys an unusual status. It was formerly part of the City of Montreal, but since 2006 it is an independent city that is however policed by the Montreal Police (SPVM) and is under the jurisdiction of the Montreal Municipal Court. Section 1)aa) of the City of Pointe-Claire' nuisance by-law is problematic. First off, the ticket in question makes no reference to a permit (or the lack of one). As it happens, I have no idea how one can get a permit: nowhere is the procedure for obtaining a begging permit explained. What's more, I doubt that the Director of Police has ever issued such a permit to a homeless person (it is probably more for firemen who want to fundraise for sick people, you know, that kind of "begging"). Actually, it seems like this by-law provision is an indirect total ban on begging. However, Canadian courts have found that begging is protected by freedom of speech²⁵ (*R v. Banks*, 2007, *Federated Anti-Poverty Groups of BC v. Vancouver (City)*, 2002) and can therefore only be limited in certain

²⁵ For more details on the language of rights and panhandling, see Blomley, 2011 and Berti, 2009.

circumstances. The Pointe-Claire ban on begging might very well be over-broad and might thus be found unconstitutional if challenged. However, as we will see in the next chapter, under the PAJIC programme, tickets are now more often withdrawn than challenged. Yet, ticketing practices place panhandlers and squeegee people in an infernal cycle of soliciting for survival purposes, getting ticketed, and then soliciting to pay the tickets. In this context, the ticketing practices reinforce the patterns of illegality.

Protest Route

CONSTAT D'INFRACTION
DISTRICT JUDICIAIRE DE MONTRÉAL

26 303944001
Greffes - Dossier N°

150784
ID avec
certif. de naissance



COCHER Poursuivant: ville de Montréal VOIR AU VERSO

C.P. 11046 SUCCURSALE CENTRE-VILLE MONTRÉAL (QUÉBEC) H3C 4Y2

STM
1265, RUE BERRI, 10^e ETAGE, MONTRÉAL (QUÉBEC) H2L 4X2

A Défendeur

1 - Mineur 2 - Mineur morale 3 - Personne morale Nom: Richard Adam

Prénom(s): Adam

Adresse: [REDACTED] App.:

Localité: Montréal

Prov./Etat: QC Code postal: H2G 0G0 Mineur Date de naissance (a-m-j): 73

Permis de conduire Certificat Licence Autre permis FCE Prov./Etat:

B Loi / Règlement R.R.V.M., c. P-6

Article(s): 2.1 Codification:

Description de l'infraction:
Non-divulgence de l'itinéraire de la manifestation, ou son déroulement ne se fait pas conformément à l'itinéraire communiqué.

Date de l'infraction (a-m-j): 13/08/05
Heure (H-M): 19:08

C Lieu

Endroit: 505 Maisonneuve E

Ville: Montréal Unité:

D PEINE Peine minimale: 500 \$ + Frais minima: 137 \$ = 637 \$ Montant total réclamé

E ATTESTATION

Je, soussigné, atteste avoir moi-même constaté les faits mentionnés en: A B C

et j'ai, de même que le poursuivant, des motifs raisonnables de croire que l'infraction décrite a été commise par le défendeur.

Personne autorisée par le poursuivant, à délivrer le constat. Nom (lettres moulées): Levesque

SIGNIFICATION

J'ai signifié lors de la perpétration de l'infraction après la perpétration de l'infraction

un double du constat par la remise: au défendeur autrement

Nom (lettres moulées): Levesque Même que attestation

QUALITE

Agent de la paix Matricule: 5404165 Unité: P.O.L.

Huissier Matricule: _____ Unité: _____

Date de signification (a-m-j): 13/08/05 Heure (h-m): 21:11

Je n'ai pas remis un double du constat.

Signature: [Signature]

COPIE DU DÉFENDEUR (REÇU)

“The night of May 23rd was maybe my 10th night time demo. I am used to going to demonstrations. In 3 months, I went to at least 100 demos. I never threw a single rock, or broke anything. I was never masked. But my peaceful attitude didn’t protect me from tear gas, and flash bombs, and police abuses.

On the night of May 23rd, the Montreal Police, acting together with the Provincial Police, decided to switch gear. No more crowd dispersal, it was now time for full-fledged mass arrests.

This protest was 100% peaceful. Apparently it had been declared illegal before it started. In my own case, I joined the demonstrators maybe 10 minutes after they started moving. I have never heard the police make an announcement saying that it was an unlawful protest and that we had to disperse.

Around 11:30 PM, the demonstration reached the corner of St-Denis and Sherbrooke. I was at the front of the procession and I witnessed the whole operation that led to the arrest (...). We were going down St-Denis, heading South. Surprisingly, police officers with yellow pinnies stopped us and prevented us from going any further on St-Denis. Until then, I had not seen any violations of the law taking place. There were a few people wearing masks among the demonstrators, but nothing that would justify the police stopping us from going further.

(...) At one point, we realized we had been trapped. The dispersal notice was made by the Montreal Police, but at this time, we were already all surrounded. We NEVER had the chance to disperse.

No one resisted arrest. Everyone cooperated nicely. Of course there were some arguments as there was a lot of frustration. But nothing too serious. Most of us sat down on the ground and sang songs. Some of us read poems. Others played games and others took a nap. (...)

Then, they started processing us, and one by one the demonstrators started to get on the buses provided by the Montreal Transportation Services. As for me, I got on the bus at 2 AM. I had to wait two hours. The police officer (...) who handcuffed me with tie-wraps was nice. He kind of admitted his own indignation about these arbitrary mass arrests. (...)

Unfortunately, the police officers responsible for the bus were of a different sort. (...)

We were locked on the bus for 4 hours, with our hands cuffed behind our backs. One older man’s wrists had gone all blue. No one told us anything during these four hours. The police never read us our rights. We only learnt the reason of our arrest after we’ve been released, once we have read the ticket they had slipped into our pockets.

I was released around 6 AM with a ticket and a \$634 fine.

John, participant at a night demonstration against Law 12 (*An act to enable students to receive instruction from the postsecondary institutions they attend, "Law 12"*) and the tuition fees hike, in Montreal on May 23rd, 2012

The arrest process John narrates is typical of the mass arrests carried out during the student strike. But the fact that these arrests were commonplace should not preclude us from asking questions. Among other things, the legality of mass arrests is highly dubious. As noted in the report *Repression, Discrimination and the Student Strike: Testimonies and Analysis* (Ligue des droits et libertés & al., 2013):

Mass arrests raise serious concerns about the principle of individual criminal liability. Punishing people in groups for being on the site of a demonstration is fundamentally unjust. Preventive arrests and preventive detention are clearly forms of prior censorship, since they prevent people from being present during a demonstration and from voicing their opinions. This form of censure violates their freedom of expression and the right of the public to receive information. (p. 15)

Yet, as we can see from the ticket above, which was given to a protester on the basis of the section 2.1 of P-6 By-law "for not communicating the itinerary of the demonstration, or its route is not following the communicated itinerary", the police officers use a self-inking stamp to write the offense on the ticket. This is one indication among others of how these mass arrests have become a routinized, mass process. This approach flies in the face of warnings by the United Nations Human Rights Committee, which, as early as 2006, in its concluding observations expressed concerns "about information that the police, in particular in Montreal, have resorted to large-scale arrests of demonstrators". It also asked Canada to "ensure that the right of persons to peacefully participate in social protests is respected, and ensure that only those committing criminal offences during demonstrations are arrested" (UNHRC 2006, para.20).

From John's testimony, it seems also that his procedural rights (right to a lawyer, right to know what one is accused of) were not respected during his detention. What's more, there are questions about the legality of arresting someone for a by-law violation. As per s. 75 of the *CPP*, i.e. the law regulating penal procedures including the issuance of tickets under municipal by-laws:

75. A peace officer who finds a person committing an offence may arrest him without a warrant if that is the only reasonable means available to him to put an end to the commission of the offence.
The person so arrested must be released from custody by the person detaining him once the latter person has reasonable grounds to believe that detention is no longer necessary to prevent, for the time being, the repetition or continuation of the offence. (emphasis is mine)

In an earlier case of mass arrest, a Superior Court judge specified that the question in each case must be "What was preventing the police officers from issuing tickets and releasing these people immediately?" (Ligue des droits et libertés, 2013, p. 15, citing *Montreal (Ville de) c. Kavanaght* (2011), para. 138). It is difficult to understand how detaining peaceful protesters for 4-6 hours is the "only reasonable means available".

In addition, according to John, the protesters were kept in the dark as to the reason for their arrest, which in and of itself contravenes to s. 10a) of the *Canadian Charter of Rights and Freedoms* ("*Canadian Charter*", s.10: "Everyone has the right on arrest or detention (a) to be informed promptly of the reasons therefor"). Now the Supreme Court recently found out that 22 minutes was too long a delay in a case of drug trafficking (*R. v. Mian*, 2014). So it may well be that having to wait 4-6 hours without knowing the reasons for one's arrest for a ticket constitutes a violation of the *Canadian Charter*.

Finally, as argued by the authors in the report *Repression, Discrimination and the Student Strike* (Ligue des droits et libertés et al., 2013):

Police alleged that, in the case of Spring 2012, detention was the only option for ensuring that the demonstration stopped, and necessary for issuing tickets. But many of the people arrested and detained under municipal by-laws reported that the actual motives for these unwarranted arrests seemed more like intimidation and a desire to castigate. (p. 15)

Another important point with regards to this ticket is the phrasing of the offense.

The above ticket refers to section 2.1 of P-6, which reads:

2.1. The exact location and itinerary, as the case may be, of an assembly, parade or other gathering must be disclosed, prior to the event, to the director of the Service de police or to the officer in charge.

Every assembly, parade or gathering for which the location or itinerary has not been disclosed, or that does not take place at the disclosed location or in accordance with the disclosed itinerary is deemed an assembly, parade or gathering held in violation of this by-law.

This provision does not apply where the Service de police, for the purposes of preventing breaches of the peace, public order and safety, demands that the disclosed location or itinerary be changed.

Section 2.1 was added on May 18, 2012 by Montreal City Council, in the midst of the student strike. The Council also decided to amend P-6 in order to add two other sections:

1) any person who covers their face with a scarf or a mask or a hood without a reasonable motive is in violation of the by-law and liable to a fine; 2) the fines for violating any sections of P-6 range from \$100 to \$500 for a first offense. Although these two latter amendments are just as problematic as the requiring of an itinerary, I will be focusing on the question of the itinerary for the purposes of this dissertation.

These amendments were introduced after Mayor Gerald Tremblay declared that the police needed new tools to intervene faster during protests (ICI Radio-Canada, 2012, May 7). At that time, there were protests almost every day and many of these were ending in confrontations between protesters and the police. Mayor Tremblay wanted to give the police more power to crack down on those he (and the media happily relayed the term) called “vandals” (“casseurs” in French).

Enough is enough. (...) I will not accept a situation where our citizens are taken hostage. I will make every effort to ensure the security of our citizens who are scared and who have had enough of this. (...) I will not accept a situation where business people and shopkeepers have their property vandalized and Montreal’s international reputation is negatively affected. (Bouabdellah, 2012, my translation)

Prior to the adoption of these amendments, the Public Security Commission of the City of Montreal organized an extraordinary public consultation to hear citizens’ perspectives on the proposed amendments. The Quebec Bar, the Ligue des droits et libertés (I wasn’t involved with them at the time), the Canadian Civil Liberties Association (CCLA), and many other organizations and individuals, all presented memos arguing that the amendments were in fact unconstitutional because they violated the freedom of expression protected by the *Canadian Charter*. The Bar (2012) was especially concerned about the phrasing of the by-laws, which was unclear about who would be responsible for communicating a protest route. Would each individual protester be responsible for this? Or just the organizers? And what about those protests that are spontaneous and horizontally organized (as opposed to ones with a hierarchy and clearly designated leaders)? The CCLA (2012) shared these concerns, and also raised the possibility of abuses

given the broad discretionary power that was to be given to police officers. They argued there is also a danger that the by-law would be enforced in a discriminatory manner with the police tolerating protests they "liked" and stopping protests they "didn't like".

The Ligue des droits et libertés (2012) also shared these concerns, emphasizing in its memo that the United Nations Human Rights Committee had previously warned the City of Montreal for its policies of mass arrests and its poor record of respect for freedom of expression and freedom of peaceful assembly. The Ligue stressed that freedom of expression is a very important right in democracy, and that any limitations should be applied in a spirit of vigilance against undue infringement. It finally warned against the potential chilling effect of the new legal provisions, considering that people might be discouraged from protesting if they did not know the conditions they could protest in without risking arrest. The Ligue reasoned that there already existed sections of the *Criminal Code* that allowed police to contain a turbulent protest or isolate a violent protester and that the City didn't need this sweeping new legal power. The Ligue concluded by positing that the City should devote its energy to listening to and considering the demands of the protesters rather than trying to repress their fundamental rights. But despite all these opposing arguments, the City Council decided to go forward with the proposed amendments.

Three years later, and despite various popular challenges (see Lemonde, Poisson & Poisson, 2014) P-6, as amended in 2012, is still on the books. Considering that this amendment allows the police to tinker with the route that is communicated by the

protesters in advance of a demonstration, it weakens the effectivity of the message. As Zick writes: “The state's power to manage, control, and produce place substantially affects the speaker's ability to convey her message. » (Zick 2006, p. 625) That being said, the sections regarding the marching route and prohibition of masks may not stand for very long as they are currently being challenged in court, and a superior court decision on the constitutionality of the May 2012 amendments is expected in a few months. But even without a judgment on its constitutionality, P-6 s. 2.1 has been considerably weakened by a municipal court decision rendered in February 2015 by Judge Randall Richmond. Judge Richmond, after a lengthy analysis, concludes that the City Council didn't intend to create an individual offense of participating in a protest for which the marching route had not been disclosed in advance. Hence, tickets could not be issued on the basis of s. 2.1. The judge felt the need to specify that the fact that many tickets could be rendered invalid by his ruling was not a factor that would prevent him from deciding in that way (*Montréal c. Thibeault-Jolin*, para. 97).

Justice Richmond's decision did have a big impact and Mayor Denis Coderre announced that all the charges (more than 3,000) made under by-law P-6 were to be withdrawn (Cameron, 2015; Ligue des droits et libertés, 2015a). He nevertheless however reaffirmed his support for and trust in the police's good work declaring: “Montreal has chosen to withdraw the charges for the fines still outstanding (...) but one thing is clear, P-6 is still valid and in force. It is the application that was criticized, not its validity ... This decision will allow us to better implement P-6 in the future. For me it is a good rule that was put in place to ensure the safety of citizens” (Bruemmer & Wilton, 2015). So for the

Mayor, the fact that thousands of people were arrested and prevented from protesting on the basis of charges on which they were afterwards acquitted was just a technical problem of by-law enforcement whereas the by-law itself remains enforceable.

Unlawful Assembly

CONSTAT D'INFRACTION
DISTRICT JUDICIAIRE DE MONTRÉAL

300

26 **303878971**
Grelle - Dossier N°

COCHER Poursuivant ville de Montreal VOIR AU VERSO

C.P. 11046 SUCCURSALE CENTRE-VILLE
MONTRÉAL (QUÉBEC) H3C 4Y2

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1265, RUE BERRI, 10^e ÉTAGE, MONTRÉAL (QUÉBEC) H2L 4X2

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3. Personne [REDACTED]
morsue Prénom(s) [REDACTED] App. [REDACTED]

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97. [REDACTED]
98. [REDACTED]
99. [REDACTED]
100. [REDACTED]

D Loi / Règlement

Article(s) [REDACTED]

Description de l'infraction R.R.V.M., c. P-6
2

Ayant participé ou étant présent à une
assemblée, un défilé ou un attroupement
mettant en danger la paix, la sécurité ou
l'ordre sur le domaine public.

Date de l'infraction (a-m-j) 1 30 03 15
Heure (h-m) 18 00

Endroit 272 Ste Catherine est
Montreal Ville UM Unité

Pénalité minimale 500 \$ s. + 137 \$ s. = 637 \$ s. Montant total réclamé

ATTESTATION
Je, soussigné, atteste avoir moi-même constaté les faits mentionnés en A B C
et j'ai, de même que le poursuivant, des motifs raisonnables de croire que l'infraction décrite a été commise par le défendeur.
Personne autorisée par le poursuivant, à délivrer le constat. Nom (lettres moulées)

SIGNIFICATION
Je signifié lors de la perpétration de l'infraction après la perpétration de l'infraction
un double du constat par la remise:
 au défendeur autrement
Nom (lettres moulées) Même que attestation

QUALITÉ
 Agent de la paix 4426 175 Matricule [REDACTED] Unité [REDACTED]
 Autre (spécifiez) P.O.L.
 Huissier

Date de signification (a-m-j) 2 JUIL 2013 Heure (h-m) 19 38

Si la signification a été faite par la poste, la date et l'heure de signification sont celles indiquées sur le avis de réception ou de livraison.

Signature [REDACTED] Signature [REDACTED]

COUR

J'atteste que le présent document est conforme à son double sur support électronique.
Nom: Nathalie Mullens(umull99) employé de la Direction des affaires pénales et criminelles.
Date: 2013-06-14 Heure: 13.43

I left the demonstration right after it was declared unlawful. The police surged forward and cordoned me off with about 30 other people. We were handcuffed and taken to a police station, then released six hours later with a ticket for unlawful assembly.

Mathieu, a demonstrator describing an evening demonstration
(Source: Ligue des droits et libertés & al., 2013, my translation)

The ticket reproduced above describes the offense as “having participated or been present at an assembly, parade, or gathering disturbing the peace, security or order on the public domain”. This is based on s. 2 of P-6 (as opposed to s. 2.1 which is about non-disclosure of the marching route). Once again, we can see that the police have gotten into the habit of issuing this kind of ticket: the offence is marked with a self-inking stamp! One might even wonder whether these tickets were not stamped in advance, which would be consistent with the theory advanced by some activists that the decision to arrest protesters is not motivated by the actual events occurring at a protest but is more of a reaction to protesters’ political beliefs and demands (which would mean the decision is taken long before the protest has even started). This particular ticket was given on March 15, 2013, at the protest against police brutality. I was at the protest that day, but I wasn’t able to join the group because the police started dispersing the crowd before I got there, and even before the scheduled start time of the event. (One can wonder how a protest can disturb the peace, security, or public order before it has even started). I tried to join a group that intended to keep protesting, but I stopped when I saw riot police pouring out of a truck. I’m actually lucky I haven’t been arrested. Many of my friends have been. Although Mathieu’s account above doesn’t refer to the March 15, 2013 protest, the police’s action that day was similar to what he describes. It is in fact not uncommon for police officers to kettle a crowd before people even have time to disperse once they hear the order to do so. And this is

assuming they hear the order in the first place. Most of the time, protesters report that they didn't disperse because they didn't know that the police had declared the protest "unlawful". Alternatively, sometimes they don't disperse because the protest is declared unlawful before it has even begun moving (most likely because the itinerary had not been disclosed) and in this case people then count on the discretionary power of the police to tolerate the march. This is a risky strategy because the police may decide to kettle the protesters at any point. Still, for the sake of being heard, many protesters are willing to take that risk.

The city by-law that applies to "disturbances of the peace" in the public domain was adopted in its first version in 1969, in response to demonstrations by the francophone nationalist movement of the day known as "Pour un Québec en Français" ("For a Quebec in French.)²⁶ At the time, there were protests almost every day. City authorities felt they needed a legislative tool to stop them and the then Montreal police chief had written to the mayor asking him for more powers to stop the protests. According to him, there had been too many protests since the beginning of the year and this was incurring excessive policing costs (notably in overtime) (Barrette, 2014). —Such is the irony of history! Some forty years later, the situation is almost identical!— The result was by-law 3926, which also came with an ordinance banning all protests for 30 days (*Dupond v. City of Montreal et al.*,

²⁶ This movement originated at a time when it was not uncommon for French Canadians to be told "speak white". And just one year earlier Pierre-Elliott Trudeau, then Prime Minister of Canada had declared that French Canadians could not be taken seriously because anyhow they spoke a "lousy French". This statement backfired and contributed to reinforcing Francophone nationalism and to fostering the celebration of Québécois French, that is, in my opinion, distinct but certainly not lousy or inferior to French of France.

1978). However, this by-law was much contested, and the Ligue des droits et libertés, which already existed in those days, led the charge against it (Barrette, 2014).

The 1969 by-law, or more specifically its section 5, was challenged in court and the Supreme Court of Canada confirmed its validity in 1978, in the famous case *Dupond* (1978). In this case, Justice Beetz, writing for the majority, ruled that section 5 of the by-law was constitutionally valid since it had been adopted under legitimate police power and was preventive in nature and not punitive (i.e. it did not fall under the auspices of criminal law, and thus did not encroach on a federal jurisdiction). Above all, Justice Beetz concluded that the right to demonstrate was not protected by freedom of speech. He wrote:

Demonstrations are not a form of speech but of collective action. They are of the nature of a display of force rather than of that of an appeal to reason; their inarticulateness prevents them from becoming part of language and from reaching the level of discourse. (p. 797)

Justice Beetz has been widely criticized for this analysis, and his ruling on demonstrations was overturned, though in a subtle manner, by subsequent Supreme Court cases, after the freedom of speech was elevated to constitutional status in the *Canadian Charter* in 1982.

However, as we will see in the next chapters, I contend that Montreal authorities — City Council and police officers alike— remain aligned with Justice Beetz' 1978 opinion and for them, demonstrations, especially if they are a little rowdy, are not legitimate forms of expression of political opinions that fall within the ambit of constitutionally protected human rights.

When challenged again in the early 2000s, P-6's validity was re-affirmed. The constitutionality of section 2 of the by-law (regarding unlawful assembly) was challenged in the *Aubert-Bonn* case (2008), but the Court of Appeal of Quebec concluded the objective of s. 2 "was not to prohibit a criminal behaviour, but to ensure a peaceful enjoyment of public domain" (para. 25, my translation). As a result, the Court concluded that there was no encroachment on federal jurisdiction. Hence, s. 2 of P-6 is still on the books and is still widely enforced. It reads:

2. No assemblies, parades or other gatherings that disturb the peace, public order and safety may be held on public thoroughfares, in parks and places or other areas of public property.

In actuality, this section of the by-law gives the power to the police to judge whether or not a demonstration is "disturbing the peace, public order and safety" and if so, it then gives them the power to declare it illegal and to hand out tickets to those who have "contravened" the by-law. Whether or not the police will then intervene to break up the demonstration becomes a matter of their discretion. In practice some illegal demonstrations are tolerated whereas others are broken up very rapidly, especially since 2012 (see the next section for more statistics).

Examining these ticket stories helps us to understand the various ways in which public space is occupied by homeless people and protesters, and how the law is mobilized to control and construct that space. In the following section, we will take a step back, zoom out, and shed light on ticketing practices more generally.

Practices in Ticketing Occupiers of Public Space

The judicialization of homeless people has been studied extensively by Céline Bellot, professor of Social Work at the Université de Montréal, and Marie-Eve Sylvestre, professor of law at the University of Ottawa (Sylvestre, Bellot & Chesnay, 2012; Sylvestre & al., 2011; Sylvestre & Bellot, 2012). In three separate studies conducted between 1994 and 2010 (1994-2004 (Bellot & al. 2005); 2004-2006; 2006-2010 (Bellot & Sylvestre 2012)) they documented the number of tickets handed out to homeless people. Bellot and Sylvestre mined the city's database for tickets issued to defendants who had given, as their home address, the address of one of the shelters and community organizations that service the homeless. In this way, they found that 64, 491 tickets were issued to homeless people between January 1st, 1994 and December 31, 2010 (Bellot & Sylvestre, 2012).²⁷ Still, the researchers caution that this is just the tip of the iceberg, considering that many people who are homeless or on the verge of homelessness may have given a friend's or a relative's address to the police officers when they receive a ticket, meaning that the number they arrived at was necessarily conservative. Of those 64, 491 tickets, 46.8% were handed out for violations of municipal by-laws and 52.3% were issued for violations of the by-laws of the Montreal public transportation system (abbreviated by STM) (Bellot & Sylvestre, 2012). Tickets for STM by-laws infractions are mostly given out in the metro and in metro

²⁷ It would be great to be able to compare the number of tickets issued to homeless people with the number of tickets issued to the whole population in Montreal between those years. This is however a figure that I did not find. Criminologists Rémi Boivin and Isabelle Billette (2012) did however obtain from the SPVM the data for 2008 and 2009 : For a period of 24 months, in Montreal, 33,167 tickets for infractions to municipal by-laws were issued to 25,630 non homeless persons; and 7 531 tickets were issued to 1,780 homeless people. When we do the ratio of the number of tickets and the total population, we see that the homeless people are overly represented : 18 tickets by 1000 persons living in Montreal, as opposed to 251 tickets by 1000 homeless people (if you estimate the total population of homeless people to 30,000 people).

stations, i.e. in underground public spaces. The proportion of STM tickets as part of the total tickets given to homeless people increased considerably between 1994 (46.3%) and 2010 (61.8%), and in particular after 2007, when the Montreal police (abbreviated by SPVM) started patrolling the metro and became responsible for STM by-law enforcement. The following table shows the evolution of ticketing practices.

Judicialization of Homeless People

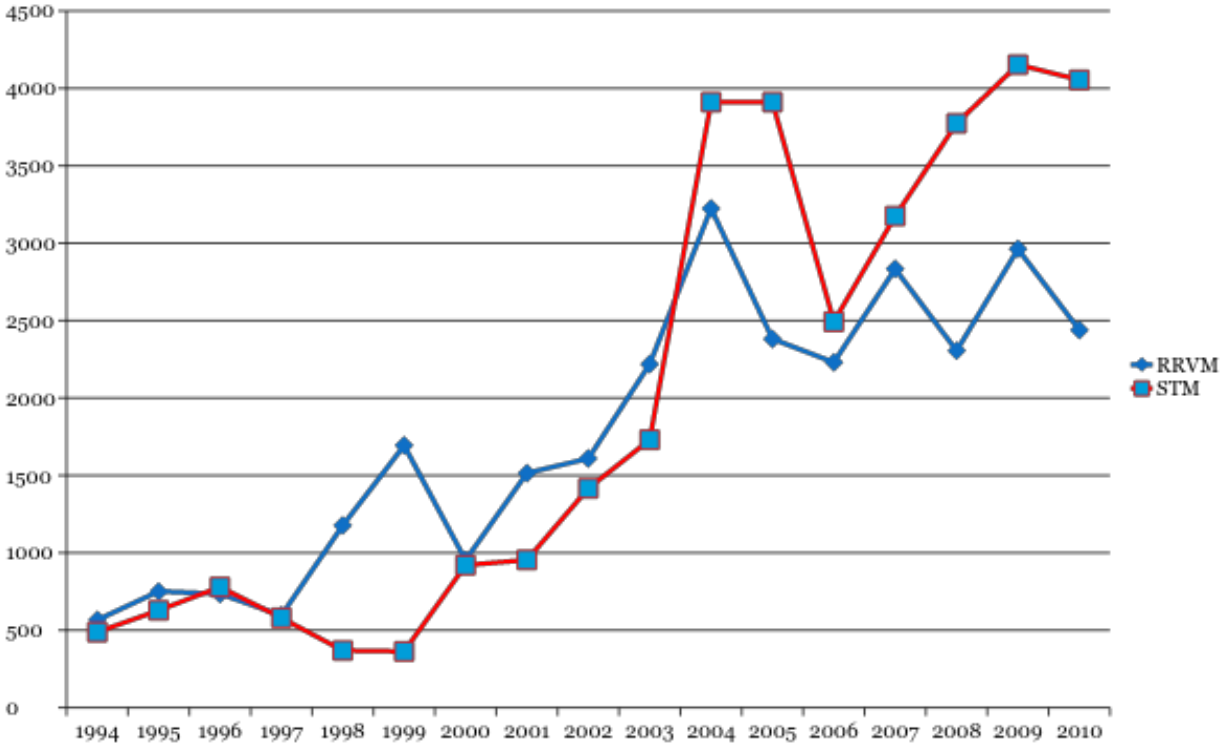


Figure 3 Number of tickets given to homeless people in Montreal between 1994 and 2010
 Source : Bellot & Sylvestre, 2012, p. 13

As we can see, since 1994, the number of tickets issued to the homeless population has exploded, increasing from 1,054 tickets in 1994 to 6,562 tickets in 2010, an increase that cannot be attributed to any drastic change in the composition of the homeless

population. Also the number of tickets issued under public transportation by-laws (and mostly in the metro) has increased dramatically in recent years, representing 57% of all the tickets known to have been issued to homeless people during the study period (Bellot & Sylvestre, 2012).

Between 1994 and 2004, tickets were issued to 4,036 homeless people, of which 7.5% were women (Bellot & Sylvestre, 2012). From 2004 to 2006, tickets were handed out to 2704 homeless people, of whom 8% were women. And from 2006 to 2010, 4,370 homeless people were ticketed, including 12% women. It is unclear if the increasing percentage of women is due to a change in patterns of judicialization or because the proportion of women in the homeless population has recently increased.

The three most common violations to municipal by-laws for which tickets were issued between 2006-2010 are: 1) being found lying or loitering drunk on a public thoroughfare or place, or any other place in the city (31.5%); 2) consuming liquor on public property (29.6%); and 3) impeding or obstructing pedestrian and vehicular traffic by standing still, prowling or loitering on public thoroughfares and places (11.8%). The most common violations of STM by-laws are 1) obtaining or attempting to obtain a trip on public transport without paying the fare (33.7%), 2) lying down on a bench, a seat or on the floor (23.3%); and 3) smoking (14.6%) (Bellot & Sylvestre, 2012).

Between 1994 and 2004, 3,436 of the ticketed persons received fewer than 10 tickets, while the remaining 600 persons received 58.3% of all the tickets covered by the

study, for an average of 22 per person and an average debt of close to \$5,000 (Bellot, Raffestin, Royer & Noël, 2005, p. 22). In the latest study, covering 2006-2010, 806 people, accounting for about 18% of the individuals profiled, received more than 10 tickets each. Hence, we can see an increase over the years in the number of people who are over-judicialized. The extreme cases are also telling: 18 people received more than a hundred tickets each between 2006 and 2010. The person who was handed the most tickets received 374 tickets during that period. The maximum number of tickets issued to a single person is 7 in one day, 33 in a month, and 72 for an entire year. The majority of these tickets were issued to people who were dealing with severe alcoholism and/or who slept in the metro.

Broadly speaking, the judicialization of the homeless led to two consequences. First, it is estimated that almost 25% of all tickets issued in Montreal during the study periods were issued to homeless people, even though this group is not thought to have constituted more than 1.6% of the population (Bellot & Sylvestre, 2012). This is what led the CDPDJQ to conclude that homeless people are discriminated against in Montreal and are victims of social profiling (Campbell & Eid 2009). Secondly, as a result of the fines and associated fees—amounts that needless to say, are almost impossible to pay—homeless people had racked up a penal debt of fifteen million dollars toward the City of Montreal over a fifteen-year period (Bellot & Sylvestre 2012).

The impact of the judicialization is very serious for the homeless. Bellot & al. (2005), who interviewed 29 homeless people, report that their interviewees faced

stigmatization, difficulties in finding jobs, loss of housing, deterioration of family relations and more because of their judicialization. The stress they suffered, by being constantly afraid of being arrested for unpaid fines was also tremendously high (some even reported having suicidal thoughts because of it). Some people reported avoiding certain areas of Montreal, even if this meant cutting themselves off from the organizations that would provide them services to try to avoid interactions with the police (p. 110). It should be noted that until 2006, people could in fact go to jail for non-payment of their ticket fines. Between 1994 and 2004, 72% of the tickets that were profiled in the first study were administratively closed not by the payment of the fine but rather by the imprisonment of the defendant (Bellot & al., 2005). Officially, no one can be sentenced to prison for a violation of municipal by-laws (as per *CPP*, s. 231), however judges may issue warrants of committal if they are convinced that all other procedures to collect the fines have failed (*CPP*, s. 366). The power to send people to prison for non-payment of fines still exists, but following a massive campaign by homeless rights activists (the RAPSIM especially) and by socially engaged scholars (Bellot & Sylvestre in particular), the collection department of the City of Montreal has opted not to use this power since 2006. In consequence, no one is currently sent to jail for tickets issued in Montreal, but everywhere else in the province, the *CPP* rules still apply for infractions to municipal by-laws and provincial laws (except the *Highway Safety Code*). And the impacts of such a penal policy are dramatic: loss of housing, loss of employment, loss of relationships, immense stress, etc. (Fortin & al., 2010).

Judicialization of Protesters

The quantitative data pertaining to the judicialization of protesters during the past few years are far less documented and easily accessible than statistics regarding the judicialization of the homeless. Despite my repeated requests, I could not secure access to the relevant data from the Montreal Municipal Court. Apparently the court's database is undergoing some major changes at the moment and it is impossible to extract data from it, let alone the number of tickets issued under by-law P-6 over the past 10 years. To solve this problem, my colleagues and I at the Ligue des droits et libertés took it upon ourselves to document the extent of political repression in Montreal and in the rest of the province since the start of the 2012 student strike. The Ligue produced two important reports (I contributed to both of them). The first one, *Repression, Discrimination and the Student Strike: Testimonies and Analysis*, was released in April 2013 and documents the arrests, police brutality, and political discrimination that occurred between February 16, 2012 and September 3, 2012. Afterwards, seeing that political repression had not halted and was actually getting worse after the student strike ended, the Ligue decided to issue another report documenting attacks on the right to protest in the province. The second report, written in French and not yet translated into English, is titled: *Manifestations et répressions. Bilan sur le droit de manifester au Québec (Protest and Repression. A Survey of the Right to Protest in Quebec.)*

The data gathered in these two reports is the fruit of intense work involving the investigation and triangulation of all potential sources including newspapers, police reports, friends' testimonies, activist tallies, etc. with a view to producing the most accurate

portrait possible. Of course, these data are far less systematic and reliable than Bellot and Sylvestre’s data on the judicialization of the homeless, but it is the best we could get, and it allows us to get a good idea of the scale to which protesters have been judicialized.

In overview, between March 15, 2011 and May 1st, 2015, police conducted nearly 7,000 arrests in the context of protests in the Province of Quebec. The breakdown of these arrests by year goes like this

Arrests in the context of protests in the Province of Quebec	
2011 (from March 15, 2011)	281
2012	3,636
2013	1,539
2014	439
2015 (until May 1 st , 2015)	1,006

Figure 4 Number of arrests in the context of protests in the province of Québec between 2011 and 2015
Source: Ligue des droits et libertés, 2015a, p. 6

Between March 15, 2011 and May 1st 2015, police conducted 46 mass arrests, which means that at 46 occasions, they surrounded and kettled a crowd of protesters, then handcuffed them using painful plastic tie-wraps, identified, detained in chartered buses, ticketed, and finally released the protesters (Ligue des droits et libertés, 2015a, p. 6).

Of the 5,895 arrests that were conducted in connection with protest in the province between March 15, 2011 and December 8, 2014, 56.5% of those were made on the basis of

Montreal by-law P-6 (either s. 2 or s. 2.1), 21% on the basis of the *Highway Safety Code*,²⁸ 13.5% under the *Criminal code*, and 9% under other municipal by-laws or on the basis of accusations which are unknown.

We can see that in the current context, the large majority of the accusations resulting from protests are laid under provincial or municipal by-laws. However, this has not always been the case. In the early 2000s, police mostly resorted to sections of the *Criminal code* to stop protests. It should be noted that when confronted with what they see as an unlawful assembly—and their discretion in how to interpret this is almost total—the police have two options: either to arrest the protesters under section 66 of the *Criminal code*; or to issue tickets on the basis of s. 2 of by-law P-6 (mentioned above). Section 66 says that “Every one who is a member of an unlawful assembly is guilty of an offence punishable on summary conviction”, and unlawful assembly is described in section 63 as:

an assembly of three or more persons who, with intent to carry out any common purpose, assemble in such a manner or so conduct themselves when they are assembled as to cause persons in the neighborhood of the assembly to fear, on reasonable grounds, that they (a) will disturb the peace tumultuously; or (b) will by that assembly needlessly and without reasonable cause provoke other persons to disturb the peace tumultuously.

Between 2002 and 2012, the number of charges laid under s. 66 declined steadily, while the number of tickets issued under by-law P-6 increased in inverse proportion to this.

²⁸ Usually the accusations are made under s. 500.1 of the *Highway Safety Code*: “No person may, during a concerted action intended to obstruct in any way vehicular traffic on a public highway, occupy the roadway, shoulder or any other part of the right of way of or approaches to the highway or place a vehicle or obstacle thereon so as to obstruct vehicular traffic on the highway or access to such a highway”

According to the internal database of the Municipal court of Montreal,²⁹ these are the figures:

Unlawful assembly charges on the basis of s. 66 (Cr. C) in Montreal	
2002	288
2003	228
2004	52
2005	1
2006	7
2007	7
2008	4
2009	3
2010	2
2011	1
2012	7
2013	7

Figure 5 Number of criminal charges for unlawful assemblies in Montreal between 2002 and 2013

Denis Poitras, a famous lawyer who spent his whole career defending activists, commented on this phenomenon at a conference he gave in May 2013. According to him, it is clear that the police were instructed at a certain point to use municipal by-laws rather than the *Criminal Code* for administration of justice reasons. On March 15, 2002, on the occasion of the annual protest against police brutality, the SPVM arrested 268 adults (and 103 minors) under s. 66 of the *Criminal code*. The defendants afterwards pleaded not guilty and organized their defense: they were determined to go to trial to prove their innocence. These trials turned out to be a nightmare for the municipal court. The Court divided the

²⁹ Those data were generously provided by Prof. Marie-Eve Sylvestre, principal investigator of the SSHRC-funded research project "Court-imposed restrictions to public spaces and marginalized people in Canada".

arrestees into 28 groups, meaning there were 28 parallel trials deliberating on basically the same question, to wit whether or not there had been a tumultuous disturbance of the peace on March 15, 2002. Realizing this was absolutely unmanageable, the Court decided to merge the defendants into 9 groups. Nevertheless, the same police officers still had to come to court and testify in 9 parallel trials, and their versions turned out to be different (improving each time) from trial to trial. This was contested by the defendants, who initiated multiple legal recourses over the course of the trials. After several years and appeals by 2008, the defendants had by and large all been acquitted due to either lack of evidence, or unreasonable delays, following a very costly and lengthy legal process (for a summary of these procedures, see inter alia *Astudillo c. R.*, 2008).

By 2008, protesters from this group were almost the only ones still facing charges of unlawful assembly. According to Alexandre Popovic, a famous Montreal activist and the author of the concluding chapter to a collaborative volume on police repression, the activists who were detained while protesting against a WTO summit in 2003 were the last ones to be charged under s. 66 following a mass arrest (Popovic, 2013). This is in fact consistent with the data provided by the Municipal Court. Hence forth, on November 19, 2004, on the occasion of a protest against the Quebec Liberal Party, the protesters who were kettled by police received tickets instead of the usual charge under the *Criminal Code* that they would have received a few years before. And in fact in 2012, during the height of the student movement, which saw multiple protest actions per day, only 7 *Criminal Code* charges for unlawful assembly were laid over the entire year. What happened? Basically the shift from the *Criminal Code* to P-6 is to get rid of having to prove the criminal intention

(*mens rea*) and to get more expeditious trials, if any, and save money. Moreover, affordable or free legal aid provided by the State is not available to defendants who have received tickets. It is more easily accessible (although not guaranteed) to defendants facing criminal charges. One could then suppose that the City evaluated that it was more likely that people would entered a guilty plea and avoid trials if they were charged of municipal by-law offenses rather than criminal offense. With fewer trials, the City would save time and money. On this, it is worth quoting Popovic (2013) at length:

It seems like political repression has quite simply adjusted to the realities of accounting. It is first and foremost the evergrowing costs of the trials of protesters that forced the SPVM to change its practice in terms of criminalizing dissidence (...). Kettling hundreds of protesters is one thing; giving them a fair criminal trial is another. Costs add up. Someone, somewhere, whom we can well imagine in our mind's eye sitting in an ivory tower, probably took out a calculator and didn't like the number of zeros that he saw. (pp. 259-260, my translation)

Before ending, it is very important to mention one last statistic: 83% of all tickets that were issued under P-6 between 2012 and 2014 resulted in either a stay of proceedings, a withdrawal of the tickets or an acquittal (Ligue des droits et libertés, 2015a, p. 10). According to Natacha Binsse-Masse, a brilliant lawyer who was in charge of multiple class actions representing protesters in the 2000s and the first person to do legwork on the notion of political profiling, the arrests conducted in the context of a protest often have very weak legal grounds and are carried out principally to end a protest and to discourage future movements of social activism (Binsse-Masse, as quoted in Ligue des droits et libertés, p. 10). I can only agree with her conclusion³⁰ and we will see in the next chapter how for both homeless people and protesters the arrest itself is often the main punishment.

³⁰ I should disclose here that Natacha Binsse-Masse was a close friend and I owe much of my analysis and conclusions to several conversations I had with her in 2008-2009. At the time, it was three years before the

But arrests and court proceedings do leave a mark on people. Of the 400 testimonies gathered in the report *Repression, Discrimination and the Student Strike: Testimonies and Analysis* (Ligue des droits et libertés & al., 2013), half of these mentioned the psychological impact that the interaction with the police and the court system had on the respondents. Many of the individuals who provided testimonies stated that they had felt humiliated and their dignity had been violated through the process. Several also recalled feeling angry at the police brutality, to the point that they literally felt sick to their stomach (p. 34). Individuals also felt scared and intimidated, like this respondent who was randomly approached by a police officer in a park:

An officer came up to me and asked if I supported the student protests. He then told me that I was now flagged as an active demonstrator and threatened to come after me if he spotted me in a crowd of 500. (Ligue des droits et libertés & al., 2013, p. 35)

Another respondent, a Cegep professor who was arrested during a protest testifies:

I felt that my right to have political ideas different from those of the government and my right to protest were violated. I felt intimidated and humiliated by the police officers' language, I was treated with no respect whatsoever, and I was a victim of unfair abuse of power. (Ligue des droits et libertés & al., 2013, p. 36)

Dozens of people who testified for the report shared that they experienced lasting psychological consequences from their arrest at a protest, including nightmares, extreme fear of police sirens, depression, and paranoid episodes (Ligue des droits et libertés & al., 2013, p. 37). Ultimately hundreds mentioned losing faith in the police, and the justice

student strike and I didn't know my doctoral research would end up focusing on the judicialization of protesters in addition to the judicialization of homeless people. Natacha passed away in the Fall of 2009, and with every page I write in this dissertation, I wonder what she would think. I like to believe she would agree with my conclusions.

system. Most importantly, many people are now afraid to go to protests. To cite the words of one respondent: "Watching this police brutality made me cry. I can't believe this is what my Quebec has come to, that I'm afraid to demonstrate peacefully, afraid of police. How can this be?" (Ligue des droits et libertés & al., 2013, p. 37).

Conclusion

As we have seen in this chapter, the ticketing practices (and the police brutality that all too often is associated) for various uses of public space by homeless people and protesters have dramatic consequences. First, we have seen with the vignettes that people don't experience the city in the same way when they are seen as disorderly. Suddenly, city landmarks become landmarks of oppression and sites of injustice. When one occupies the space as a homeless or as a protester, one's geographical points of reference are entangled with the judicial system.

When examined one by one, out of context, the ticket is a mundane legal document. For most of us, it is a stupid piece of paper we find in our car windshield after having overstayed a parking meter. For most of us, it ends up being paid online with a credit card either because we recognize our guilt or because going through the hassle of a trial is not worth it. These tickets are annoying, but most of the time they don't bring dire consequences: they never result in a criminal record, and most of the time they don't even occasion a court appearance (if the accused decides to plead guilty and pay the fine, as it happens in the vast majority of cases). But as we have seen, the situation is different for certain segments of the population that are deemed unruly and disorderly, namely the

homeless and protesters. Everytime an individual gets a tickets, he or she is impeded in her or his occupation of public space. The panhandler, the loiterer, the protester is removed from public space by the ticketing practices, and this has serious consequences, because, as Kairys (1998), Zick (2006) and Waldron (1991) all pointed out, protesters and homeless people alike need access to public spaces for their rights to be fully effective.

As far as I know, not many studies have compared the ways in which local regulations impact on both protesters and homeless people (see however Mitchell, 1995; Mitchell, 2003). But as we have seen in this chapter, when we look at both groups together, we see that the by-laws might not target specifically one group or the other, but rather that it is directed at disorders. As we will see in the next chapters, studying the penal control of the occupations of public space by both the homeless and the protesters reveals that this control has much to do with a certain conception of public space and being together in the city. In the next chapter, we will examine the repressive logic —i.e. clearing the streets of unwanted disorders— that lies behind this spatial tactic.

We have seen also that if several authors have studied public spaces, there have rarely been studies paying specific attention to the workings of city regulations of public space. But I believe that when we don't look specifically at the legal technicalities in these cases, we miss out. When viewed on a larger scale, we realize that the ticket is anything but banal, and we see that the same tool is used to control both protesters and the homeless. But because homelessness and protests are not prohibited per se in Quebec, we have to look more closely at the legal processes to see how oppressive they are. When we look

below the surface, unpack the logic, and see the aggregate data, then we are in a better position to understand the dramatic impact the ticketing practices have. It also says something about the criminal justice system, which seems to favour control over sentencing in the name of expediency and cost efficiency, as we will see in the next chapter. And by looking at each ticket in details, we could see also that many of them could be fought and challenged, even if in actuality they rarely are (Ms. Nelson is an exception). When we take the law seriously, we see that we could potentially redress injustices with legal technicalities, or in other words, win against the law with the law.

CHAPTER 4 THE “ARREST” IS THE PUNISHMENT³¹

“The unchecked panhandler is, in effect, the first broken window”
Wilson & Kelling, 1982

“There is no reason for the police to arrest 300 people at a protest because two people broke a window. People have a constitutional right to protest”
Famous activist lawyer,
quoted in Lachapelle, 2013
(my translation)

Introduction

How does a panhandler get equated with a “broken window”? How do two people breaking a window at a protest justify intense state violence and police brutality? Isn't it interesting to note how a simple “broken window”, literally or figuratively, seems so threatening? What is so wrong with these broken windows?

This chapter engages the literature on broken windows theory (Wilson & Kelling, 1982; Kelling & Coles, 1997) and its associated policing strategy (Bratton & Giuliani, 1994) to show how the occupation of public space by the homeless and by protesters (though the latter case is not typically seen as such in the literature) are constructed by the police as public disorder, or if you please, broken windows, that need to be fixed and taken care of swiftly. Much has been written on the broken windows theory and the “quality of life” policing strategy (see e.g. Harcourt 2005, 2013; Harcourt & Ludwig, 2006; Mitchell, 2003;

³¹ A shorter and previous version of this chapter was presented in Seattle at the Law and Society Annual Meeting in May 2015. This chapter also draws on an essay I wrote for the course *Crime and Public Policy* taught by Prof. Ronald Huff at UCI in the Spring quarter of 2011.

Samaha, 2012; Sylvestre, 2010; Vitale, 2008; Sampson & Raudenbush, 1999; Kelling & Coles, 1997; Bratton & Kelling 1982; Skogan, 1992) but only a few authors (Vitale, 2005, 2011; Rafail, 2015; Passavant, 2015) have made the connection between the repression of protests and the low level of tolerance for what is constructed as disorder. This chapter establishes that connection and shows that the urban policing of disorder seems to have been driven by one deep and powerful force for more than twenty years: the fear of the broken window, in whatever form it may come.

This chapter also shows how the criminal justice system subsequently deals with these public order offenses in a bizarre way; in actuality, the behaviour that had been constructed as public disorder is only rarely punished through the traditional adjudicative criminal process. Feeley (1992) in the late 1970s famously argued that the expansion of the procedural rights of the defendants in criminal proceedings brought unintended consequences: for many defendants accused of petty crimes in low-level offense courts, the pre-trial costs are so high that the process itself is the punishment and “it leads arrestees and the court to ignore the opportunities available under formal adversarial proceedings” (p. 244). However, I intend to argue that in the case of offenses related to occupation of public space in Montreal, it is not necessarily the process but rather the arrest that is the punishment. In fact, this chapter will show that there is a complete disconnect between the arrest and the municipal criminal justice system that administers the consequences of the arrest. The police punish through arrest, and the criminal justice system then manages these disorderly elements of society through its institutional framework rather than

formally punishing them through sentencing. And the result is a significant disregard for the constitutional rights and freedoms of marginalized populations along the way.

Broken Windows Theory and Order Maintenance Policing

The broken windows theory is attributed to James Q. Wilson and George L. Kelling who published a short text entitled “Broken Windows” in 1982 (Wilson & Kelling, 1982). Broken windows theory inspired an order maintenance policing strategy, also called “quality of life” or “zero tolerance” strategy, which is often attributed to the 1990s New York duo of police chief and City Mayor, respectively William Bratton and Rudolf Giuliani (Bratton & Giuliani, 1994).

Inspired by the Chicago School of Criminology that connected social control exercised by the community (or rather the lack thereof) and crime, Wilson and Kelling developed a theory using the metaphor of broken windows in a house to illustrate the problem with disorders. Their reasoning is the following: if a house has a broken window that is left unrepaired, soon people will break more windows as they will not fear consequences. The unrepaired broken window shows that no one cares and that there is no surveillance. The same can be said of disorders in a community. “ “Untended behavior” [like untended property] also leads to the breakdown of community controls” (Wilson & Kelling, 1982). Disorders in a community cause discomfort and fear. Since people are not as likely as before to go out in the streets, a relaxation of informal social control by the community occurs. Then, potential criminals, witnessing disorders and interpreting these as a sign of low surveillance, feel free to act and to commit crimes. And thus begins a

vicious cycle of disorders and crime. Victimless disorders are likely to cause more serious crimes because, like broken windows, they are at once a signal that there is no community control and a consequence of this relaxed control. "If the neighborhood cannot keep a bothersome panhandler from annoying passers-by, the thief may reason, it is even less likely to call the police to identify a potential mugger or to interfere if the mugging actually takes place" (Wilson & Kelling, 1982). Contrary to the Chicago School and the proponents of social disorganization theory who saw structural conditions such as ethnic heterogeneity, poverty and population turnover as the main factors in social disorganization, Wilson and Kelling do not address the "root causes" of crime and focus mainly on unchecked social disorders as the main trigger for serious criminality (Cullen & Agnew, 2006, p. 457).

Several authors have already commented exhaustively on all the problems with the broken windows theory (Harcourt 2005, 2013; Harcourt & Ludwig, 2006; Mitchell, 2003; Samaha, 2012; Sylvestre, 2010; Vitale, 2008; Herbert, 2001) but allow me to underline here quickly what I think are its four main shortcomings: 1) there is no clear evidence of a causal relationship between disorder and crime; 2) in dividing the world between respectable and disreputable people, this theory dehumanizes and discriminates against whole groups of human beings, including the homeless and protesters; 3) in focusing on disorders, this theory obscures the structural conditions leading to crime, such as poverty, racism, social inequality, etc.; 4) finally, it promotes the myth that the disorderly people it targets (like the homeless and the protesters) are violent and dangerous criminals.

No Causal Relationship Between Disorder and Crime

Although it has become widely popular, the broken windows theory has still not been convincingly empirically proven. Writing in 2004, the National Research Council states that “[Although] [t]here is a widespread perception among police, policy makers and the public that enforcement strategies (primarily arrest) applied broadly against offenders committing minor offenses lead to reductions in serious crime ... [r]esearch does not provide strong support for this proposition” (Harcourt & Ludwig, 2006, p. 273). Similarly, Harcourt and Ludwig concluded in 2006 that although policing does matter, there is no empirical evidence supporting the proposition that aggressively policing disorders will reduce violent crime in the long run (p. 315). To this day, the connection between crime and disorder is still uncertain. After an extensive review of available studies, Samaha concluded in 2012:

On the available evidence, a sensible conclusion is that the probability of generating a beneficial self-fulfilling prophecy with broken windows policing is uncertain, low, or confined in important ways. (p. 1629; see also Harcourt, 2013)

Even James Q. Wilson, in an interview given to the New York Times in 2004, somewhat repudiated his own theory: “I still to this day do not know if improving order will or will not reduce crime. [...] People have not understood that this was a speculation” (Hurley, 2004). In this New York Times article, Dr. Felton Earls, a Harvard professor of social medicine who is the main interviewee in this article, emphasizes concentrated poverty in a community and lack of collective efficacy as the main factors driving crime in a community, not broken windows. His conclusion is telling:

As for policy implications, ... rather than focusing on arresting squeegee men and graffiti scrawlers, local governments should support the development of cooperative efforts in low-income neighborhoods by encouraging neighbors to

meet and work together. Indeed, cities that sow community gardens, he said, may reap a harvest of not only kale and tomatoes, but safer neighborhoods and healthier children. (Hurley, 2004)

A Dehumanizing Theory

The very name of this theory is somewhat offensive and dehumanizing, considering that it compares the most destitute people among us, those dealing with extreme poverty, drug addiction and/or mental illness, to mere “broken windows”. In addition, the broken windows theory assumes that there are two types of people in the world: the disorderly people and the respectable people (Cullen & Agnew, 2006, p. 464). Disorderly people, as Wilson and Kelling (1982) specify, are “[n]ot violent people, nor, necessarily, criminals, but disreputable or obstreperous or unpredictable people: panhandlers, drunks, addicts, rowdy teenagers, prostitutes, loiterers, the mentally disturbed”. In dividing the world between disorderly and respectable people, broken windows theorists dehumanize the first group, taking their agency away and making them simple objects for police control.

Concealment of Structural Causes of Crime

Another common critique of the broken windows theory is that this theory does not address the underlying structural causes of crimes. Although the theory claims to adopt a communal perspective —“we must return to our long-abandoned view that the police ought to protect communities as well as individuals” (Wilson & Kelling, 1982)— it still assumes that “disreputable” people are solely responsible for their “disreputability” and that the community is therefore justified in cracking down on them. In addition, this theory overestimates the role of the police in solving crime. As Elliott Currie (1998) puts it in a

chapter published in the book *The politics of Law*, “part of the reason for our failure to control violent crime is that we have relied too much on the criminal justice system to do the job alone” (p. 393). He goes on to underline the extreme importance of addressing social exclusion, economic deprivation and inequality. In order to do this, we should endeavor to adopt social policies that reform work (so there are less “working poor”), and redistribute work (reversing the tendency for the labor force to be divided between those that work too little and those who work too much); and we should also enhance social services (including health care and parental support). All these and many other structural influences in the society are quite simply not considered by the broken windows theory.

Fueling the Myth That Disorder = Danger

In targeting “disorderly people”, such as the homeless, prostitutes, the mentally ill, and rowdy teenagers, the broken windows theory and the policing practices that are derived from it, help fuel the myth that these people are violent and threatening criminals (Landreville et al., 1998). However, many studies have demonstrated that, for example, “homeless persons are less likely to be charged with violent offences, and more likely to be charged with property-related offences, such as those which meet their survival needs” (Institute for the Prevention of Crime, 2008, p. 23; see also Gowan, 2002). Violations of municipal by-laws related to public spaces are actually the most common offences committed by the homeless. The criminalization of the homeless, as well as the spectacle that often comes with an arrest, even if it is for a minor offense, reinforces the myth of their dangerousity and by the same token heightens the population’s feelings of insecurity. In the end, it often results in the increased social exclusion of the homeless. The same is true with

protesters: when their protests are violently repressed, it sends a message to the population that they are dangerous criminals, and not mere citizens, unarmed and unprotected, facing police in riot gear who are armed with all sorts of crowd control devices. The media also largely contribute to this perception. As Stefan Christoff (2015), a well-known activist and independent journalist writes:

Generally speaking there is a massive gap between the reality on the streets over these past weeks and the picture that the corporate media is broadcasting. (...) mainstream media (...) consistently adopts the political orientation of the powerful and those of us within this anti-austerity movement on the streets (...) are often criminalized and misrepresented by the press.

Order Maintenance Policing

Emphasizing disorders as the main cause of crime suggests that the main way to control crime is to police disorders. The broken windows theory therefore comes with a handy solution: we need to fix the broken windows of the community by eliminating disorders. And one way to efficiently deal with disorders is to implement community policing charged with restoring order, notably through crackdowns on “disreputable people” (Wilson & Kelling, 1982). Or as Wilson & Kelling (1982) specify, and it is worth quoting again, “Not violent people, nor, necessarily, criminals, but disreputable or obstreperous or unpredictable people: panhandlers, drunks, addicts, rowdy teenagers, prostitutes, loiterers, the mentally disturbed”.

Hence, order maintenance policing is the broken windows theory put into practice. Zero tolerance policing strategy, as advocated by Giuliani and Bratton, is an extreme form of order maintenance policing, consisting of zero tolerance for minor offenses. Broken

windows policing became very popular when Rudolph Giuliani and Police Chief William Bratton implemented it in New York City in the mid-1990's (Bratton & Giuliani, 1994). In their strategy no. 5 on "Reclaiming the public spaces of New York", they affirm that the New York Police Department is committed "to giv[ing] police precinct commanders the authority to respond to an array of disorderly conditions; [and] advance a quality of life legislative agenda to enhance the police department's ability to respond effectively to disorderly conditions and low-grade criminal activity that increase public fear." (Bratton & Giuliani, 1994, see also Bratton 1995). Concretely, it means that any street-level misdemeanor, from loitering to squeegeeing, triggered a strong police response (Beckett & Herbert, 2010).

Order maintenance policing typically relies on what are commonly called "civility codes", which are a set of city ordinances that prohibit "incivilities" in the public space. Police officers use these legal tools to clean the streets, or in other words, fix the broken windows. In the United States, civility codes were adopted in the wake of Supreme Court rulings in the 1960s and 1970s that struck down vagrancy laws all over the country (Beckett & Herbert, 2010). As we saw in the previous chapter, the US Supreme Court invalidated laws that criminalized status (e.g. being homeless), making it clear that behavior and not status, should be the target of legislation. Civility codes then became the hammer that allowed the police to fix the windows. As Beckett and Herbert argue:

[these civility laws were enacted with an aim] to criminalize many common behaviors –such as drinking, sleeping, and urinating– when those behaviors occur in public spaces. (...) These ordinances provide the police with an important set of order maintenance tools and arguably enable the police to make stops and

conduct searches that they could not otherwise legally make. (Beckett & Herbert, 2010, pp. 40-41)

As we have seen in the previous chapter, in Montreal, civility codes take the form of municipal by-laws. Several by-laws governing public spaces and adopted by the City provide police with the tools that allow them to make arrests and issue statements of offense. But the police can be very crafty in finding the perfect hammer to control disorder, if a given tool proves inadequate. For example, after a municipal judge decided that section 2.1 of the By-law P-6 (which is the section regarding the disclosure of an itinerary) did not create an individual offense and that the police could not give tickets on the basis of this article to individual protesters (*Montreal c. Thibeault-Jolin*, 2015), Ian Lafrenière, the police spokesperson said that “P-6 was only one tool that allows the police to arrest protesters”. He added “We have many other “legal tools” in our toolbox” (Ligue des droits et libertés, 2015a, p. 8, my translation).

Bernard, Snipes and Gerould (2010) contend that “broken windows has pervaded law enforcement strategies (e.g., maintenance of order and zero-tolerance policing) and is now one of the most commonly known terms in the law enforcement community and among those who influence law enforcement policy” (p. 146). But order maintenance is not new in policing strategies, and some authors have argued that it was the very reason why the police was founded (e.g. Silver, 1967; Keller, 2013). Sir Robert Peel (1899) himself, the founder of the London Metropolitan Police, also known as the father of the modern professional police force, wrote in 1829: “liberty does not consist in having your house

robbed by organized gangs of thieves, and in leaving the principal streets of London in the nightly possession of drunken women and vagabonds”(p. 115, as quoted in Tobias 1972, p. 206).

Peel was concerned with vagabonds, just as Wilson and Kelling are concerned with the homeless. Silver argues that it is clear that a professional police force like the one created by Sir Peel, with prevention of disorders as its main task, was meant to control the “dangerous classes”, i.e. the growing number of urban poor who, through their occasional uprisings, were threatening the social and political order as well as the property interests of the wealthy ruling class. Order maintenance meant social control of the vagabonds and the mob (or in today’s context, the homeless and the protesters). At the time when the first professional police forces were created, riots were so frequent that the existing military units were inadequate to control them, unable as they were to be mobilized in a timely fashion (Parks, 1975). As Evelyn Parks (1975) writes, “[u]sually, riots are an attempt by the have-nots to seek a redress of grievances from those with power and wealth. The solid citizens, on the other hand, wanted to prevent riots, to stop the disturbances in the streets” (p. 211). A continued presence of state authority (i.e. a professional police) was needed for the prevention of those riots.

Friederich Engels (2001) has also pointed to the role of the police in order maintenance tactics that aim at disciplining the poor:

Cast into the whirlpool, he [the poor man] must struggle through as well as he can. If he is so happy as to find work, *i.e.*, if the bourgeoisie does him the favour to enrich itself by means of him, wages await him which scarcely suffice to keep

body and soul together; if he can get no work he may steal, if he is not afraid of the police, or starve, in which case the police will take care that he does so in a quiet and inoffensive manner. (p. 81)

Hence, order maintenance policing is not new, but the broken windows theory has definitely leant a renewed impetus to this. As Kelling and Sousa (2014) explain, it “refers to a police operational tactic that involves managing minor offenses and acts of physical and social disorder” (pp. 3349-3350). Wilson and Kelling don’t really define disorder in their 1982 article, but Sampson and Raudenbush (1999), who studied and tested broken windows theory and policing, define physical and social disorders in these terms:

By social disorder, we refer to behavior usually involving strangers and considered threatening, such as verbal harassment on the street, open solicitation for prostitution, public intoxication, and rowdy groups of young males in public. By physical disorder, we refer to the deterioration of urban landscapes, for example, graffiti on buildings, abandoned cars, broken windows, and garbage in the streets. (pp. 603-4)

For my part, I would contend that protests are also seen as a disorder and that protesters, like the urban homeless, and like the vagabonds and the mob of the 19th century, are categorized as disorderly people by the proponents of the broken windows theory.

Protests as Disorder

The criminologist Alex Vitale makes the connection between the brutal repression of protests in New York and the broken windows policing model. Using the February 15, 2003 anti-war protest as a case study, Vitale notes that the NYPD failed to use the negotiated management strategy to police protest, and as a result, the protest was met with a crackdown that was forceful, and disproportionate. “The decision to use force by the

police was motivated by the desire to clear the streets, not to prevent violence or regain control of a destructive, violent crowd” (Vitale, 2005, p. 291). In the end, dozens were injured and several hundred were arrested on disorderly conduct charges. The same scenario was repeated during the Occupy Wall Street demonstrations in 2011. Vitale (2011) writes:

Consider what has precipitated the vast majority of the disorderly conduct arrests in this movement: using a megaphone, writing on the sidewalk with chalk, marching in the street (and Brooklyn Bridge), standing in line at a bank to close an account (a financial boycott, in essence) and occupying a park after its closing. These are all peaceful forms of political expression. To the police, however, they are all disorderly conduct.

I would argue that the same phenomenon occurs in Montreal. It seems that the City authorities and the police have a very low tolerance for any disruptive protests, as peaceful and non-violent as these may be. Protesters in Montreal are sanctioned under a local version of a disorderly conduct charge. As we have seen, large numbers have received tickets under *P-6* by-law for either 1) participating in an assembly, parade or gathering for which the location or itinerary has not been disclosed; or 2) participating in an assembly, parade or gathering held on the public domain “that disturbs the peace, public order and safety.” However since 2012, the police immediately declare most if not all protests illegal, generally before they even have started marching. Protesters are ordered to disperse and to enforce the order, the police don’t hesitate to use pepper spray, teargas, and other potent chemical agents, as well as batons, flash bombs and the like. In 2013, at a time when the student movement was trying to re-emerge, Jean-Bruno Latour, a Montreal police spokesperson even dared to say the following:

Starting with the last three demonstrations, we have been intervening faster. We do not want to hold citizens who wish to go to downtown Montreal hostage. The

Charter [of Rights and Freedoms] protects the right to freedom of expression, but there is no right to protest. (Cox, 2013)

This characterization of protesters as taking the population in hostage with their protest/disorder is frequent. In May 2012, during the legislative debate that preceded the vote on the amendments of By-law P-6, then Mayor Gerald Tremblay maintained that since the start of the strike, the city had been taken in hostage by protesters, protesters that he qualified as radicals and compared with “criminals” and “vandals”. He declared: “It’s time to take back our streets, our neighborhood, our city” (City Council debate, 2012, min 11:30 and forward, my translation), as though the demonstrators were some kind of violent assailants. He further maintained that they were adopting these new amendments because the police force needed an additional legal tool to be able to arrest protesters. The problem with the existing provisions under the *Criminal Code* was that the police needed to prove a criminal intention before arresting (*mens rea*). With the new municipal by-law, they could act “preventively” and could “apply the law without having to prove criminal intention”, said the police chief (City Council debate, 2012, min 25:00, my translation).

In a word, taking matters a step further than the quote I began this chapter with, the police don’t wait for actual windows to be broken in order to intervene in a protest.³² These days, the mere gathering of people for a collective expression of dissent is seen as a disorder, i.e. a broken window to be fixed quickly, “preventively”, without having to prove harmful intention, through kettling and ticketing practices as well as through brutality.

³² I don’t think that symbolic property destruction warrants mass arrests, but I will leave aside the debate on the legitimacy of Black Block tactics. This would require a whole other dissertation !

Political science professor Paul Passavant (2015), studying a group of light graffiti artists in New York, also reached the same conclusion:

Interviewees relate that the NYPD tends to be particularly aggressive when the Illuminator is projecting in support of protesters, indicating that the NYPD's purpose is political order maintenance. This policing strategy, dislocated from concerns regarding actual crime, manifests the broader security-based orientation of the NYPD and its devotion to pacification.

Similarly Rafail (2015), also writing about New York, recounts that "protest, and especially contentious protest, came to be treated as disorder, relegating it to a form of potentially criminal behaviour rather than legitimate First Amendment expression." (p. 480)

Iris Marion Young (2002) also contends that some modes of political communications, like street demonstration, are deemed disorderly in a deliberative model of democracy:

[...] rowdy street demonstrations where thousands of people carry funny or sarcastic banners and chant slogans directed critically at powerful actors, which disrupt normal traffic and force bystanders to listen and look at their signs, go beyond the bounds of deliberative civility. (p. 47)

Within such a model, these "rowdy street demonstrations" are the epitome of urban disorder, and according to the broken windows theory, such disorders should not be tolerated.

That said, certain demonstrations are deemed more orderly than others. In 2013, the police spokesperson in fact intimated that the police would be inclined to tolerate

spontaneous demonstrations following a hockey victory³³ (ICI Radio-Canada, 2013). In fact, we should say that some protesters are deemed more orderly than others. As we have seen, a homeless person drinking beer in public or a 20-something student taking to the street to protest austerity measures are both seen by the Montreal Police as creating a disorder in the public space. But more accurately, we should say that they both belong to a constructed category of disorderly people. The problem in fact is not necessarily with the behavior leading to the ticket. A middle-age man drinking a glass of rosé with his late afternoon lunch in a public park won't be ticketed for public drinking. He is not being disorderly. The same applies to the white-haired mother who marches against climate change on Earth Day. She is not being disorderly. This discrimination in the enforcement of municipal by-laws, which is based on the categorization of people as orderly and disorderly, results from social profiling (profiling on the basis of the social condition, Campbell & Eid, 2009) and political profiling (profiling on the basis of political beliefs, Dupuis-Déri, 2014). Homeless people and anti-capitalist activists are often victims of social and political profiling, i.e. they are treated differently by the police because of their presumed or actual political beliefs or social condition. Often those belonging to the profiled groups will be labeled and treated as disorderly people, no matter what behavior they adopted, thereby reinforcing stereotypes against those groups. For example, student protesters, protesters against police brutality and postcolonial, anti-capitalist, environmentalist and anarchist protesters are more likely to be arrested than other

³³ It is important to understand that Montreal is a hockey city: I have frequently seen police cars sporting the team flag of the Montreal Canadiens during the Stanley cup playoffs! If this is not showing one's colors, I don't know what is. But is the occupation of the streets by hockey fans any less "dangerous" than the occupation of the streets by activists protesting for affordable public education?

protesters, even if they are not the only ones not to provide their marching route to the police in advance (Ligue des droits et libertés, 2015a, p. 8). But in the end, their actions are more likely to be seen as disorders, or broken windows, in the public space.

To take matters a step further, according to the broken windows theory, the goal is to contain these disorders in the most efficient way, to make them disappear from public space as rapidly as possible. The windows need to be repaired, even the smallest ones, and those who are best placed to repair them are the professionalized police force close to the community.

Order Maintenance Policing, Montreal Style

Despite the fact that, as some would say, broken windows policing comes from a broken theory, it is very much part of the policing landscape in Montreal, as in many other big cities in North America (Los Angeles, New York, Chicago, etc.). Marie-Ève Sylvestre (2010) traces the history of the control of disorder in Montreal:

Whether it was due to direct U.S. influence or to the result of the convenient appropriation of a populist discourse as it resonated with local concerns, or if it was instead the result of a global trend toward insecurity and fear of (post)modernity (Landreville, 2002), the SPVM proposal directly built on U.S. studies on the connection between disorder and urban decay and growing feelings of insecurity in a neighborhood (SPCUM, 1995). (p. 806)

Some Montreal police officers even traveled to the USA and Europe to learn more about zero tolerance policing practices (Sylvestre, 2010, p. 807). In the end, order maintenance policing practices, Montreal style, took the form of the implementation of community policing in 1997, enhanced deployment of the police force downtown and the prioritization of the control of certain disorders. No overarching piece of legislation was

specifically enacted to enable such a policy, but the systematic enforcement of municipal by-laws controlling disorder was implemented at the same time as the neighborhood police system, i.e. in 1997. Six years later, in 2003, reaffirming these community policing principles, the Montreal Police Department (Service de police de la ville de Montréal, SPVM) released the document “Optimization Plan for the Neighbourhood Police” in which the policing of anti-social behaviour becomes their main objective.

[The] SPVM ranked fighting against antisocial behavior among the highest concerns and expectations of citizens, insisting that it should become a “real priority” (SPVM, 2003b). (...) The SPVM adopted a policy with respect to disorder and agreed on a list of antisocial acts to be closely monitored, which the City of Montreal explicitly endorsed. Following the recommendations from its Committee, the SPVM chose two overarching categories to encompass all behavior: (1) signs of antisocial behavior or physical disorder, and (2) acts of antisocial behavior or social disorder (SPVM, 2003b). These categories were then divided into subcategories including noise, disturbing behavior, drug trafficking, driver misconduct, and other acts that fall into the category of social disorders, as well as vandalism, environmental misconduct, and automobile obstruction that fall into the category of physical disorders. (Sylvestre, 2010, p. 809)

As a result of these policies, by 2008, the total number of tickets issued for violations of Montreal by-laws (whether or not the individual was homeless) had increased by 107.5% since the release of the optimization plan (Sylvestre, 2010, p. 817)³⁴. And as we have seen in Chapter 3, the judicialization of homeless people has reached an unprecedented level lately, with the homeless population receiving around 25% of all the tickets issued in Montreal (which is disproportionate to their numbers, since homeless people make up less than 2% of the population of the city) (Bellot & Sylvestre, 2012; Campbell and Eid, 2009). However, following the publication of a major report condemning the social profiling practices of the SPVM in 2009 by the Human Rights

³⁴ Unfortunately, it is impossible at this point to get data for the more recent years.

Commission of Quebec (Campbell & Eid, 2009), I have heard representatives of the City of Montreal affirm on multiple occasions that things have gotten a lot better. To verify these claims, the RAPSIM conducted an investigation of its own in 2014 and found that half of the respondents agreed that things got better in terms of judicialization of homelessness over the previous 2 years (i.e. in terms of the number of tickets given to homeless people). However, 80% of the respondents in this study also said that the relationship between homeless people and police officers was still bad. They said that although the number of tickets issued had decreased, the verbal and physical abuse and the police intimidation and harassment of the homeless population had never stopped. Displacement, with or without tickets, is now the standard tactic of control. For example, a homeless man told the RAPSIM this story:

Two young police officer from Precinct 21 [downtown area] asked me to move along, so I told them that I was waiting for my friend who was in the bathroom. Then they said that they had the feeling that I was actually waiting for the crack dealer. I just told them that I was only drinking alcohol. Then they told me: "We said to move along!!!" and they pepper sprayed me in the face! I had to feel my eyes burning for twenty minutes and to look for water to rinse them off (RAPSIM, 2014, my translation).

This is of course, just one example, but it illustrates that to this day, order maintenance policing, whether the disorder targeted is sleeping on a bench or chanting in the street, remains a part of the day-to-day activities of the SPVM.

From the Streets to the Court: the Journey of a Ticket

So far, we have seen that because the way homeless people and the protesters occupy public space is seen as disorder, they are frequently arrested and ticketed. And as

we will see in the next section, the arrest is in and of itself sometimes meant as a punishment. Still, the fact remains that once a ticket is issued, the individual's entanglement with the criminal justice system kicks in.

When a typical Montreal resident receives a ticket, most of the time he or she will just pay the fine. When a homeless person or a protester is ticketed though, it is a whole other story. As it happens, often neither of these individuals has the ability (or desire) to pay the fine. To start with, many homeless people lose their actual tickets because they know they cannot pay the money anyway. Some homeless people go so far as to burn their tickets out of anger at the system and its injustice (Denis, 2011). The upshot is that their file is processed, they are presumed to plead not guilty and the Court automatically sets a court date for them. However, most of the time they do not get notification of these court dates (because they have no address) or they simply don't show up in court (because their mode of living precludes them from doing so) and they are found guilty by default. To be found guilty by default means to be found guilty in absentia. In this way, homeless people can rack up large quantities of penal debt without ever seeing a judge or setting foot in court.

That said, the situation has now changed somewhat, starting a few years ago when homeless rights activists at RAPSIM set up the Clinique Droits Devant to assist and accompany homeless people or formerly homeless people through the legal proceedings that result from their occupation of public spaces. More than 2000 people have received the services of the Clinique droits devant and it is not unusual these days for the homeless

to bring their tickets to the Clinique as soon as they get them. Apparently, the word on the streets is that the worker at the Clinique do “magic” with the tickets!

I would argue that the procedure is far from magic —and, as I will explain in the next section, that is actually in line with the dominant narrative that sees homelessness as disorder. Still I can’t deny that the workers at the Clinique do an extraordinary job, especially with the PAJIC. As I explained briefly in Chapter 2, in 2010, homeless rights activists as part of a strategy to end the judicialization of homelessness in Montreal, pushed for the creation of a special program through the municipal courthouse that would deal, in a more humane manner, with the tickets homeless people receive for their use of the public spaces. In response, the City of Montreal and the Municipal Court set up the PAJIC. The PAJIC has the following objective: “to foster social reintegration and accountability”, by helping to alleviate the burden that penal debt constitutes for homeless and formerly homeless people (Ville de Montréal, 2013; Beauchemin, 2012). As one prosecutor assigned to this program described it:

The idea is to take a person who is judicialized (some criminal cases and mostly tickets) and who has a penal debt that precludes him or her from fully reintegrating into society. We have meetings with that person to take into account all the positive elements in his or her life [since the time of judicialization] and we give this person a second chance [by withdrawing the tickets]. (Lapierre, 2014, my translation)

Subjects such as the participant’s housing situation, various addictions, relationships with friends and family, and current and future life projects are discussed during the meetings. These meetings are not held at the courthouse but on the premises of the Clinique Droits Devant. The social workers at the Clinique welcome the participants

and offered them coffee, chat them up a little bit to make them comfortable and let them know more about the meeting (even if they have been briefed on the phone before the actual date) and then they meet with the prosecutor in a different room. A social worker affiliated with the Clinique always accompanies the participant during his or her meeting with the prosecutor. The worker's role is to take notes on what is said during the meeting in order to write a support letter to provide to the judge. The social worker's role is also to provide support to the participant. For example, I had to intervene when a PAJIC participant, perhaps too intimidated by the whole process, failed to acknowledge all the efforts he has made to put his life back together. In that case, I prompted the person about his victories and small joys, so that the prosecutor would have enough information to withdraw the tickets. Another role of the social worker accompanying the participant is to step in if the prosecutor is out of line or insensitive to the homeless person's reality. For example, I had to intervene once when the prosecutor started asking questions such as "how was your relationship with your father?" to the PAJIC participant. Not only was this information absolutely unnecessary for the purposes of the program, but above all it was a huge trigger for the person. I am always a little worried that the person will relapse *because* of some discussions during, or circumstances surrounding, the PAJIC meeting. It so happens that the risk factors are all combined here: the meeting takes place downtown (a setting that former homeless people or drug addicts tend to avoid); it brings them back to their past, and it creates emotional turmoil (a weird mix of happiness and sadness, joy and shame, pride and despair, revolt and appreciation).

During the whole meeting, in theory, no word is said about the reasons why the person got these tickets in the first place. The meeting does not look backward, as the court usually does in normal proceedings, but concentrates on the present and the future of the PAJIC participant. In other words, the prosecutor is not meeting with the defendant to determine whether he or she was justified, or has a defense, for breaking the law, but rather they meet to look at where the person is now, compared to where he or she was at when the tickets were issued. I say in theory, because I have been informed recently that things are changing a bit. The prosecutors now come to the meetings more and more prepared, having noted the offense for each of the ticket received by the participant, sometime even having made their mind (before having met the person!) on whether or not they would withdraw the ticket. They may say that the only thing that is important is how the participant is doing today and how much “effort” he or she has made to get here, but in actuality, it remains that the prosecutor seems to be approaching the case as a typical case of sentence dealing, that is ready to negotiate based on the “seriousness” of the offence and the overall criminal past of the accused. I see this as an important asymmetry, because the participant is not allowed to explain the reasons why she or he got those tickets in the first place. The reasons why one is occupying the space (had the person been evicted from his apartment?), or why one got tickets (was she well known to the police and they were harassing her?), are deliberately swept under the rug.

Still, typically, at the end of the meeting, if the prosecutor is satisfied that the person is well engaged in the process of getting off the street and is making progress towards rehabilitation; if there are enough “positive elements” in the person’s life, notably if the

person's addictions are under control and his or her housing situation is stable, then the prosecutor offers to withdraw the tickets. If the prosecutor is not satisfied with the person's situation, or if the person has received too many tickets previously, then the prosecutor will ask to meet again. I have estimated that around 28% of PAJIC participants meet the prosecutor more than once.

The withdrawal procedures have to be confirmed by a judge, in a courtroom, at a later date. After another short meeting with the prosecutor (outside the courtroom) to check if everything is still good since the last time they met, and on the basis of a letter written by a social worker summarizing the meetings with the prosecutor, the defendant takes the witness stand and the prosecutor summarizes the letter and asks the judge to withdraw the tickets. If the infractions have already been judged in the absence of the defendant, the prosecutor first asks for revocation of the judgments and then for the withdrawal of the charges. During the hearing, the judge may or may not ask questions to the defendant and engage in a short dialogue with him or her, but more importantly the judge congratulates the PAJIC participant for his or her efforts. At the end, the judge gives the participant a diploma (if she or he wants it). In my view, the approach of awarding a diploma raises some interesting questions. As one PAJIC participant once put it, "Am I getting a diploma for being ticketed while on the street?" What's more, one could say that giving a diploma infantilizes the PAJIC participants, or even that it reinforces the idea that the judicialization of the homeless is their sole and only responsibility and not part of a bigger social problem that has little to do with the "bad" or "good" attitude of the judicialized people. Giving a diploma in a way sanctions the fact that the individual alone is

responsible of getting out of his or her entanglement with the judicial system, and it obscures the notion that the tickets may be questionable and illegitimate in the first place. Still, as critical as I am of this initiative, I must admit that, to my great surprise, a majority of PAJIC participants are happy to get their diploma. In one case, I heard a 40-something year old man told the judge with some emotion : “ha! I think that’s the first diploma I’ve ever received!”

All in all, since the beginning of the programme, more than 5,300 tickets have been withdrawn, thereby cancelling the penal debt of more than 400 individuals (Clinique Droits Devant, 2015). And the program is growing exponentially, attracting more people and resources every year; it has even been transplanted to other cities in the province.

For protesters who receive tickets, the situation is slightly different. Unlike the homeless, they tend to contest their tickets in large numbers and to show up for court dates. In the case of mass arrests, the courts will decide to process all the tickets resulting from arrests at the same event together. For example, if there were 250 persons arrested one night during a kettle operation, all arrestees who decided to plead not guilty will have their court date at the same time. In some cases, there have been so many defendants that the municipal courtrooms were not big enough, and the prosecutors have asked permission to hold the trials at the provincial Courthouse, which has greater capacity (Normandin, 2014). (This is one more indication that the municipal court system is designed more for the defendants to pay their tickets online than for the defendants to show up in court to

defend their rights.)

Nevertheless, while more protesters than homeless people choose to fight their tickets, the protesters are no less intimidated by the court system. During my ethnographic research, I was able to attend a few pro forma court dates for various P-6 tickets (pro forma audiences are to schedule another date, organize the trial, communicate evidence, and the like) and on each occasion I thought the defendants in the room seemed rather anxious. They were annoyed too — they had missed school, or work, or simply had taken time off from their regular activities to come to court, only to see the case postponed again, at the prosecutor's whim. During one prosecutor's address to a courtroom full of defendants, the young man who had been arrested in a protest during the student strike and who was now sitting next to me asked me under his breath: "this guy [the prosecutor!] is there to help me, right?" He thought the prosecutor was his lawyer! Most people self-represent in the case of tickets, but this does not imply that they are conversant in the law, as I could see that day. I can't recall how many times I heard, "but if there is a class action for my "kettle" [i.e. a class action of the group of protesters arrested together during a protest], do I have to do something with my ticket?" This kind of remark reveals a lack of understanding of the duality of the proceedings: civil (class action) and penal (pleading non guilty and presenting a defense to the ticket).

Cognizant of this situation, activists and advocates launched all sorts of initiatives to educate protesters about the law in the aftermath of the student strike. Protesters tend to benefit from networks of solidarity. Their strength is in collective actions, be they in

protest or in defense against judicial attacks. In this vein, they organized collective defense strategies, workshops on self-representation, and legal information clinics to help with their legal proceedings. Some have challenged their tickets on constitutional grounds, and some have even launched class actions against the police and the City for multiple violations of their constitutional rights (Ligue des droits et libertés, 2015a). At least three groups have also filed a complaint with the Quebec Human Rights Commission regarding political profiling. (Lemonde, Poisson, Poisson 2014)

Protesters do not benefit from a special program through the municipal courthouse, but they too have their tickets withdrawn. A study by the Ligue des droits et libertés indicates that 83% of the tickets that have been handed out pursuant to By-law P-6 between 2012 and 2014 have concluded either in an acquittal (in a minority of cases) or more commonly in a withdrawal of the charges via prosecutorial discretion following an administrative order from the Mayor's office (Ligue des droits et libertés, 2015a, p.10).

The Arrest is the Punishment

In arresting disorders in the public space, the police are putting the broken windows theory into practice. In the book *Crime and Public Policy*, edited by Joan Petersilia and James Q. Wilson, Lawrence W. Sherman (2010) writes:

There are [...] at least two broken windows theory [...]. The first is a theory of crime *causation* which hypothesizes that minor disorder is infectious and may lead to more serious crime if left unchecked [...]. The other broken windows hypothesis is a theory of crime *prevention*, which holds that if police regulate disorder more effectively, serious crime will go down or be prevented. (p. 606)

I am not convinced as to the merits of this division – I consider the “theory of crime prevention” a policy application derived from the theory of crime causation rather than a theory in itself. Or as Harcourt (2013) puts it, these are two aspects of the same theory, i.e. “the causal theory of crime (namely, that minor disorder, left unattended, causes serious crime) and the remedial theory of policing (namely, that order-maintenance policing reduces serious crime)” (p. 260). But most importantly, I would add that the broken windows theory is not only a theory about crime, it is a theory about public space. As Sylvestre (2010) writes,

Indeed, the proponents of the broken-window theory present a single homogenous vision of order, as well as a normative judgment about the good life and how people should behave in public places. Disorder, chaos, and street occupation are therefore considered to be the wrong ways for people to lead their lives. (p. 807)

In repressing certain occupations of public space, the police are not only imposing a certain vision of ordered (as they define it) public space, but in the process they are violating the fundamental rights of the occupiers, be they protesters or the homeless. They violate their right to dignity (considering the way they are treated), their rights to equality (as they are discriminated against) and their right to freedom of expression and freedom of movement.

Beckett & Herbert (2010), in the context of Seattle argue that banishment, as a practice of social control that consists of the spatial exclusion of the socially marginal, has recently become more common. “[F]or the banished, mere presence in increasingly large urban spaces may lead to arrest” (p. 15). In Montreal, the homeless and the protesters that

are constructed as disorderly people are the banished. The mere presence of the “disorderly” is the offense. The banishment is the punishment, a punishment imposed by the police. As Harcourt (2005) argues, “[order maintenance policing] does not aim to reform the disorderly so much as it does to punish them and to exclude them, in the sense of getting them off the street” (p. 149).

Through the ticketing practices but also especially through the displacement that is frequently associated with them —displacement that takes the form of an order to disperse at a protest or an order to “move along” in the case of the homeless person accused of loitering, panhandling or drinking in public— the police intervention, the arrest, translates into a temporary removal of the individual from a part of the public domain. I am not talking here about the “deterrent effect” of the ticketing practices (i.e. homeless people or protesters who would stop being homeless or stop protesting in order to get fewer tickets). If this is an actual phenomenon —especially in the case of protesters who very much feel the chilling effect of the ticketing practices (Ligue des droits et libertés et al., 2013), but also in the case of certain homeless people who try to be less visible (i.e. deserting downtown and their solidarity networks) (Sylvestre et al., 2011)— I want to underline here another phenomenon: the instant displacement that comes with the police intervention. As Beckett and Herbert (2010) write: “the new social control tools are resolutely territorial: they seek to remove those perceive as disorderly from particular geographic locations (...) to “move them along”” (p. 54). And this, I think, is the true punishment, especially when we consider that the tickets given to homeless people and

protesters are often withdrawn, thanks to prosecutorial discretion or to the PAJIC, when they reach the court level.

The proportion of tickets withdrawn, in the case of both homeless people and protesters, is significant. It thus seems there is a clash between what happens on the streets and what happens in court, i.e. between the police repression of certain uses of public space, and the kind of partial amnesty, though not without procedural hassle, that is administered by the criminal justice system. In short, the police punish a disorder, while the court system manages a population. We have apparently entered a “managerial justice” paradigm (Kohler-Hausmann 2013, 2014).

Indeed, the courts seem to have embraced a reforming mission. The “disorderly” are sent to court in the same way the “guilty” are sent to prison. As we have seen, on one hand you have police officers who keep issuing tickets to homeless people and protesters for violations of municipal by-laws. On the other, you have a very low rate of conviction while a vast number of these tickets are withdrawn. I don’t mean to imply that the ticketing practices have no other consequences besides the arrest. First of all, not all homeless people can qualify for the PAJIC. And not all protesters have their tickets withdrawn. And the substantial fines associated with the tickets have major consequences, as we have seen before. But it does seem that the number of tickets withdrawn is considerable enough to see a pattern.

When the targeted individuals enter the court system, either via the PAJIC or via regular ticket contestation procedures, it seems as if the goal is less to determine whether or not they are guilty of an offense than to teach them a lesson (how to behave properly in public spaces) and to manage them. Issa Kohler-Hausmann (2014) describes what she calls *managerial justice*:

[the] managerial model holds that what criminal law is good for is providing an opportunity to sort and assess people hauled in from policing of disorderly places, seeing over time what sort of people they are, and keeping records of them in the process. (p. 627)

In its broad strokes, this definition matches the reality of the municipal court system as it relates to protesters and homeless people. Within the framework of the PAJIC, for example, the prosecutor will aim to verify over the course of several meetings that the defendant shows signs of rehabilitation, measuring the person's progress toward the "good life" by questions like: "do you have a girlfriend?"; "how often a week do you go to the gym?"; "do you cook meals with your roommates?" If the prosecutor is satisfied with the answers, the tickets will be withdrawn. If he or she is not, then another meeting will be required, and the participant will have to show better signs of having exited the category of "disorderly person".

For protesters, the process is a little different, but no less managerial. Right from the outset, Prof. Patrick Forget writing in May 2012, had predicted that the mayor was not really responding to a need when he amended By-law P-6, but he was applying a kind of shock doctrine, exploiting the situation to restrict liberties for the long term. Forget (2012) argued that the mayor wasn't really afraid of protesters, but in his role of a good manager,

he was taking advantage of the crisis to pass a by-law that would bureaucratize protest in the future. He argued that what the mayor was doing in asking for a marching route before a protest was to bureaucratize a political mode of action for the sake of economic efficiency, without regard to the importance of freedom of expression and peaceful assembly. Moreover, as Forget argued, the mayor was imposing a model of protest (hierarchic, and orderly), and therefore distinguishing in the process between “good” and “bad” protesters. Forget concluded with this powerful sentence: “In a hygiene-oriented society like ours, the greatest danger is not to kill a protester, but to kill the protest” (my translation).

The protest, I am afraid, has been killed. And the bureaucratization of the protest is total, occurring before and after the moment of occupation of public space. In a way, courts manage and control protesters after the fact. One could argue that the main players in the court drama know very well that the cases against protesters are weak, involving bad evidence, multiple procedural rights violations during arrest and detention, discriminatory enforcement of the law, and vaguely worded by-laws. Yet, instead of dismissing the cases right away, the prosecutors force the defendants to attend multiple court dates. Some protesters have gone to courts 7-8 times (spending hours on each occasion) over tickets that end up being withdrawn. Prosecutors intrude less on the protesters’ lives than PAJIC prosecutors do in the case of PAJIC participants, but the court still seeks to impose a certain way of life on defendants. With its solemn, complicated procedures, and through the father figure of the judge, it seems to attempt to scare and intimidate young protesters enough that they will stop being disorderly in their political expression (and instead use proper and less annoying channels for political actions, like for example voting and writing letters

to members of parliament).

In the end, in many cases, the charges are dropped, or the tickets are withdrawn, but the accused have already been punished. Protesters were prevented from protesting to express their dissent, and the homeless were prevented from simply being in some public spaces. This is why, tweaking Malcolm Feeley's famous dictum, I would say that *the arrest is the punishment*. This accomplished, the court manages the individuals who have been thus punished, hoping to reform them in the process.

CHAPTER 5 - THE POLITICAL SPACE OF THE STREETS

Place Émilie-Gamelin,

May 30th, 2006

THE SEASON of WEIRDOS

By François Parenteau

The weirdo is a colourful character who wanders the streets and is noticeable. He or she can be an original, a street artist, or more sadly a homeless person or a person dealing with mental health issues who has been de-institutionalized. But it looks like the summer months might be tougher for weirdos this year. The police department seems to have decided to crack down on involuntary weirdos, multiplying arrests and fines for those who loiter, panhandle or just make themselves comfortable somewhere they shouldn't. In addition, for the street musicians and other street artists, city hall just raised the cost of their permits considerably and limited the places where outdoor performances were allowed (...). This attitude, unfortunately, seems to be the norm these days...

More and more, it seems that the thing people value the most about their quality of life is the fact of never being disturbed, ever, by anyone, anywhere. Not a weirdo, not a spoon player, not a kid who is crying, not a neighbour who stinks. People do not want to get disturbed, intellectually, musically, journalistically, visually. I actually believe that this is the biggest obstacle to the development of public transportation. People can be stuck in traffic in

their car for hours, they don't mind, at least they are in their bubble. They listen to the music they like, they put the little tree shaped car freshener they like, they talk on the cell phone with whom they want. No one is disturbing them. (...)

But I am sure that human beings need a reasonable dose of disturbance in their life to evolve, so that the society continues to be humane. I had been thinking about that for a while when I watched a documentary on PBS about Yellowstone National Park. They were investigating two unfortunate natural phenomena: the disappearance of aspen and the erosion of Lamar River banks. In measuring the age of some of the old aspens that remained in place, scientists found that the youngest aspens had started to grow the very year the last wolf was killed in the park. After that, none of the aspens could survive.

When there were still wolves, the deer had to watch themselves. They couldn't stay for too long in the same place, wolves were disturbing them. That could leave some aspen shoots time to survive. Since then, the deer had eaten all the shoots and destroyed the vegetation of the river banks. Beaver have deserted the area, short of trees and material to build their den. Since the beaver ponds were gone, dozens of insects and animals had also deserted the park. The land started to be carried away by the water and the river turned brown. (...) All this because there were no more wolves.

I am thinking that cultural and urban disturbers must, in a sense, play the same role. Without street entertainers, the sponsored festivals take all the space and continue to allow our brain to be yet more colonized by the brownish algae of capitalist logic. Without a mad

person yelling at a street lamp, the simplest originality becomes suspect. (...)

So next time you are disturbed by someone, instead of initiating a lawsuit, demanding a new municipal by-law or writing to the ombudsman, say thank you. It probably helps something useful to grow. (Parenteau, 2005, my translation)

The political comedian François Parenteau, standing on a cement block, delivered the above monologue with passion on May 30th, 2006, in front of a crowd of street workers, street people, city officials and advocates from different institutions (universities, homeless shelters, community organizations, etc.) all gathered in Place Émilie-Gamelin for an event demanding the right to the city³⁵ for homeless people.

In this performance, Parenteau celebrated disorder, because “a reasonable dose of disturbance (...) probably helps something useful to grow”. According to him, disorder, difference, originality should not be repressed but should be recognized and appreciated. They should be encouraged because they foster good spirit in the city; they help the society to be more humane.

The urban sociologist Richard Sennett has often made a similar argument in his studies of public spaces (Sennett, 1970, 1992, 1994). In 1970, Sennett celebrated the uses of disorder in a city as a way to access the “full possibilities of freedom” (1970, p. xviii) and “to transcend the need for order” (p. xiv), which for him was a form of self-slavery (p. xviii).

³⁵ For RAPSIM, the right to the city / « droit de cité » refers to the right to live in dignity in a city without social exclusion and poverty. For them, it is a right to all rights (see RAPSIM, 2005).

For Sennett, “disorganized city could encourage men to become more sensitive to each other” (Sennett 1970, p. 189) and achieve a more egalitarian and just life in the city. Later, in *Flesh and Stone*, Sennett (1994) argued that modern urban settings are designed in such a way as to free our bodies from all possible resistance. Modern technologies of motion (such as automobiles and continuous highways) allow for speed and isolation and the urban sprawl has dispersed the crowd. For him,

the great urban transformation now occurring, which is shifting population from densely packed urban centers to thinner and more amorphous spaces, suburban housing tracts, shopping malls (...), this great geographic shift of people into fragmented spaces has had a larger effect in weakening the sense of tactile reality. (p. 17)

And he continues:

Once a mass of bodies packed tightly together in the centers of cities, the crowd today has dispersed. It is assembled in malls for consumption rather than for the more complex purposes of community or political power; in the modern crowd the physical presence of other human beings feels threatening. (p.21)

This deprivation of sensory experiences has made humans passive, and intolerant to the most minor disturbances (be it a street protest or a homeless person panhandling). As he puts it, “as urban space becomes a mere function of motion, it thus becomes less stimulating in itself; the driver wants to go through the space, not to be aroused by it” (Sennett, 1994, p. 18).

Not to be aroused by it. Similarly, Iris Marion Young calls for an eroticism of the city, which she describes as “the wide sense of an attraction to the other, the pleasure and excitement of being drawn out of one’s secure routine to encounter the novel, strange, and surprising” (Young, 2011, p. 239). For Iris Marion Young, her normative ideal city life has

four virtues: 1) social differentiation without exclusion; 2) variety; 3) eroticism; and 4) publicity. Young calls for public spaces in which everyone has access because those spaces allow people to encounter others they may not identify with. For Young such encounters are crucial.

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. (p.240)

Hence, encounters with difference and even disorder, are important in the normative ideal city life, which involves a being together of strangers that seek to avoid domination and oppression, and to realize the “full possibilities of freedom” (Sennett, 1970, p. xviii). But instead, in today’s cities an ideology of comfort dominates. Don Mitchell (1997), building on Sennett’s insight, writes ironically:

The homeless provide “resistance” to our unfettered movement, cause discomfort as we try to navigate the city. And those homeless people who persist in challenging our right to walk by without helping them to survive are anything but “user friendly”. (p.326)

And Blomley (2011) makes a similar argument in his book *Rights of passage*:

(...) [within pedestrianism] rights are construed in a highly individualized, abstract way, with the right of the individual to unfettered mobility given priority. As a consequence, encounters with things or people are viewed as collisions between competing uses, rather than opportunities for political possibility. The panhandler is thus not a locus of rights, but an obstacle, like a bus stop, whose stasis and location affronts. (p. 110)

As we saw in previous chapters, the homeless, when they are panhandling, sleeping

or drinking in public spaces, are seen as disorders in urban settings; as nuisances. When they just try to *be* in the space, to exist, they are accused of loitering. The image below, which is the cover page of the legal guide of the Clinique Droits Devant, is telling: the character's t-shirt is saying: "I don't loiter around, I exist!"



Figure 6 Legal guide cover page, Clinique Droits Devant 2005

The same is true for the protesting crowd who disturbs the normal flow of pedestrians and automobiles. Again, the comic/meme below, created by the Ligue des droits et libertés as part of a popular education campaign, is telling. It shows a young man protesting for the protection of environment... in his own bedroom. When asked what he is doing, he explains he is trying to protest... without disturbing anyone! Of course, this is a

caricature but it is not too far from reality and it is, in a way, what is asked of protesters in Montreal these days: protesting without disturbing anyone, without being considered a nuisance, a disorder.



Figure 7 Comic on the right to protest, Ligue des droits et libertés, 2015b

Hence, as we saw in the previous chapters, whether it is because of the action of the political and social profiling, or whether the homeless and protesters occupy public spaces for purposes that go beyond the typical circulation or normalized leisure activities, they are seen as disorders. As such, both groups are ticketed. Even when their actions are no different than the rest of the population (for example, many people drink in public space, as we have seen, but not many get tickets for it), they are still more repressed because they are seen as disorderly people. The ticketing practices as part of a spatial tactic of social control aims at stopping the disorder and removing the disorderly people from public spaces. Those practices are anchored in broken windows theory, which is more about sanitizing space and imposing a certain model of public space than it is about controlling crime. Despite the fact that it was repeatedly demonstrated that the broken windows

theory is a flawed theory, it still drives the policing tactics. As a result, in Montreal, the police are punishing by removal —Beckett and Herbert (2010) would say banishment— and the criminal justice system is then managing the already punished. Teaching the disorderly a lesson, the courts attempt to rehabilitate more than to adjudicate guilt. The courts, in a typical Foucauldian fashion, are managing and normalizing the disorderly (Harcourt, 2001).

Combined, the policing strategy based on broken windows theory and the court's practices impose a certain vision of public space. And when the courts adjudicate legal challenges and publish legal decisions, we can see very clearly that they have a limited view of what public space is for. When legal provisions prohibiting panhandling or protesting have been challenged in courts, they have generally been upheld. Both activities are considered expressive and falling within the scope of section 2b) of the *Canadian Charter of Rights and Freedoms*, therefore being protected by freedom of expression, but in Canadian law, freedom of expression is not absolute and some infringements are constitutional if they are justified in "a free and democratic society" (see limitation clause, s.1 of *Canadian Charter of Rights*, see *Oakes*). For example, in a case challenging the constitutionality of Ontario legislative provisions limiting panhandling (in certain circumstances) and squeegeeing (all the time), the Ontario Court of Appeal found, after having balanced competing interests, that they were constitutional, despite the fact that they were limiting the freedom of expression of those asking for money by begging and squeegeeing. The Court writes:

While the appellants' conditions of economic disadvantage may be deserving of sympathy, they have not established they are entitled to a response that is constitutional in nature on the facts of this case. (*R v. Banks*, 2007, para 134)

Sympathy apparently is all they deserve, because reducing dangers on roadways and providing efficient traffic circulation warrant overriding the right guaranteed by s. 2(b) in a free and democratic society (para 129). The occupation of the street for panhandling or squeegeeing is apparently reduced to a « danger on roadways » and devoid of any other meaning. In our “free and democratic society” the court ruled that it is more important to provide efficient traffic circulation than to allow those panhandling or squeegeeing to make a living, which is all the more ironic. As Collins and Blomley (2003) write: “At the same time that capital flows of billions of dollars are proceeding relatively unregulated by the state, begging on the streets of North America for dimes and quarters is increasingly subject to governmental sanction” (p. 58).

Similarly, in a case involving protesters but relying very much on *R. v. Banks*, judge Starck from the Montreal municipal court ruled that section 500.1 of the *Highway Safety Code* was constitutional: although s. 500.1 was violating freedom of speech, this violation was justified in a free and democratic society (*Montreal c. Garbeau*, 2014). From the judge's written decision but also from the court hearings (which I attended sporadically) we could understand that the judge's vision of the functions of the streets were strictly to facilitate unimpeded traffic. He writes:

The reality is that, as part of our social contract, we must share public roadways. No citizen has more right than another with regards to their use of public space. It might be true that, as contended by the defendants, there is no right to arrive on time at work or at home. But does that mean that protesters may do what they want whenever they want on public roadways and that all other citizens may

only suffer the consequences? The Court answers no to that question. (para 173, my translation)

There is no doubt that the streets must be shared, but what strikes me in this excerpt is that the right to protest, i.e. the right to occupy the street politically, is almost set on the same foot than the right of the motorists to flow through the streets, undisturbed. The question in this case was not whether or not protesters may do whatever they want whenever they want, but rather if tickets given to protesters for street obstruction were constitutionally valid. From this decision, it is clear that the streets are seen by the courts more as a place for traffic than as a place for political activity. It should be noted however that this case was appealed and a decision by the Superior Court should be rendered shortly.

In another constitutional challenge by protesters, *Aubert-Bonn* (mentioned in chapter 3), the Quebec Court of Appeal ruled that the prohibition of “assemblies disturbing the peace” under s. 2 of by-law *P-6* was constitutionally valid. And the court didn’t pass up the opportunity to again emphasize the chaotic character of demonstrations, citing justice Beetz famous declaration in *Dupond* (1978) regarding demonstrations and their inarticulateness, and citing as well the 1987 Supreme Court case *Rio Hotel Ltd. v. New Brunswick (Liquor Licensing Board)* signed by Justice Estey:

The control and regulation of traffic on the streets is a matter of local concern and parades by their very nature usurp the entire use of a street or thoroughway for the use and benefit of one cause or body. The chaos which could result from unannounced, extended and repeated arrogation of the streets by one body or group might dislocate the entire community. Transportation and communication in large urban areas are a vital, albeit local, concern and as such have been assigned constitutionally to the province and through it to the municipality. (para.31)

So not only does this case consider that the streets exist exclusively for traffic; it considers the use of the street for expressive purposes as chaos. And the Quebec Court of Appeal relied on that case as precedent.

More recently, in the wake of the Occupy movement, the various protesting activities in public parks were considered expressive activities and the notice of trespass served by the cities and the enforcement of municipal by-laws governing the parks were considered infringement on the freedom of expression. Yet in a typical Canadian manner, these infringements were found to be “reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society” (section 1, *Canadian Charter*), all this in the name of the more important purposes assigned to the space. In the case *Batty v. City of Toronto* (2011), Justice Brown writes:

Without some balancing of what people can and cannot do in parks, chaos would reign; parks would become battlegrounds of competing uses, rather than oases of tranquility in the concrete jungle. Or, parks would become places where the stronger, by use of occupation and intimidation, could exclude the weaker or those who are not prepared to resort to confrontation to carve out a piece of the park for their own use. The evidence filed before me from the residents indicates that that is precisely the effect of the Protesters' occupation of the Park. (para 91)

And finally, in another Occupy Movement case in Canada, *Smiley v. Ottawa* (2011), the judge ruled in the same way, but not without offering his personal view of what democracy is:

[50] Protesters can access public parks, as any citizen, during the normal hours of operation of the public place to express themselves, but are subject to reasonable limits such as the bylaws prescribe. Should the protesters disagree with the bylaws, they are free to petition the public authority for change, raise the issue in the free press, protest within the limits of the park bylaws, support

initiatives for change, support candidates of change, or run for elected office to bring about those changes. This is the stuff of which democracy is made.

This is the stuff of which democracy is made. It seems like alternative uses of public space, like panhandling or protesting in a way that contradicts the very strict limits of the by-laws, cannot be construed as the stuff of what democracy is made.

Two things stand out from these legal decisions: 1) according to the courts, streets are mainly for traffic flow, and parks for recreation; 2) protesting or panhandling are protected expressive activities but their chaotic/disorderly character makes them incompatible with the use of public space, and in a free and democratic society, it is okay to control –even remove– these disorders from public space. Hence, if broken windows theory is a theory on public spaces, as we have seen in chapter 4, it is a theory that courts are subtly, but certainly, buying into. When it is time to balance competing uses of public space, it is disorder against order, chaos against democracy. Justice Brown’s description of the Occupy Toronto Movement even recalls “Hobbes’s famous depiction of the state of nature” according to Margaret Kohn (2013, p. 105). And a free and democratic society apparently has no choice but to suppress any form of disorder occurring in public spaces.

But it doesn’t have to be this way. If protesting and panhandling were seen as healthy alternative uses of the spaces that are paramount to an inclusive democracy; if they were seen as maybe disorderly but nevertheless important political expressions, judges would perhaps be less quick to justify violations of the freedom of speech. Kohn (2013) is very explicit on how occupations function syndecdochally and are politically meaningful:

The occupation of physical space [during the Occupy Movement] was one part of a broader attempt to reclaim the ideal of the public. By occupying a diverse range of public, quasi-public and even private spaces and turning them into sites of deliberation, community, and political activity, the activists were trying to make a broader claim about the need to re-distribute the common-wealth that has been appropriated or controlled by a narrow stratum of society. (p. 106)

This is exactly the point of this dissertation. Unorthodox uses of public space might be disorderly but disorders might “help something useful to grow” (Parenteau, 2005). Small disturbances in a city —and I am not talking about violent crimes here but about what is called “nuisances” such as the extravagant behavior of a man drinking a beer in a park, or a noisy protest against budget cuts in education— can potentially contribute to an enhanced tolerance and a better cohabitation of citizens. And disorder is not always meaningless chaos. If courts were to look at the motives behind occupations of public space, they might very well notice that disorderly occupation of public space is deeply political. Rather than being at odds with democracy, occupation of public space may very well be a radical enactment of democracy.

The political dimension of the occupation of public space by protesters is admittedly easier to grasp than the political dimension of the use of the space by the homeless who sleep in parks. Protesters are upfront about it. During an interview, Mary, an experienced activist who is a veteran of many protests affirmed the collective and political sense of the demonstration when I asked her what protests means for her:

it’s having a social presence in the street and having a chance for lots of different people to participate in one thing, and coming together.

(...)

lots of demonstrations I guess, at least in Montreal, happen downtown, sort of downtown core, sort of like in contrast to what normally happens downtown. Like, commerce and whatnots. And I think people taking over those spaces ... and

interacting with public space in a way that isn't a very scripted, you know, like commuting to work, or shopping or you know... working in some capacity or another, is an important part of wanting another world: Having spaces in which we don't have to interact in those ways... hum.. and yeah, and having a social presence I think is like, having a visibility to people who otherwise wouldn't know, wouldn't hear about, or wouldn't otherwise engage with the issues that are coming up, whatever they are, hum... you know that there is something powerful about seeing people in the streets who care enough about something to do that with their time (...) you know, it's a contrast to sort of what you see everyday, people just walking around in the streets, not engaging with each other, not talking with each other... no connection to each other...

And when I asked her why it was important for her to participate in demonstrations, she said:

Because we have a responsibility to speak up when things are not right in the world and I think we have a responsibility to fight for a better world, maybe responsibility isn't a great word but it's compelling, it something that compels us to want a better world, to want to live in better conditions...

And Anita, another activist I interviewed, expressed a similar position:

I really need, we need to be political in life. In fact, I believe that human beings are intrinsically political beings and when they are stripped off of their political elements, they are lost, alienated.... And one can be political in various ways, in participating in demonstrations, in occupying spaces, in organizing self-management projects, many projects...

And when I asked Nico, in another interview, about the power of demonstrations, he said it was a way to get heard, and change the power dynamic:

Because us, we don't have access to their table of negotiations, we can't send lobbyists, we don't have access to the parliament, etc.... and therefore, our political space... well, it's the street... it's there we can play.

Hence, demonstrations are an occasion to feel alive as a citizen in a democratic city; it is a way to engage with difference, a way to get heard. As David Harvey (2012) put it, the

collective power of bodies in material public space is “still the most effective instrument of opposition when all other means of access are blocked” (pp. 161-162). And the activists, to whom we ascribed a lot of agency, are more often than not forced to protest in public space, forced to be disorderly, for lack of better channels to demand social justice and to be heard.

The political dimension of homelessness and of the occupation of public space by homeless people is not as obvious. As we have seen in chapter 3, some homeless people are by definition, by lack of a private space to call home, forced to be ‘disorderly’ in public space (drinking in parks, panhandling, jumping turnstiles, sleeping in a closed park at night, etc.). For the progressive scholars at least, the homeless are often perceived partly as victims of structural forces that drive them into poverty. This is a helpful move, as it delegitimizes the ticketing practices and takes the responsibility off of the homeless, countering by the same token the conservatives’ narratives such as the one developed by Ellickson (1996):

begging is a morally dubious activity; if everyone were to try to survive as an unproductive person living off the charity of others, all would starve. A pedestrian who sees an apparently employable person begging may sense the degeneration of one of the most fundamental social norms. (p. 1182)

When, on the contrary, one considers that homeless people are forced into public space, that they are panhandling out of necessity, that they have nowhere else than public space to perform vital functions such as sleeping and urinating, (Waldron, 1991), and that this situation is at least partly the result of private property rules (Blomley, 2009), then the ticketing practices become completely nonsensical. This is what we saw in chapter 3, but I want to nuance this portrait here. To focus exclusively on structural forces and to say that

no person chooses a life on the street might be too much of a generalization. More accurately, we should say, with Blomley (2009), “Nobody should be homeless who does not choose to be homeless” (pp. 586-587). Because yes, some people do choose alternative ways of life, alternative ways to be in the space. The street might sometimes be a place for the expression of marginality, a socialization space where one has the opportunity to affirm values of solidarity, mutual aid, environmentalism, etc. (Bellot, 2003). It is a way to challenge the established order and the exploitative capitalist hegemony. Greissler (2010) for example suggests that street youth might be much more politically motivated than we thought them to be. Michel Parazelli (1997), acknowledging that dimension, speaks of “constrained choice”. It is a choice that results from a lack of alternatives maybe, but nonetheless the exercise of one’s agency. To deny that a street life can be the result of a choice when one is absolutely fed up with the consumption-oriented life is to very strongly deny the agency of a certain segment of the population. Let’s take the example of Mario, a very articulate man who had 7 or 8 dogs attached to his belt by multiple leashes (to respect the by-law that a dog must be kept in leash at all time). Mario rejected conventional norms of society in order to live in the streets according to his values; he even calls himself a sort of Jack Kerouac. Importantly, if he chooses the margins, he doesn’t choose the judicialization that comes with it. He claims that those tickets (mostly for loitering and for dogs without a license) are illegitimate and that they are only excuses to drive him away from the space. For example, he would see other citizens doing the same thing than him (e.g. discarding ashes of a cigarette on the ground) but only he would get tickets for it. (Denis, 2011).

Mario is not the only marginal person to contest the legitimacy of the ticketing and social profiling practices, despite the fact that he chose his street way of life. Several times I heard PAJIC participants saying to the prosecutors exactly what they wanted to hear (“no, I don’t take drugs”; “yes, I live in a nice apartment”; “yes, I want to find a job”; “yes, I have new friends now”) mostly just to navigate through the system and see their tickets withdrawn. Does that mean they think their tickets were legitimate in the first place? Not in the least. Does that mean that they are willingly exiting the margins and becoming “conformist citizens”, as one man once told me? Not exactly. Some even see the PAJIC as a subversive use of the criminal justice system to reduce the harm caused by the judicialization.

If I recognize that it is somehow romanticizing homelessness to say that to live a life on the streets is a counter-hegemonic act against capitalism; I also want to emphasize that it is a detrimental generalization to annihilate the agency of individuals like Mario and like some PAJIC participants who refuse the current economic system with its sterile vision of public space. As Barak and Bohm (1989) write,

care must be taken neither to romanticize the homeless nor impose our will upon them. A small number of the homeless seek no help and prefer, for whatever reasons, life on the streets. As long as these homeless people are not victimizing anyone else, they should be offered help, but if refused, they should be left alone. (p.284)

The point of this dissertation is therefore not to call for a normalization of the uses of public space by a rehabilitation of the protesters and the homeless into typical activities of leisure and circulation in the public domain. Quite the opposite. In fact, like Sennett and Parenteau, I too celebrate disorders. I also recognize the political dimension of ‘disorderly’

actions. And I believe that courts would be much more reluctant to rule that the repression of certain uses of public space was a justified violation of freedom of speech if they were to consider these uses as political acts. If disorder in public space was understood as a way to re-imagine democracy and foster an inclusive and diverse society, rather than as broken windows harbingers of a decaying civilization, it would be far less easy to discard disorders as threatening the “free and democratic” society. Instead, disorder in public space would be seen as performative; it would be the very enactment of a free and democratic society.

In the end, after having purposively emphasized in this dissertation the control exerted over those who occupy public space, I want to now underline the reasons why people are in the streets in the first place. Student activists and homeless people alike are in the streets because of social inequalities and a broken system. Whether one is protesting for more accessible public education, or being in the streets as a result of a chosen marginality to express the rejection of a materialist society, or as a result of the capitalist forces producing extreme poverty, lack of affordable housing and even exacerbating mental health problems, in the end it all comes back to one thing: one’s material conditions are at the root of the “disorderly” occupation of public space. And again, whether or not one chooses to be homeless or chooses to protest, it doesn’t matter. In the end, it remains that both have to use public spaces *to be*. But ticketing practices, through removal and displacement, preclude them *to be*, or at least to be *there*. In the end, both groups are annihilated in their occupation of the space. But in order to fight for more wealth redistribution, for more social justice, for a more egalitarian society, we need to be able to

occupy public space and challenge the powerful, the “haves” (Galanter 1974). And it is perhaps because the ruling class had understood the power of the streets, i.e. to paraphrase Harvey (2012), the collective power of bodies in material public space, that it is so quick and heavy in the repression. Disorder, let alone “organized disorders” such as protests, is the scariest thing for those in power who benefit from the current system; disorder, as a matter of fact, is an immediate threat to the established order in society.

Rather than transforming the disorderly into a “one size fits all” model of urban citizenship, we should be transforming the ways we think about disorder in public space. This must begin with a recognition that such disorder is a real means of working towards social change and therefore should not be subject to judicialization. In the end, the criminal justice system does more harm than good when it engages in order-maintenance strategies: the disorder might be stopped on the moment, but the poor stay poor and the protesters stay angry. Their rights are violated and they are just more entangled within the justice system, a justice system that manages more than it punishes. That being said, I still believe in the power of the law, in that I think there is room to fight within the system. As we have seen, many tickets and legal procedures (like the arrests) can be challenged and sometimes such challenges have been successful. There have also been several initiatives to contest the practices associated with the judicialization of public space, such as complaints in front of the police ethics committee or the Human Rights Commission. As one activist once told me: “enough of being victims of police abuses, let’s fight back for our rights!”

Most importantly, whether we are talking about the homeless or protesters, we

need to re-invent the ways in which we view the occupation of public space, to get closer to the “ideal of city life as a being together of strangers in openness to group difference” (Young, 2011, p. 256). We need to push back against that idea that disorders need to be policed heavily. We need to revise municipal by-laws and their enforcement, so that no one gets ticketed anymore for loitering, panhandling, squeegeeing, drinking in public, or sleeping in a park. We need to abolish laws that restrain the right of peaceful protest such as Quebec’s P-6 law. We need to provide amnesty to all protesters and homeless people who received illegitimate tickets. We need to improve access to toilets that are publicly available. We need to build much more social housing. We need to increase the minimum wage and welfare benefits. We need to tax the rich to foster more wealth redistribution. Of course, this is a loaded program, but to recall the slogan of the 2012 student strike, it should always start with a “rêve général illimité”.

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