

**THE WAY OF RIGHTS AND THE RIGHT OF WAY:
PANHANDLING AND RIGHTS IN PUBLIC SPACE**

by

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ABSTRACT

There is a tradition within geography of calls for inclusivity gained by the “cry-and-demand” on the part of those marginalized to claim rights *in* and *to* public space. However, the utility of rights as a tool for gaining social justice bears closer inspection. Using as an example debates around the *Safe Streets Act* in British Columbia, I interview panhandlers to test the convergence between their lived-experiences and the dominant rights-discourse used in debates around the law. This reveals a gap between the reality of being marginalized on the street, and dominant rights-based narratives. Furthermore, panhandlers question whether they can assert even the limited forms of rights available to them. I suggest that the problem is deeply inherent in rights themselves: specifically, in a strong liberal-ontology present in rights-discourse, which views individuals as isolated monads and limits discussion of alternative strategies for social justice while masking the everyday realities of oppression.

Keywords: Rights, Panhandling, Begging, Right to the City, Public Space, Liberalism.

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FOREWORD

"I'm not looking to put a kid through college or you know, finance my condo or anything. You know what I mean? If I can eat twice a day, which you know is pretty minimum - and I don't eat great meals. Once in a blue moon someone will take me for something really great to eat. Once in a while you know.

But generally I eat two fast food meals that cost about twelve dollars in total for both meals. And you know seventeen and change to get indoors. And that's all I need, you know what I mean. And some days I don't even make that.

So when I hear people saying things like oh, it's easy money, easy money. It's like, it's not easy money dude. I've got to put up with people telling me off all day. I've got to put up with crap all day. You know I sleep outside most days. You know I don't eat enough. I got to pick cigarettes off the ground to afford my smoking. You know. And it's a real blow to the pride to sit there on a daily basis asking people for money.

So anyone who says it's easy money is out of their fucking mind. I'd like to see any of the people who say that give it a shot, like a real shot. Like take away their bank cards and their credit cards and their nice clothes and their watch and their jewellery and their suits, and you know, just have them in jeans, sneakers and a jacket you know, sitting on the side of the road. I don't think most people could handle it.

And I don't, I can only handle it because I'm - I have to! You know. It's borne out of necessity. And I, the first little while I was scared shitless you know. But now you know, I'm not scared anymore. I'm just--I'm not thrilled either, you know."

(Ben, 39)

1: CONCEPTUAL BACKGROUND

Throughout North America, governments and industry have worked together to advance the ‘Broken Windows’ model of crime—situating street poverty and its associated economic and social activities as indices of social disorder requiring punitive sanction. Rather than calling for measures to alleviate or eliminate poverty, these efforts seek to criminalize it via the surveillance, control, and domination of public space. In this view, the panhandler is seen as a visible sign of street disorder which, if left untended, will lead to an escalation of crime. One consequence of this neoliberal turn has been an increase in both the number and severity of laws which regulate panhandling.

Vancouver, Canada has not escaped this trend, and has had lively recent debate over the enactment of laws governing behavior in public space. In particular, the enactment of the “*Safe Streets Act*”¹ (SSA) has crystallized debate on all sides, with court challenges occurring both to the BC legislation, and others throughout Canada. As with many trips into court, these challenges have heavily utilized the language of rights, highlighting for some the utility of rights, and for others, their impotence.

¹ 37th Parliament B.C. Legislative Session: 5th Session, “Bill 71: *Safe Streets Act*,” (2004 (http://www.leg.bc.ca/37th5th/3rd_read/gov71-3.htm)). Modelled closely on legislation in Ontario, the Act regulates the time, place, and manner in which people are allowed to panhandle. Further exploration follows.

All agree that rights are unique and powerful things. Most will agree that the ways that rights are created, negotiated, and utilized have important implications. Some claim that rights “protect, defend, and restore the agency of the defenseless”², while others are more dubious, choosing instead to refer to rights as “simple...rhetorical nonsense—nonsense upon stilts”³. In any case, the normative appeal and inclusionary promise of rights are an inveterate feature of our everyday lives, and bear close inspection.

My central concern is an exploration of the ways in which liberal forms of rights are structured and called into play in the debate around anti-panhandling legislation. Specifically, I will explore the rights-consciousness of those simultaneously most affected, and least consulted, by such legislation: panhandlers themselves. Such an endeavor, rare in the literature on both rights and geography, will critically question whether rights are neutral, pre-political, entitlements, and if not, what sort of political subjects are created by rights—with what implications for the city landscape.

But, it is worth pausing for a moment here, before venturing too deeply, to briefly foreground what is meant by ‘rights’—what it is that rights are thought to do, why people should have rights, and what (if anything) geography has to do with the study of rights.

² Michael Ignatieff, *The Rights Revolution* (Toronto: Anansi, 2000). Pg. 43

³ Jeremy Bentham, "Anarchical Fallacies," in *'Nonsense Upon Stilts': Bentham, Burke and Marx on the Rights of Man*, ed. Jeremy Waldron (London: Methuen, 1987). Pg. 53

1.1 Rights?

In its simplest form, a right is a “power or privilege to which one is justly entitled”⁴. From this deceptively simple statement it follows that if I have a right, then someone else must have a corresponding duty (or obligation, to use the full legalese) to either do something, or not do something, to ensure that my right is respected, for “in the absence of [this] entitlement there are no rights.”⁵ While someone against whom I do not hold a rights-claim may feel obliged to render me a service, because it is the ‘moral’ thing to do, I cannot rightfully claim that that they *must* do so. This is the difference between something being ‘right’ in the moral sense, and the possession of a ‘right’ in the formal sense⁶.

So what is it that rights do? Rights establish a language of priority: “to have a right is to have something that overrides other considerations in both moral and legal discourse”⁷. In addition, structuring thought in the language of rights assures that there are decisive remedies available in the event that the rights are infringed upon—“rights promise clear answers to moral problems”⁸. Lastly, rights “offer security through a system of social and political entitlements”⁹. They guarantee certain claims in a structure such that the claims cannot be alienated from the individual. I cannot be deprived of my rights at the capricious whims of others.

⁴ Nick Blomley, "Rights," in *Dictionary of Human Geography* (forthcoming).

⁵ Jack Donnelly, *The Concept of Human Rights* (London: Croom Helm, 1985). pg. 11.

⁶ Ibid.

⁷ Tom Campbell, *Rights: A Critical Introduction* (New York: Routledge, 2006).

⁸ Ibid. pg 3

⁹ Ibid. pg 4

Certainly, rights seem like a grand proposition, and correspondingly are not granted haphazardly. Indeed, of the many inhabitants of the planet, people are thought to be the sole possessors of rights. The reasons that humans have rights is generally agreed to be related to autonomy, though there is some dispute about how this link is made. According to Kant, humans should have rights because they are the only beings capable of acting autonomously. As such, humans are capable of originating their own conduct, rather than simply being at the whim of the forces of nature and instinct. This gives rise to Kant's famous 'Categorical Imperative', whereby all persons are "to be regarded as 'ends in themselves' and each person is therefore "to be respected, and equally respected, by all other persons"¹⁰. Others differ slightly from this view, stating instead that autonomy is an essential *element* of human well-being. In this view, the "normative significance of autonomy resides, not in its being an essential feature of personhood, but in its being an essential element of living well"¹¹.

Though we could elaborate on this philosophical quibbling (which does, indeed, have important implications¹²), for our present purposes it will suffice that we understand the importance of autonomy as a basis for rights, whether we give it "ultimate moral significance...as an essential element of the good life [or] as a capacity which confers a special status [of rights bearer] upon individual

¹⁰ Peter Jones, *Rights*, ed. Peter Jones and Albert Weale, Issues in Political Theory (Basingstoke: Macmillan, 1994). Pg 128

¹¹ Ibid. pg 129

¹² Cf. Jones; Campbell. on autonomy

persons”¹³. For, as we will see, autonomy is at the base of much rights-discourse.

1.2 Rights...and Geography?

Despite, or perhaps because of, the far-reaching philosophical nature of rights, it may be tempting to imagine them as inherently detached from social and physical space—inhabiting a higher plane of neutrality and justice. However, rights entail a variety of spatial dimensions, both abstract and physical¹⁴.

At an abstract level, the language of rights is heavy with geographic dimensions of boundary-setting. Within liberal legal thought, these include a drawing out of what we consider ‘public’ and ‘private’, closely related to a fencing of the ‘individual’ against the ‘collective’. Indeed, the law is “self-consciously spatial in orientation, and its first concern is to define the boundaries in which it operates”¹⁵. The liberal imaginary in this boundary-setting is inherent in the infrastructure of rights, and, as we will see in our discussion below, has important implications for how rights are used.

In a physical sense, rights must be exercised somewhere, and external constraints oftentimes influence the efficacy of rights-exercise. This is deeply related to the desire of rights to strengthen and enable the individual choices that

¹³ Jones. pg 132

¹⁴ Indeed, it could be suggested that the forms of rights we are most familiar with have emerged as a product of a particular political-economic moment (i.e. capitalism). Though this is not directly my point here, it is interesting to keep in mind throughout.

¹⁵ David Engel, "Law in the Domains of Everyday Life: The Construction of Community and Difference," in *Law in Everyday Life*, ed. Austin Sarat and Thomas Kearns (Ann Arbor: University of Michigan, 1995). Pg. 130.

one may make. Put most simply, “it implies that individuals require some space in which to shape their lives as they choose”¹⁶. Thus, by imposing excessive restraints upon what people may do in a location an individual’s autonomy is curtailed in the sense that they have fewer material options.

Ofentimes though, the abstract and the material spaces necessarily meet. At a most basic level, rights are performed in space and the language of rights helps to order this space. A right to free speech, for example, necessarily entails a physical place to speak from. If one has a right to free speech, but nowhere that they can exercise that right, it lacks a substantive quality. Likewise, however, if the physical place is not one in the public sphere, then the right likewise lacks a substantive effect. Traditionally¹⁷, to speak of a physical location in the public sphere is to speak of public space.

1.2.1 Public space as Political Space

For space is not simply an empty container holding objects, people, and practices. Space, by its very nature, is socially produced through specific spatial practices. Indeed, far from being a neutral holding tank, public space “implies, contains, and dissimulates social relationships”¹⁸. This is to say that space does not exist outside of context. Each society takes space and makes it in unique

¹⁶ Jones, 124

¹⁷ Certainly, newer arguments exist: eg. the public sphere and the internet, etc.

¹⁸ Lefebvre, H. 2005. *The Production of Space* (translated by D. Nicholson-Smith). Blackwell; Oxford, UK; 82-83. The law, I will suggest, exerts particular power in the definition and dissimulation of both social and political relationships.

ways conducive to the goals, ideals and aspirations of that society. This active interpretation and creation makes space a political creation¹⁹.

Public space, then, plays a formative role in the production of social life. But, more to the point perhaps, public space plays a *vital* role in the production of political life. Public space, it is argued, is the space of politics:

For politics to occur it is not enough to have a collection of private individuals voting separately and anonymously according to their private opinions. Rather these individuals must be able to see and talk to one another in public, to meet in a public space so that their differences as well as their commonalities can emerge and become the subject of democratic debate.²⁰

Public space, then, is vital as a space for representation—as the space in which ideas can be encountered and exchanged. It is the space where, as Iris Marion Young puts it, “one should expect to encounter and hear from those who are different, whose perspectives, experience and affiliations are different”²¹. It is where ideas are created, sustained, and engaged with. Public space is where the body politik exists.

Yet, this existence is not without its complications. Ellickson²², offering a slightly different take on public space, speaks of “the tragedy of the agora” that can result from the presence of those who are a “chronic street nuisance”²³, such

¹⁹ Lefebvre, *ibid.*

²⁰ D'Entreves, M.P. 1994. *The Political Philosophy of Hannah Arendt*. New York; Routledge; 146.

²¹ Young, 1990. *Justice and the Politics of Difference*. 119

²² Ellickson, R. (1996). “Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows and Public-Space Zoning.” *Yale Law Journal* 105(5):1165-1248.

²³ *Ibid*, 1175

as the homeless and panhandlers. According to Ellickson, this detracts from the nature of the street as a place for the public, for:

to be truly public, a space must be orderly enough to invite the entry of a large majority of those who come to it. Just as disruptive forces at a town meeting may lower citizen attendance, chronic panhandlers, bench squatters, and other disorderly people may deter some citizens from gathering in the agora²⁴.

Given the importance of public space as political space then, who may access which spaces and for which purposes, becomes an important question—a question often settled using the language of rights. This operates at a literal level of physical access (as seen above), but has more subtle implications as well. As Staeheli and Mitchell detail:

even if not physically barred...access is conditioned by feelings of receptivity, of welcome, of comfort (or by the lack of these feelings). Access also encompasses the kinds of actions and behaviors that can be taken in a space or acceptable within it. Furthermore, access to one space may set the conditions for access to other, perhaps metaphorical spaces, as in when access to the streets for immigrant protestors conditions access to the public sphere of American society and governance.²⁵

Oftentimes, the language of rights is called upon in these competing notions of who may do what within which area. In the particular debate we are approaching, the way the function of particular places is envisioned, we will see, is of paramount importance. Rights are not merely held, they are enacted (and not enacted) in ways that profoundly affect our visions of the space. The way that the struggle over competing uses of a space is resolved through rights-talk is

²⁴ Ibid, 1174; emphasis in original

²⁵ Staeheli, Lynn and Don Mitchell. *The People's Property: Power, Politics, and the Public*. New York: Routledge, 2008: pg 118.

of particular interest to me, as I suspect that rights may sometimes work to obfuscate power-relations, excluding certain people from public spaces, and perhaps from public awareness. A troubling gap seems to exist within geography as to the ways in which *rights themselves* may actually serve to order political space in this way—a gap which I hope to address in this research.

Yet, I hasten to add that to say that there is a gap is not to say that the literature overlooks the interrelation of rights and geography. Indeed, the reality is quite the contrary. The failure in geography, I will suggest, is not one of theory—but one of imagination.

1.2.2 The Right to the City

There is a cogent argument within geography which centres upon public space and rights in the urban context, focussing on “the right to the city”. Originally proposed in the works of Henri Lefebvre, the central idea is that the city should be conceptualized of as an *oeuvre*, that is, as a creation of its citizens, rather than merely an economic product. The use-value of the city, it is argued, is separate (and more important) than its mere economic-value. The use and enjoyment of the city by the inhabitants of the city is a worthwhile end in and of itself. As Lefebvre puts it:

The right to the city manifests itself as a superior form of rights: right to freedom, to individualization in socialization, to habit and to inhabit. The right to the *oeuvre*, to participation and *appropriation* (clearly distinct from the right to property), are implied in the right to the city.²⁶

²⁶ Lefebvre, H. 1996. *Writing on Cities*. (edited and translated by E. Kofman and E Lebas). Oxford: Blackwell, 173-174

This is a strong battle cry: a cry towards citizenship, towards the claiming of the city, and towards the usurpation of privileged and capital-dominated views of the city. Many geographers have carried this idea forward, arguing for a city made for (and by) its inhabitants, for the primacy of the possession and use of public space for use by the people; for a *right* to the city.

One of the most coherent contemporary examples of this argument can be found in the works of geographer Don Mitchell, whose book “The Right to the City: social justice and the fight for public space” was well received within geography as a refreshing call to reinvigorate Lefebvre’s argument²⁷. In this work, Mitchell makes a reasoned and impassioned argument for the prevalence of rights, which we shall briefly explore.

The spaces of representation found in the streets of the city, Mitchell reminds us, are vital for political functioning, for “if the right to the city is a cry and a demand, then it is only a cry that is heard and a demand that has force to the degree that there is a space from and within which this cry and demand is visible.”²⁸ If legislation and political ordering are allowed to render the poor and marginalized out of public sight, then being out of mind may quickly follow. As Mitchell argues, “insofar as homeless people or other marginalized groups remain invisible to society, they fail to be counted as legitimate members of the

²⁷ I will consider Mitchell’s reasoning in some depth as a prime example what I will call “right to the city”-style arguments. I attach Mitchell to this argument for two reasons: 1) Mitchell makes what I feel is one of the roundest and most successful contemporary explorations of a “right to the city”-style argument; 2) Mitchell’s argument is rare, to my knowledge, precisely because rather than blindly accepting rights he carefully considers the effects of their usage (though he is still, ultimately, a rights-optimist). Thus if the critique implied herein can be applied to his more careful reasoning, then it may be generalized to a majority of similar arguments by those who simply take the valence of rights for granted.

²⁸ Mitchell, *The Right to the City*, 129. See also: Henri Lefebvre, *The Production of Space*, Oxford: Blackwell, 1991.

polity.”²⁹ The right to the city thus “demands the redevelopment of the city in a manner responsive to the needs, desires, and pleasures of its inhabitants, especially its oppressed inhabitants”³⁰.

There is a constant battle, then, between those who would deny or water-down a truly inclusive public realm, and those who wish to claim public space in their vision. Space is only made truly public, Mitchell claims, when

“to fulfil a pressing need, some group or another *takes* space and through its actions *makes* it public. The act of representing one’s group (and to some extent one’s self) to a larger public creates a space for representation. Representation both demands space and creates space.”³¹

It is easy to see why such an idea has been so well-received in geography. But how are we to accomplish this? Mitchell, and others, suggest that the power of rights will light the path forward because:

“Rights establish an important ideal against which behaviour of the state, capital, and other powerful actors must be measured—and held accountable. They provide an institutionalized framework, no matter how incomplete, within which the goals of social struggle can not only be organized but also attained”³²

By claiming, occupying, and utilizing public space those who would be excluded from public space can make their cry and demand visible. *Rights*, both legal and normative, provide a powerful vehicle through which claims to the city can be made; through which marginalized actors in urban cores can bring their

²⁹ Mitchell, *The Right to the City*, 129; See also: Joe Hermer and Janet Mosher (editors) *Disorderly People: Law and the Politics of Exclusion in Ontario*, Halifax: Fernwood Press, 2002.

³⁰ Mitchell. *The Right to the City*, pg 21.

³¹ Mitchell. *The Right to the City*, pg 35

³² Mitchell. *The Right to the City*, pg 25.

needs to the forefront; and through which space can be *taken* and *made* in the image of the citizenry.

The quest for social justice thus suffers when rights in the abstract are ignored, for rights have the ability to be universalized in the public realm and carry with them the force of law³³. These qualities, it is argued, make rights the best tools we have to pry open the door for social change. Indeed, there are no two ways about it according to Mitchell: “the cry and demand for the *right* to the city is the best means there is to begin to assure...‘the geography of survival’”³⁴.

There is much to admire in Mitchell’s account, which is understandably more nuanced than I have given credit here. Such arguments suggest that rights are important because of their abstract quality, which allows them to be deployed in diverse circumstances. However, below I will suggest that such arguments ultimately *fail precisely because of their abstract quality*, which does not take into account the multifaceted relations of power in the real world. What is necessary is a way to reconcile the abstract nature of rights with their actual practice to determine if the right to the city is so easily claimed by the marginalized citizens for whom Mitchell speaks.

³³ These two points, it seems, are key to Mitchell when he lays up his defence of rights. However, as we will see below, his optimism may be unfounded--as the “universality” of the public realm, and the force of law, may indeed exist--but exist in particular and limited ways incongruent, perhaps, with the vision of social justice he seems to favour.

³⁴ Mitchell. *The Right to the City*, pg 21, original emphasis.

1.3 Legal Consciousness

Because, despite the fact that “rights are not determined in the abstract, but rather in practice,”³⁵ rights are generally thought about, and studied, in these rather abstract terms. However, examining rights solely in the vacuous spaces of abstract theory may not yield a true picture of the ways that rights are actually used (or not used) in the more complex spaces of everyday life.

There is a growing body of research that seeks to bridge this gap between theory and practice with an examination of the “legal consciousness” of everyday people—examining how they think about the law and how their understandings of the way law actually “works” affect their everyday lives³⁶. Indeed, “individuals come to the law (and the law comes to them) with a body of knowledge, assumptions, ideology, and experience with the law and legal actors that affects whether or not they will assert their legal rights”³⁷. Thus, a person’s legal consciousness affects the way that they frame their experience, as well as the range of options that they feel they have in different circumstances. For example, if I do not believe that I have rights, then I will not seek remedies utilizing rights. If I believe that I have rights formally, but it costs too much money or time to dispute infringements upon my rights, I am likewise unlikely to call forth the power of rights in my favour.

³⁵ Mitchell. *The Right to the City*. pg 6.

³⁶ Cf. Patrick Ewick and Susan Sibley, eds., *The Common Place of Law: Stories from Everyday Life* (Chicago: University of Chicago Press, 1998); Laura Beth Neilsen, "Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens About Law and Street Harassment," *Law & Society Review* 34, no. 4 (2000); Austin Sarat, "'The Law Is All Over': Power, Resistance and the Legal Consciousness of the Welfare Poor," *Yale Journal of Law and the Humanities* 2 (1990).

³⁷ Neilson. "The Work of Rights and the Work Rights Do: A Critical Empirical Approach," in *The Blackwell Companion to Law and Society*, ed. Austin Sarat (Oxford: Blackwell, 2004). Pg 69.

Such an understanding of legal consciousness is important because, at the most practical level that most people encounter the law, the law consists of relationships between people with regard to actions and things. Law, at the end of the day, is about allocating power in these relationships³⁸; thus, an examination of the social and spatial context of the relationships is vital to an understanding of the ways that law actually works. As Iris Marion Young persuasively argues, “rights are relationships, not things; they are institutionally defined rules specifying what people can do in relation to one another. Rights refer to doing more than having, to social relations that enable or constrain action”³⁹. How these relationships, and the structure of the law, are framed in consciousness affects the potential scripts and roles that will (indeed, *can*) be enacted. A person’s legal consciousness affects the way that they frame their experience, as well as the range of options that they feel they have in different circumstances.

The quest to map variations in legal consciousness has yielded a diverse literature, a central concern of which is an examination of the “persistent contradiction between the ideal and the actual in the law”⁴⁰. Thus, in seeking to fill in the contours, scholars have examined the understandings and use of the law by a variety of groups, such as jurists⁴¹, working class women⁴², legal staff⁴³,

³⁸ Blomley, Nicholas. *Law, Space, and the Geographies of Power*. New York: Guilford, 1994.

³⁹ Young, I. 1990. *Justice and the Politics of Difference*. Princeton: Princeton University Press; 25.

⁴⁰ Ewick, Patrick, and Susan Sibley, eds. *The Common Place of Law: Stories from Everyday Life*. Chicago: University of Chicago Press, 1998; xiii.

⁴¹ Fleury-Steiner, B. 2002. Narratives of the Death Sentence: Toward a Theory of Legal Narrativity. *Law and Society Review*, 36: 549-576.

⁴² Merry, S. 1990. *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans*. Chicago; University of Chicago Press.

and people with disabilities⁴⁴; and throughout a variety of public and private sites, such as streets⁴⁵, neighborhoods⁴⁶, and workplaces⁴⁷. Such studies⁴⁸ recognize that the law cannot be understood separately from its social and spatial context, and highlight the importance of studying how people think about and experience the law. It is through this that we can gain insight as to the various understandings of the law and legality that people have and use to construct their everyday understandings of the world.

However, far less work in this area has been done on the meanings of law for more marginalized groups. Levine and Mellema⁴⁹ mark one of the (very) few exceptions with their examination of the “salience of law” amongst women in the street-level drug economy⁵⁰. Looking at the “degree to which the law matters in the lives of street women”⁵¹, they powerfully argue that much contemporary literature ignores the experience and understandings of extremely marginalized

⁴³ Yngvesson, B. 1993. *Virtuous Citizens, Disruptive Subjects: Order and Complaint in a New England Court*. New York; Routledge.

⁴⁴ Engel, D. and Munger, F. 2003. *Rights of Inclusion: Law and Identity in the life stories of Americans with Disabilities*. Chicago: University of Chicago Press

⁴⁵ Neilsen, Laura Beth. "Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens About Law and Street Harassment." *Law & Society Review* 34, no. 4 (2000): 1055-90.

⁴⁶ Ewick, Patrick, and Susan Sibley, eds. *The Common Place of Law: Stories from Everyday Life*. Chicago: University of Chicago Press, 1998.

⁴⁷ McCann, M. 1994. *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilizations*. Chicago: University of Chicago Press; Marshall, A.-M. 2005. *Confronting Sexual Harassment: The Law And Politics Of Everyday Life*. Burlington, VT: Ashgate.

⁴⁸ Generally, the Legal Consciousness literature recognizes three prevalent modalities of legal consciousness: “Before the Law”; “With the Law”; and “Against the Law” (see Ewick and Silbey, 1998, *passim*, for an in-depth discussion). Interestingly, the responses of those in this sample did not correspond to any of these categories. I intend to explore the implications of this in a future paper.

⁴⁹ Levine, K., and V. Mellema. 2001. Strategizing the street: how law matters in the lives of women in the street-level drug economy. *Law & Social Inquiry* 26:205.

⁵⁰ Indeed, Levine and Mellema offer a much more in-depth examination of the legal consciousness of women on the street, deserving of its own discussion. Among other things, they critically question the “law first” perspective of much of the law and society literature, pointing out the multiple and contradictory forces present in the lives of the most marginalized. I hope to engage with, and expand upon, their argument more thoroughly at a future date.

⁵¹ *Ibid*, 171

people. Their investigation leads them to believe that “the law not only fails to provide assistance to women in need, but also serves as an obstacle to their survival by subjecting them to increasingly punitive measures in both the criminal justice and welfare systems”⁵². Similarly, Sarat⁵³ examines the legal consciousness of people engaged with the welfare system. His conclusions, as well, do not give us cause for celebration. In particular, he notes that the legal consciousness of the welfare poor “frequently contests what are often thought of as the key legitimating symbols of law, in particular the association of law with neutrality, disinterestedness, rule determinacy and rights”⁵⁴. These two studies, rare in the field, both suggest that further work into the experiences of marginalized people with the law are necessary, as it seems that those with the most experience with the law often contest some of the most basic principles associated with the law, with troubling implications.

This study will add to this literature by engaging with the legal consciousness of panhandlers with regard to rights. As previous research in the law and society movement has suggested “the social location of subjects plays an important role in the shaping of their...legal consciousness”⁵⁵. Thus, we may expect that panhandlers, occupying a space of social and economic marginality—and often constituted as a threat to public order—view the force of

⁵² Ibid 189

⁵³ Sarat, Austin. ““The Law Is All Over”: Power, Resistance and the Legal Consciousness of the Welfare Poor.” *Yale Journal of Law and the Humanities* 2 (1990): 343-79.

⁵⁴ Ibid 377

⁵⁵ Laura Beth Neilsen, “Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens About Law and Street Harassment,” *Law & Society Review* 34, no. 4 (2000). Pg 1086.

rights in a particular way. Expanding upon previous research of mine⁵⁶, this project will explore the legal consciousness of panhandlers, grounding formal and abstract ideas of rights in the spaces of the everyday, so that we may examine the more substantive and concrete ways in which rights are actually practiced⁵⁷. Taking this more nuanced view, I will suggest, raises interesting questions about the utility of rights and the vision of equality popularly portrayed in the law.

⁵⁶ Berti, Mario. "Handcuffed Access: Homelessness and the Justice System." Paper presented at the Association of American Geographers Annual Meeting, San Francisco, April 19 2007; Berti, Mario. "A View from the Margins: The legal consciousness of Vancouver's homeless." Paper presented at the Canadian Law and Society Annual Meeting, Saskatoon, June 1 2007; Berti, Mario and Jeff Sommers. "'The Streets Belong to People That Pay For Them': the Spatial Regulation of Street Poverty in Vancouver, BC." in *Poverty, Regulation and Social Exclusion: Readings on the Criminalization of Poverty*, edited by Diane Crocker and Val Johnson, UBC Press, forthcoming.

⁵⁷ Cf. Patrick Ewick and Susan Sibley, eds., *The Common Place of Law: Stories from Everyday Life* (Chicago: University of Chicago Press, 1998); Laura Beth Neilsen, "Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens About Law and Street Harassment," *Law & Society Review* 34, no. 4 (2000); Austin Sarat, "'The Law Is All Over': Power, Resistance and the Legal Consciousness of the Welfare Poor," *Yale Journal of Law and the Humanities* 2 (1990).

2: CONTEXTUAL BACKGROUND

2.1 Disorder and the Fear of “Street People” as a Political Issue in Vancouver

Homelessness in Vancouver, BC, Canada has undergone a staggering increase in the past decade, from between 300 and 600 homeless people in 1999, to 1121 in 2002. In the 2008 official one-day count, it was found that there were a total of 2,592 homeless people in the GVRD. This represents an increase of 131% since 2002, or an increase of 332% (by the most conservative estimate) since 1999⁵⁸.

This increase in homelessness has been seen in many Vancouver neighborhoods as a rise in the number of panhandlers, and bidders, as well as people sleeping in doorway alcoves on streets and alleys, in parking lots, and in parks. In many instances, these have been taken as signs of increasing street disorder. Recent legal and political initiatives⁵⁹ in Vancouver take as a starting point the fact that public disorder, mostly attributed to panhandlers, the urban poor, and the homeless, must be curbed in order to ensure that the public spaces of the city remain welcoming⁶⁰. Such initiatives take as their starting point a belief in a ‘broken windows’ theory of crime prevention, and a thriving neoliberal environment.

⁵⁸ SPARC BC. 2005. *Homeless Count 2005: On Our Streets and in Our Shelters...Results of the 2005 Homeless Count in Greater Vancouver*. ; Metro Vancouver Homeless Count Figures 2008: Preliminary Numbers—April 8, 2008. There are numerous methodological problems with finding exact numbers of homeless people. As such, all numbers reported from such studies are estimates (and, almost certainly, underestimates).

⁵⁹ See, for example, 2004 Legislative Session: 5th Session, 37th Parliament, *Bill 71: Safe Streets Act* <http://www.leg.bc.ca/37th5th/3rd_read/gov71-3.htm>; 2004 Legislative Session: 5th Session, 37th Parliament, *Bill 74-Trespass Amendment Act* <http://www.leg.bc.ca/37th5th/3rd_read/gov72-3.htm>; and especially, Project Civil City, <http://www.city.vancouver.bc.ca/projectcivilcity/> (all accessed March 10, 2008).

⁶⁰ Berti, Mario and Jeff Sommers. 2009. “The Streets Belong to People That Pay For Them’: the Spatial Regulation of Street Poverty in Vancouver, BC.” in *Poverty, Regulation and Social Exclusion: Readings on the Criminalization of Poverty*, edited by Diane Crocker and Val Johnson, Fernwood.

2.2 Broken Windows

Broken Windows emerged as the central discursive frame for understanding the social geography of crime in North American cities over the 1990's, not least due to its deployment as the guiding concept of New York City's vaunted crackdown on street crime and disorder. Its key theoretical "innovation"⁶¹, a proposed link between petty crime and nuisance behaviour, on the one hand, and urban disorder, on the other, served to reconfigure "our notion of what constitutes 'crime' and ... how we determine the relative seriousness of particular types of crime."⁶² The proponents of Broken Windows contended that activities that had once been approached as nuisances should actually be treated as criminal acts because they are the cause of even more terrible deeds. By this logic, signs of public disorder such as rowdiness, public urination, begging, and public drinking, as well as unsightly scenes of graffiti, uncollected garbage and litter, and deteriorating buildings, will reach a critical mass that invites an escalation of criminal acts if left unchecked. As indications of disorder mount, they provide evidence to the criminally-disposed that nobody much cares about the area in which they are taking place. Such individuals are thus encouraged to engage in progressively more serious acts.⁶³

According to this theory, the more disorder there is, the more criminal acts take place and the more disorder is tolerated, and so forth. Once residents begin to fear for their safety in public places, a spiral of decay sets in, as public space

⁶¹ Though seen as an innovation, it was certainly prefigured by earlier work (eg. Jane Jacobs, etc.).

⁶² Kelling and Coles, *Fixing Broken Windows*, 27.

⁶³ Kelling and Coles, *Fixing Broken Windows*.

is taken over by the disorderly and the criminal. Businesses close or move as their customers flee or stay home behind locked doors. Disorderly behaviours and situations are not simply nuisances but criminal acts that, in sufficient numbers, lead inexorably to neighbourhood or even city-wide decline.⁶⁴ However Broken Windows' proponents hold out the hope that the inevitable decline that results from disorder can be halted, and even reversed, through police and community intervention.

Brown and Herbert point to a core spatial logic that underpins Broken Windows, which is based on the premise of an essential territorial imperative, especially the notion that both built and human "landscapes ... communicate signals of neighbourhood vulnerability to the criminally minded."⁶⁵ Places must therefore not only be defended from potential wrongdoers, but their residents and/or users must seek to actively exclude the latter. Broken Windows thus constructs public space in terms of a social division between the good residents or passive users of a place and the dangerous strangers who seek to harm the former. This social division is constituted spatially, as the two sets of actors are embodied and present in particular places.⁶⁶ Indeed, as we will see below, it is the embodied presence of the stranger that makes it such a problematic figure.

Broken Windows does not simply diagnose problem situations. It is also prescriptive, suggesting two main types of action. First, combined with the related

⁶⁴ Bernard Harcourt, *Illusion of Order: The False Promise of Broken Windows Policing* (Cambridge and London: Harvard University Press, 2001); Wesley Skogan, *Disorder and Decline: Crime and the Spiral of Decay in American Neighborhoods* (Toronto: Collier MacMillan Canada, 1990).

⁶⁵ S. Herbert and E. Brown, "Conceptions of Space and Crime in the Contemporary Neoliberal City," *Antipode* 38, no. 4 (2006): 758.

⁶⁶ Herbert and Brown, "Conceptions of Space and Crime in the Contemporary Neoliberal City."

notion of situational crime prevention, Broken Windows advocates careful attention to the design and maintenance of the built environment, arguing that such activities will effectively discourage criminal acts not only by decreasing available opportunities but also by sending the message that the place is cared for. Second, and more contentiously, Broken Windows promotes the active exclusion of people from local spaces via aggressive policing. Critics argue that such exclusionary action primarily targets the poor, especially the homeless who are obliged to live in public space.⁶⁷ However, proponents of Broken Windows claim that the measures they advocate target not social groups but individuals and their unacceptable conduct, particularly “disreputable or obstreperous or unpredictable people: panhandlers, drunks, addicts, rowdy teenagers, prostitutes, loiterers, the mentally disturbed.”⁶⁸

In seeking to defend Broken Windows from the charge that it primarily afflicts the poor and homeless, Kelling and Coles maintain that the homelessness-disorder nexus can only be properly understood through social classification that distinguishes “the truly homeless”—a category in which they include “the genuinely poor” and people who are “seriously mentally ill and addicted”—from “those for whom living on the streets and hustling, including criminality, has become a lifestyle.” The direction of exclusion in each case is

⁶⁷ See Timothy A. Gibson, *Securing the Spectacular City: The Politics of Revitalization and Homelessness in Downtown Seattle* (Lanham: Lexington Books, 2004); Herbert and Brown, “Conceptions of Space”; Don Mitchell, *The Right to the City: Social Justice and the Fight for Public Space* (New York: Guildford Press, 2003).

⁶⁸ Wilson and Kelling, “Broken Windows.” See also Robert C. Ellickson, “Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-Space Zoning,” in *The Legal Geographies Reader: Law, Power, and Space*, ed. Nicholas Blomley, David Delaney, and Richard T. Ford (Oxford and Malden: Blackwell Publishers, 2001); Kelling and Coles, *Fixing Broken Windows*.

somewhat different. While the latter are to be aggressively policed, the former require assistance that amounts to sequestration in shelters and other institutional abodes and forms of management that remove them from public space.⁶⁹ Ellickson resorts to another kind of spatial fix, advocating a return to well-defined containment zones like the old skid rows in which the police exercise wide discretion in dealing with nuisance activities and misbehaviour.⁷⁰

It is little wonder that, despite a clear lack of systematic empirical validation of these theories, a range of authorities, from police to business groups to civic leaders, have sought to mobilize Broken Windows and its preoccupation with public order. By spatializing poverty, the discourse constitutes it as a local problem centered on individual conduct. It thus gives its proponents a way of talking about poverty without dealing with the structural and institutional conditions through which it is generated. As such, persistent problems of public order are treated merely as questions of management and regulation rather than political intervention.

2.3 The Rise of Neoliberalism

The type of public order that currently prevails in Vancouver began to emerge in the early 1980s when a group in the West End, a high rise neighbourhood adjacent to the downtown shopping and business district, initiated the city's first group of resident vigilantes. CROWE, the Concerned Residents of the West End, started what they called a "shame the johns" campaign, targeting

⁶⁹ Kelling and Coles, *Fixing Broken Windows*, 27

⁷⁰ Ellickson, *Controlling Chronic Misconduct*.

the sex workers who worked on local corners, as well as their customers. The intensity of this campaign prompted BC's then-Attorney General, Brian Smith, in 1984, to apply for a Supreme Court injunction against thirteen women and "persons unknown," prohibiting them from loitering within the West End.⁷¹

The injunction effectively banned street prostitution from the West End and the western edges of the business district, pushing it eastward across the city, initiating an almost twenty-year process in which the growing street sex and drug trades were pushed from neighbourhood to neighbourhood, dislodged by successive resident campaigns designed to pressure participants in the street scene as well as the police and civic authorities. Such campaigns marked a historical shift in the role of neighbourhood residents' groups in Vancouver. Until the early 1980s, they had been concerned primarily with issues around community services, property development, and zoning controls.

It is worth noting here the wider context in which this emerging preoccupation with "street people" took place. While it may only be coincidental, CROWE's campaign began just as British Columbia's Social Credit government was implementing its infamous "restraint" program, an early Canadian exercise in neo-liberal budget cutting and program restructuring, precipitated by both ideological predilection and the collapse of the province's economic base—forestry, mining, and fishing—in the wake of the Reagan recession. In the aftermath of the 1986 World Exposition (Expo '86) in Vancouver, an escalating flow of capital began to pour into property development throughout Vancouver,

⁷¹ John Lowman. "Street Prostitution in Vancouver: Notes on the Genesis of a Social Problem." *Canadian Journal of Criminology*, 28:1:1-16, 1986.

particularly the downtown peninsula and the surrounding districts, not only transforming the urban landscape, but also propelling a wave of gentrification throughout the core area and inner city that continues unabated. It is in many of these gentrifying sites that conflicts over public space and the presence of street people have been most acute.⁷²

In Vancouver, the figure of the street person was flagged as a public issue at the municipal level by the early 1990s. Panhandling appeared as a constant irritant to some residents, consumers, and businesses over the course of the decade. However, most of the concern over public order focused on the city's Downtown Eastside, a neighbourhood where, in 1997, the Vancouver Richmond Health declared a health emergency due to spiraling rates of HIV/AIDS among injection drug users. Suddenly, the attention of the news media across the country was drawn to the area's open dense drug market. A panic erupted across the city as the Downtown Eastside was cast as the source of the many social problems faced by the region. The neighbourhood became synonymous with the equation of public disorder and urban decay.⁷³ Open drug dealing and use, panhandling, binning, vending, and homelessness were widely interpreted as spill-over from the Downtown Eastside due to gentrification or police

⁷² Barton Reid. "The Political Economy of Densification : Looking for Signs of the Postmodern City : a case study of urban transformation in Greater Vancouver." (Ph.D. Dissertation, University of Manitoba, Spring 1998); Jeff Sommers, "The Place of the Poor: Poverty, Space, and the Politics of Representation in Downtown Vancouver, 1950 – 1996," (Ph.D. Dissertation, Simon Fraser University, 2001).

⁷³ Sommers, "The Place of the Poor"; Jeff Sommers and Nick Blomley, "The 'Worst Block in Vancouver'?" in *Every Building on 100 West Hastings*, ed. Reid Shier and Stan Douglas (Vancouver: Arsenal/Pulp Press, 2003).

pressure.⁷⁴ In this context, the figure of the drug addict was seen as the primary carrier of disorder.⁷⁵

The association between urban decay, drug addiction, and the various activities associated with disorder only served to emphasize the difference between the “street person” and other presumably more normal citizens. A key element of this difference appeared to be aesthetic. Commenting on the proliferation of security guards hired by Business Improvement Associations to patrol public space, a police officer argued that: “These [street] people look quite scary. Law-abiding citizens and business owners get quite frightened about seeing these people on the street.”⁷⁶ As a result, according to some US tourists, the “once beautiful city has now turned into a city of despair, with panhandlers and runaway teenagers at every corner. I cannot recall ever seeing the scenes of filth and hopelessness that I witnessed in Vancouver. ... Where are the police to patrol these areas?”⁷⁷ Beyond the aesthetics, however, the situation was cast as an infection in which the presence of street people “spread its tentacles like a

⁷⁴ Anonymous, “Poster Taped to Telephone Pole in Grandview Woodlands Neighbourhood of Vancouver Urging Residents to Attend a Public Meeting to Oppose a Needle Exchange in the Area,” (2004); A. Davies, “Vancouver’s Downtown Eastside Is a BC Problem,” *Vancouver Sun*, November 20 1996; Ian Mulgrew, “Residents of the Drive Scared of Area’s Newcomers,” *Vancouver Sun*, August 28 1999; Brenda Weikle, “Dealers, Hookers Return to Mount Pleasant: Downtown Eastside Cleanup Sends Problems Back up Main St,” *Vancouver Courier*, October 11 1998. Binning is the term used in Vancouver for practices involving recovering recyclable goods from garbage cans. Vending involves selling, on the street, goods obtained by binning or other means.

⁷⁵ A. Colebourn, “Homeless Problem Makes Mess of Park: Police Called in to Deal with Overcrowding,” *Vancouver Province*, August 20 1997; Board of Trade Vancouver et al., “Letter to Prime Minister.”

⁷⁶ I. Bailey, “Guards Ask Panhandlers to Move: At Least Four Neighbourhood Business Groups, Including Gastown and Chinatown, Have Hired Their Own Security Guards after Losing Patience with Street People They Say Are Bad for Business,” *Vancouver Sun*, December 22 1997.

⁷⁷ Tom Myers and Bonnie Myers, “Its One Thing for Us to Take Shots at Our City, but Tourists?” *Vancouver Province*, September 13 2000.

cancer through the body politic.”⁷⁸ The *Vancouver Courier* thus told its readers that citizens were all at risk from the “runaway kids and ...panhandlers [who] crash after a night’s partying [in] parks, doorways and squats.”⁷⁹

The pervasive fear that was generated via the media, with support from the police, and especially the BIA, resulted in the City’s 1998 anti-panhandling by-law. Citing a “recent survey of members of the Downtown Vancouver BIA [which] indicated that 73% of members polled felt that the panhandling problem in the downtown area had worsened,”⁸⁰ Vancouver City Council enacted a by-law⁸¹ modeled on one in Winnipeg. Shortly thereafter, separate challenges were launched as to the constitutionality of both the Winnipeg by-law, and its Vancouver relative. In 2001, under an almost-certain threat that the Winnipeg by-law would be struck down due to its unconstitutionality, Vancouver City Council repealed their copy of the Winnipeg by-law, citing concerns that such “regulation must balance the competing rights of all people who use the streets including pedestrians, panhandlers, and those who derive their business from street traffic such as merchants and shop owners.”⁸² The city simultaneously enacted a harder to challenge by-law against “obstructive solicitation”, folded into the Streets and Traffic Act.⁸³

⁷⁸ Michael McCarthy, “Begging the Question: While Governments, Business and Anti-Poverty Activities Discuss What to Do, Down-and-Outers Pan City Streets for Silver,” *Vancouver Courier*, June 14 1998.

⁷⁹ *Ibid.*

⁸⁰ City of Vancouver, “Administrative Report: Panhandling. From the City Manager to the Standing Committee on Planning and Environment” (1998).

⁸¹ “Panhandling by-Law No. 7885,” (Vancouver, BC: 1998).

⁸² “Administrative Report: Panhandling by-Law. From the City Manager to Vancouver City Council” (2001).

⁸³ “Street and Traffic by-Law No. 2849: A by-Law to Regulate Traffic and the Use of Streets in the City of Vancouver; Section 70a: Obstructive Solicitation” (Consolidated June 8, 2004).

To step back for a moment, we can consider the changing provincial political context of British Columbia in 2001. Under a platform of “economic revitalization” a decidedly (neo)Liberal government campaigned, and was elected under the leadership of former developer, businessman, and Vancouver mayor Gordon Campbell. Initiating an unprecedented restructuring of social programs, the provincial Liberals made deep cuts to social and health programs. This included the introduction of a “training wage” of six dollars an hour, an almost fifty percent increase in Medical Service Plan fees, a weakened Pharmacare program, the reduction in amounts and time spans for welfare eligibility, mandatory reassessments for most people on disability benefits, and the dismantling of a large number of treatment facilities for people with mental illness, without the creation of viable alternatives.⁸⁴ This dismantling of the social safety net and reorganization of health services was accompanied by changes in legislation to ensure that the penal system was ready to deal with the products of restructuring. Thus we see, in Loïc Wacquant’s apt phraseology, “the invisible hand of the market and the iron fist of the state combine and complement each other” to offer up the problems, and their solution.⁸⁵

It is within this rendering of neoliberalism in full-swing that the *Safe Streets Act* is introduced in British Columbia.⁸⁶ BC’s version of the *Safe Streets Act*, like similar legislation in Ontario, effectively regulates the time, place and manner in

⁸⁴ Gail Johnson, “In Their Own Words,” *Georgia Straight*, April 22 2004; Steve Kerstetter, “MSP Premiums: A Really Dumb Tax,” *Canadian Centre for Policy Alternatives* (May 1, 2002).

⁸⁵ Loïc Wacquant, “The Penalization of Poverty and the Rise of Neoliberalism,” *European Journal on Criminal Policy and Research* 9 (2001): 404.

⁸⁶ BC Legislative Session: 5th Session, “Bill 71: *Safe Streets Act*.” At the same time that the *Safe Streets Act* was passed, amendments were made to the Trespass Act to make it easier for property owners to evict unwanted people from their land. BC Legislative Session: 5th Session, “Bill 74-Trespass Amendment Act.”

which people are allowed to panhandle.⁸⁷ When introduced in parliament, the legislation was said to:

recognize that those who wish or feel they are obliged by circumstance to panhandle or beg are free to do so. They have the right to be on the streets, just as all of us do. But they do not have the right to use their right to be on the streets to intimidate and to belligerently verbally abuse people, to block their right of passage, to take advantage of their presence in situations where citizens are waiting to make a phone call or using a cash machine.⁸⁸

Thus, it is all right to panhandle (if one *wishes* to be poor), as long as it is done in places where citizens can easily ignore it. Utilizing the typical neoliberal catchall of “responsibility,” those arguing in favour of the Act in the Legislature claimed that the legislation would serve to balance the interests of all citizens, insuring that all people involved worked together for a more just society. As Jeff Bray, the MLA for Victoria-Beacon Hill, put it: “We have expectations of each of us in a society. Those shouldn't stop because somebody is perhaps less fortunate. Their responsibility doesn't automatically end. We must work together, including people who find themselves on the streets, to make our community healthy and strong”.⁸⁹

⁸⁷ The BC *Safe Streets Act* has two distinct parts. The first prohibits “aggressive” solicitation, which is defined as soliciting “in a manner that would cause a reasonable person to be concerned for the solicited person's safety or security.” This includes, but is presumably not limited to, “obstructing the path of the solicited person; using abusive language; proceeding behind or alongside or ahead of the solicited person; physically approaching, as a member of a group of 2 or more persons, the solicited person; and continuing to solicit the person.” The second part of the *Act* prohibits solicitation in certain spaces where there is a “captive audience.” These include spaces such as near bus stops, pay phones, and automated teller machines, as well as parking lots, roadways, and those about to either enter or exit an automobile. In essence, as some have noted, this spatial restriction effectively makes most areas in the downtown urban core off-limits to panhandlers (see Nicholas Blomley, “Panhandling and Public Space” Expert Opinion to the BC Supreme Court Case, *Federated Anti-Poverty Groups of BC v. Vancouver [City]* 2002, B.C.S.C. 105,” [2000]).

⁸⁸ *Official Report of Debates of the Legislative Assembly (Hansard)*, 2004 BC Parliament, Tuesday, May 11, 2004, Volume 26, Number 17, 2004, Hon. Geoff Plant, at 11721.

⁸⁹ *Official Report of Debates of the Legislative Assembly (Hansard)*, 2004 BC Parliament, Monday, May 10, 2004, Volume 25, Number 6, 2004, J. Bray, at 10950.

Safe Streets Acts like those in BC and Ontario illustrate Broken Windows theory's preoccupation with public disorder. On one reading, this means that the prescription offered to issues of visible poverty is centrally concerned with intensifying spatial regulation and, in particular, with the stigmatization and exclusion of those categories of people who are labeled disorderly. As the sponsoring member of the BC *Safe Streets Act*, Vancouver-Burrard MLA Lorne Mayencourt articulated the message implicit in the legislation: "what we're telling *them* is that the streets belong to people that pay for them."⁹⁰

To put aside the many more general dangers entailed in a dichotomization that constructs the urban poor ("them") as distinct from us (or "we"), this way of thinking about space has important implications for who has a right to access, use, and occupy public spaces in the city. As Collins and Blomley have noted, such legislation signifies "a growing mistrust in the ideal of a truly inclusive public space and [strengthens] the hegemony of those private interests that assert that if cities are to compete in a global economy, they must 'purify' the urban landscape."⁹¹ Wardaugh and Jones further clarify that, in the neoliberal vision of poverty, "it is not marginality per se that is dangerous: rather, it is the *visible* presence of marginal people within prime space that represents a threat to a sense of public order and orderliness."⁹²

⁹⁰ "MLA pushes 2 aggressive-panhandler bills in house." *The Province*. Vancouver, B.C.: May 7, 2004. pg. A.32 (emphasis added).

⁹¹ Damian Collins and Nicholas Blomley, "Private Needs and Public Spaces: Politics, Poverty, and Anti-Panhandling Bylaws in Canadian Cities," in *New Perspectives on the Public/Private Divide*, ed. Law Commission of Canada (Vancouver: UBC Press, 2001). 42.

⁹² Julia Wardaugh and Jane Jones, "Begging in Time and Space: 'Shadow Work' and the Rural Context.," in *Begging Questions: Street-Level Economic Activity and Social Policy Failure.*, ed. Hartley Dean (Bristol: Policy Press, 1999), 112, emphasis added.

Blomley⁹³ offers a slightly different take on *Safe Streets*-talk. He suggests that a focus on the essentially illiberal exclusionary and stigmatizing intentions of such legislation misses the point. Instead, it is productive to note the deeply liberal⁹⁴ nature of such arguments, which rely on a conception of the bounded and atomistic self carefully negotiating encounters with others. Such a perspective draws our attention away from trying to find 'hidden' illiberal agendas, and towards an examination of a deep liberal imaginary which is "reliant upon a particular conception of the atomistic self-governing individual, engaged in dyadic relations structured according to a logic of negative rights, autonomy, and mobility"⁹⁵. From this view, "public space is a site of hermetic closure and suspicion, in which boundary maintenance plays a central role [and] rights serve as the shield for the bounded self."⁹⁶ The logic (and imagination) of liberalism, we will see below, runs throughout discussions of the *Safe Streets Act*.

Overall then, we see that broken windows theory of crime prevention has thrived in a (neo)liberal environment, with troubling effects for those on the street. It is in such an environment that there is a great need for a counter-narrative reaffirming an inclusive vision of public space. Indeed, in a modern experience increasingly marked by spaces created *for us*, rather than *by us*, an argument such as Mitchell's becomes very important. Arguing for a "right to the city" seeks to reclaim a vision of the city, and of the public, as an inclusive space.

⁹³ Blomley, N. The Right to Pass Freely: circulation, begging and the bounded self. (manuscript under review, *Law and Social Inquiry*).

⁹⁴ *infra*, liberalism at page 47.

⁹⁵ *Ibid*, 24

⁹⁶ *Ibid*, 24

However, in what follows, I wish to suggest that the use of constitutional and legal rights oftentimes conflict with the conceptions of rights offered by “right to the city” theorists such as Mitchell, with contradictory and tragic effects for those on the street, such as panhandlers. Indeed, I will suggest that rights themselves may be part of the problem.

3: THE COMMON DISCOURSE OF RIGHTS WITH REGARD TO PANHANDLING

The language of rights, both formal and normative, is frequently raised in debates around panhandling⁹⁷. However, rights, when utilized at court have paradoxical effects. I will draw attention to two types of rights-based argument: the first is concerned with a competition between *competing* rights-claims: safety and expression; and the second (to follow next chapter) is concerned with *interpreting* rights, in this case equality. Both give interesting insights into the way that the law views the world.

3.1 Competing Rights (Mobility vs. Expression)

Generally speaking⁹⁸, most of the rights-discourse on the *Safe Streets Act* falls into two main camps, both centrally concerned with the preservation of autonomy.

The first argues ***for*** the legislation, based upon the right to mobility⁹⁹ and safety:

“This is a bill about safety on our streets. It is a bill which says that the right of free passage on the streets of British Columbia is a fundamental right, and ... the citizens of British Columbia do have

⁹⁷ Both in wider debate, and in constitutional challenges to the SSA.

⁹⁸ While the court took the most time with the argument between these competing rights claims, other arguments were present. The argument from equality, although quickly dismissed, was one of these. A fuller discussion of it will follow next chapter.

⁹⁹ Interestingly, is not a Charter right in the sense used here. However, it is a strong argument, as we will see below.

the right of free passage on the streets without being harassed or intimidated or abused or beset by those who abuse their own right as citizens to be on the streets.¹⁰⁰

Freedom of safe movement is one of the ultimate expressions of autonomy, being perhaps the quintessential physical expression of liberty. Regulations aimed at sanitizing the urban core from disorder generally take as a starting point the feelings of vulnerability as experienced by “the public” when confronted with public displays of the marginalized “behaving disorderly”, such as asking for free money. Thus, the nuisance presented by being repeatedly asked for alms, the unsightliness of the unkempt beggar, and the danger to the economy are seen as concrete and paramount concerns for the gentrified public when walking on the streets of the city. If this is allowed to go unchecked, it is argued, people will stay home from the shopping districts and business and the public sphere will suffer. In a simple sense, the street provides a means for the public to move. If the street is blocked, then citizens cannot be at liberty to safely and autonomously pursue their individual goals. People must be allowed to walk down the street unimpeded.

The second side calls forth the language of rights to argue against the legislation, claiming that it violates a fundamental right to freedom of expression¹⁰¹. Communication, it is argued, “is an intrinsic part of a genuinely worthwhile human life [; thus,] the denial of free speech...is an affront to the

¹⁰⁰ *Official Report of Debates of the Legislative Assembly (Hansard) T*, 2004 B.C. Parliament: TUESDAY, October 26, 2004 Morning Sitting, Volume 26, Number 17 (<http://www.leg.bc.ca/hansard/37th5th/h41026a.htm>), 2004. Attorney General Geoff Plant, at 1020.

¹⁰¹ Section 2(b) of the Charter provides that: “(2) Everyone has the following fundamental freedoms: (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication...”. Equality rights (15) are also raised here in important and meaningful ways. A further discussion of this thread will follow next chapter.

equal worth of humanity as we admire and treasure it"¹⁰². Thus, the freedom to communicate with one's fellow beings is, at a most basic level, a necessary component of a creative and dignified life. Even more importantly, it is a vital component of our ability to live our lives autonomously. This is a heavy argument, valuing communication, *regardless of the message*, as being of fundamental worth. In this view, it easily follows that "the expression of society's poorest members, through panhandling and squeegeeing, is charitable speech"¹⁰³, and as speech, it must be protected. But the argument goes further, for the *message itself* communicated in panhandling is also viewed as a vital one.

Panhandling, it is argued, communicates an important social message. It serves to convey "information regarding the speaker's plight. Begging gives the speaker an opportunity to spread his or her views and ideas on, among other things, the way our society treats its poor and disenfranchised. A beggar's request can change the way the listener views his or her relationship with the poor."¹⁰⁴ But the social function does not stop there:

"When a beggar begs, one member of a stigmatized group steps forward and, on a human level, engages a member of the mainstream in her problems and her life. It is at best a rough form of communication that can produce a rough sense of engagement. But it is capable of producing understanding and awareness among

¹⁰² Campbell. Pg. 147

¹⁰³ Banks, "Appelants' Factum," (Court File no.: M32206: R. v. Banks, Ontario Court of Appeal, 2002).

¹⁰⁴ Ibid. at ¶ 47

people who might otherwise never think about the poor or who might never think about them in a positive way.”¹⁰⁵

Both sides, it seems, utilize the language of rights to present powerful and compelling arguments, both for, and against, the legislation.

3.2 Judicial interpretations of rights with regard to panhandling

So, where do these rights-based arguments take us? Into court, of course. And what does the court have to say about the constitutionality of the *Safe Streets Act*?

There have been two significant challenges to Safe Streets type legislation¹⁰⁶. Though both cases involved a myriad of rights-based arguments, both have boiled down to the discussion of freedom of expression versus freedom of mobility we have seen above. How do the courts see the matter? What is the stronger rights based argument?

Not surprisingly, given its valence in western thought, the courts take care to affirm that freedom of expression is important, and (rather resentfully) accept that panhandling is a form of expression afforded protection. However, no right is absolute. The state is caretaker to the public spaces of the city, and thus must manage them in an efficient manner. Freedom of expression, as we have seen above, requires a place to express yourself from. In the case in question, this

¹⁰⁵ Helen Hershkoff and Adam S. Cohen, "Begging to Differ: The First Amendment and the Right to Beg," *Harvard Law Review* 104, no. 4 (1991). Pg. 915.

¹⁰⁶ *Federated Anti-Poverty Groups of BC (et al) V. City of Vancouver (et al)*, 2002 BCSC 105 (2002); *R. V. Banks*, 248 D.L.R. (4th) 118 (2005).

place is the street; thus, the court is forced to examine what the function of the street is—is it a place of communication, or a place for movement?

Both cases utilize a previous judicial decision from a supreme court case based on the distribution of literature in an airport that set the precedent for freedom of expression in public places. In this case, the court found that: “the individual will only be free to communicate in a place owned by the state if the form of expression he uses is compatible with the principal function or intended purpose of that place.”¹⁰⁷

Following this logic, the court challenges to the SSA legislation both ended essentially the same way, and result in a very particular definition of public space: “activities, whether or not they engage in forms of expression, are subordinate to the purpose of the safe and efficient movement of pedestrians”.¹⁰⁸

Thus, the principal function of the street is mobility. In this light, a panhandler is seen in essentially the same way as any other obstacle on the street, such as a lamppost or newspaper box, and must be placed (or behave) in such a way as to not interfere with the flow of traffic¹⁰⁹. Just as one cannot erect a lamppost in the middle of the street, so panhandling can only occur if it does not infringe upon the flow of traffic.

¹⁰⁷ *Committee for the Commonwealth of Canada V. Canada*, 77 D.L.R. (4th) 385 (1991). C.J Lamer. It is interesting to note the turn of phrase here: public space has become “a place owned by the state”.

¹⁰⁸ *Federated Anti-Poverty Groups of Bc (Et Al) V. City of Vancouver (Et Al)*. J. Taylor, at ¶ 158.

¹⁰⁹ Blomley, N (2007) Civil rights meets civil engineering: public space and urban traffic logic. *Canadian Journal of Law and Society*, 22, 2, 55-72

3.3 Rights and....Political Subjectivity?

So, case closed. The matter is decided. A complicated conversation has been settled simply, and the discursive light of rights has called the Truth out of the dark corners of doubt. Or has it?

Focusing on the right to freedom of expression invites us to see panhandlers as rights-bearing beings, engaged in expressive behavior, while focusing on mobility rights leads us to see the needs of pedestrians to walk down the street unimpeded. Characterizing the interaction in these concise rights-terms gives us the ability to understand the citizens in the space of the street. Each has rights, and each individual is bounded and made intelligible *through* rights.

But, this would seem, at first glance, to be far from the neutral affirmations promised by rights. By encouraging, indeed *requiring*, us to compress our understanding of the political actors at play in the situation into such distilled terms, rights would seem to have actually *organized* the political space in a certain, rather constrained, manner. Prioritizing the needs of the peripatetic citizen to move through space certainly does not do him justice—certainly there is more to this hypothetical political subject than their itinerant needs. By the same token, rights would seem to imagine the panhandler as a being whose complex circumstances and tribulations can be affirmed by expressing herself, and her poverty, to the larger world.

These rights, held by these individuals, we are told, are the important factors at play here. Perhaps. But, by requiring us to view the interaction in

these terms, it would seem that “rights-discourse [has] produced a certain kind of subject, in need of a certain kind of protection”¹¹⁰. For, while this characterization of the interaction is a form of truth, and of the situation, it would seem to be a rather exclusive and insipid one. Has this conversation been limited by its reliance on rights? Critics of rights would say yes, for several reasons. Primary among them, I will suggest, is the law’s liberal imagination.

¹¹⁰ Wendy Brown, “The Most We Can Hope For...”: Human Rights and the Politics of Fatalism,” *South Atlantic Quarterly* 103, no. 2/3 (2004). pg 460

4: THE LAW'S LIBERAL IMAGINATION

To begin with, we have seen, in this context, an attempt to squeeze a discussion about social justice into an argument about constitutional rights, such as free expression. This conflation draws attention to the limitations of rights-talk, for the larger social issues are obfuscated by the structural constraints of liberal-rights discourse. Can we collapse the regulation of panhandling into such simple categories?

As Blomley argues, such “legal discourses...split the world into categories that filter our experience, distinguishing a set of harms that we must accept as the hand of fate or our own fault—such as poverty—from those actions that we may legitimately contest—such as libel...assault in a public place,”¹¹¹ or, as it would seem, a violation of a right to freedom of expression. There is not a formal ‘right to be free from poverty’, and thus poverty is not a candidate for rights-talk.

Furthermore, a need to structure the debate about panhandling into these narrow rights-terms limits, indeed destroys, any transformative potentiality. *The most that one could have been hoped for, in these court cases, is an affirmation that people were allowed to beg in the streets.* This would, of course, not address the more important question of *why people must beg* in the streets, for there “is no natural, a priori ordering that requires society to leave the beggars’ needs unmet. Rather, society has decided that it will allow [them] to remain in

¹¹¹ Nicholas Blomley, *Law, Space, and the Geographies of Power* (New York: Guilford, 1994). Pg. 12.

poverty”¹¹². It would seem that, within the narrow language of rights, we are constrained to addressing poverty in terms of an individual’s rights to freely express their plight, rather than addressing the larger social and economic forces that might contribute to this penurious state. The language of liberal rights, in this case, can do nothing but proudly reaffirm society’s tolerance of an individual’s poverty, whilst simultaneously claiming sympathetic concern with that individual’s welfare.

At its base, I suggest that this is because of a deeply seated logic of liberalism inherent in legal rights discourses, which leads to a particular and limited conception of equality. This handicaps the transformative potential of rights. I will use an examination of equality to flesh out the liberal imagination here.

4.1 Equality - (or, interpreting rights)

Most western legal systems have, at their base, one or several provisions guaranteeing *formal* equality¹¹³. In Canada, for example, Section 15(1) of the *Canadian Charter of Rights and Freedoms* provides that:

“Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination....”

¹¹² Hershkoff and Cohen. Pg 913

¹¹³ To be contrasted with substantive equality, which we will examine below. The limits of the formal equality of the law will be discussed further in Chapter 8.

This is a bold and worthwhile claim. However, what exactly 'equality' means is open to interpretation, as an examination of the ways this concept is used in the context of the *Safe Streets Act* will show us.

Those in favour of the *Safe Streets Act* cited this very notion of *formal* equality to defend against claims that the bill discriminated against the poor, and would disproportionately affect the marginalized. Speaking on this point, the Right Honourable Geoff Plant noted that:

[the *Safe Streets Act*] makes no distinction between the homeless and those who have homes. It makes no distinction between those who are tall and those who are short. It regulates and prohibits and says is wrong some activity. It's an offence to demand things. It would be an offence under this bill to aggressively panhandle a homeless person. That's the protection that the law affords. It is the equal protection of the law.¹¹⁴

Thus, the bill is not about people, but about *behaviour*. A poor person may not beg from a rich one in an unsavoury manner, and the dignified equality of the law demands that the same standard applies regardless of social situation. The poor and the rich, divorced of circumstance, must face the same law. This is formal equality.

Opponents of the bill took a different stance, arguing for a form of *substantive* equality¹¹⁵, noting that there are already plentiful provisions in the Canadian Criminal Code to bring intimidating and dangerous behaviour under legal regulation. Canada has long had laws against offences such as causing a

¹¹⁴ *Official Report of Debates of the Legislative Assembly (Hansard)*, 2004 B.C. Parliament: Monday, October 25, 2004 Afternoon Sitting, Volume 26, Number 16. Plant at 11702.

¹¹⁵ Thought their arguments are of a version of substantive equality, they do not fully argue for substantive equality, which would entail quite a different view upon *outcomes*.

disturbance, harassment, common nuisance, uttering threats, assault, robbery, extortion, intimidation, and mischief.¹¹⁶ In other words, harmful behaviour on the street is already effectively regulated by the pre-existing Criminal Code. As such, the *Safe Streets Act* brings nothing new to this, except for an easy framework through which to target impoverished people whose basic crime is to make some members of the public “feel very uncomfortable while they're asking them for money.”¹¹⁷ Such legislation, opponents suggest, harkens back to the discarded vagrancy laws that overtly targeted the itinerant poor, effectively criminalizing the status of its intended objects rather than an individual's actions.¹¹⁸

This leads to a slightly different conception of equality, which pays a bit more attention to context. As Micheal Vonn, of the British Columbia Civil Liberties Association suggests:

It is cruelly insensitive to suppose that those of us who are not poor have a right to ask for assistance but those who need it most cannot...The fact that it is absurd to think of this Act being invoked against a kindly veteran offering Remembrance Day poppies is a reminder of the real aim of the legislation, which is to prevent certain people from occupying public space. [This law is] designed to be applied in a discriminatory manner.¹¹⁹

On this reading, while facially neutral, such legislation would disproportionately affect the poor and marginalized, and the bill “discriminates on the basis of poverty, social conditions and the personal characteristic of

¹¹⁶ Micheal Vonn, “Safe Streets - Laws for Us, Laws for Them,” B.C. Civil Liberties Association <<http://www.bccla.org/othercontent/04safestreetsvonn.htm>> (Accessed August 7, 2007). The article also appeared in the October 20, 2004 edition of the *Vancouver Sun*.

¹¹⁷ *Official Report of Debates of the Legislative Assembly (Hansard)*. Monday sitting. Mayencourt, 1105.

¹¹⁸ Todd Gordon, “The Return of Vagrancy Laws and the Politics of Poverty in Canada.” *Canadian Journal of Social Policy* 54 (Fall 2004): 34-57.

¹¹⁹ *Ibid* 116

poverty.”¹²⁰ From this point of view, we are asked to step back and examine context, concentrate on the *effects* of the bill, and ask ourselves if every citizen has an equal chance of encountering a situation where they must beg, and hence where the law would apply to them. The rich, it is suggested, have no cause to beg. As such, in the timeless quote of Anatole France:

“The majestic equality of the law forbids the rich as well as the poor to sleep under the bridges, to beg in the streets and steal bread.”¹²¹

Both sides, it seems, present compelling arguments worthy of some thought. However, as before, rights based arguments are slippery concepts, and it is left to the court to clarify the meaning of equality rights in this context for us.

After taking time to consider the merits of each argument, the court appeared moved by the truth, frankness, and power of Anatole France’s reading on the law’s equality, as seen above. Indeed, they went so far as to cite the quote in their decision—whilst offering a rather sombre reading demonstrative of the law’s view of equality:

While one must never be unmindful nor forgetful of the plight of the poor, France’s quotation must be viewed in the context that, while being true, what underlies this powerful statement about the poor, the homeless and the financially downtrodden is the caveat that if

¹²⁰ *Federated*. It is interesting to note that, in public political debates in Canada, those arguing against the bill seem unwilling to make an argument concerning substantive equality. One could suggest that that this was related to a failure to note alternative conceptions of equality because of the monopoly of traditional liberal categories on the Opposition’s imagination. While this would strengthen my argument, I suspect it was more about a fear of being politically disingenuous (arguments towards conceptions of rights outside of a liberal framework may serve to label the speaker a Commie, with undesired affects). This however, is a separate, more practical, and sadder, argument.

¹²¹ France, A. 1922. *Le Lys Rouge* (The Red Lily- translated by W. Stephens) 6th ed. 95.

the rich and the poor do so sleep together under a bridge, they must do so respectful of one another.¹²²

Thus, they concluded, the by law “does no more than to enunciate that caveat.”¹²³ The lens of law, it seems, offers a rosy view.

This seems puzzling. We have heard a powerful argument about how rights are tools to be taken and used by oppressed groups to gain social justice and how rights can be used to rejoin the social circle by recasting naturalized oppression as a wrong against a rights-bearing citizen. Rights-based arguments, we have seen, are the language of the court, and used to powerful effect (in some form or another) to most sides involved in disputes. And, despite the troubling implications of what sorts of emancipation can be offered by rights in some circumstances, we have seen how they are used in a variety of arguments to gain political traction. However, the vision of emancipation promised by rights is questionable because of a powerful liberal ideology underscoring rights. The underpinnings of rights (as recognized in western law) are the classical liberal imagination of the unfettered atomistic individual (as a unit of measurement) being protecting against the tyranny of the state (as *the* oppressive force). Because liberalism is an ideology based upon the protection of the atomistic individual as a unit of measurement, equality is assumed¹²⁴; that is, context is ignored.

¹²² *Federated Anti-Poverty Groups of BC (et al) V. City of Vancouver (et al)*, 2002 BCSC 105 (2002). Taylor at para 302-304.

¹²³ *Ibid*

¹²⁴ ...particularly in the public realm. Interesting streams of geographies exist here (public/private), but following them would lead us to a deep pond near, but not at, our destination for today.

4.2 The Atomistic Individual v. The State

The liberal view on autonomy conceals a rather particular world-view, premised on the worth of the individual. This is not just any individual, but an *atomised* individual, divorced of social relations and context¹²⁵. The purpose of rights is to maintain the integrity of this atomised individual from outside threats; that is, we'll recall, to ensure that their *autonomy* is not compromised. Rights erect a wall of protection around the individual separating them from the forces that would compromise their autonomy.

But a careful reading here will note that this is done in a rather interesting way. The threat to the individual, in the liberal rights-worldview, is exclusively from the state. Thus, we have (rather notably) not seen any arguments so far concerned with non-state forces that may contribute to the penury state of the panhandler. This seems rather remarkable.

To carry this further, the wall of rights, as we've seen, has (unsuccessfully) attempted to protect the individual merely from state *action*. The liberal imagination, indeed our most cherished rights, are virtually all of a negative¹²⁶ form: they may protect from state *action*, but not from state *inaction*. We could, I suppose, imagine a world where the rights based argument around panhandling would question our social priorities, and a win would mean the elimination of a

¹²⁵ Most famously summed up, perhaps, by the charming Lady Thatcher: "There is no such thing as society"

¹²⁶ I'm using the classic language of rights here. Put simply, a positive right requires someone to do something for the rights-bearer to actuate the right. A negative right requires someone to not interfere with the rights bearer to actuate the right. Virtually all rights in liberal legal systems are of the negative variety.

need to panhandle, not merely an affirmation that people are allowed to panhandle. Sadly, neither has happened here.

Rights are not about context. Indeed, rights are acontextual. The threat to the individual, in the case above, is not the actions of the free market, rises and falls in the housing market, racism, sexism, classism, or any one of a number of other broader systems or institutionalized power structures. Not only are these not the direct action of the state, these are decentralized hegemonic systems without direct responsibility as individuals. Rights are dyadic. One cannot exercise a right without an individualized claimant to exercise it against. As such, broader systems remain untouched by the justice offered in liberal forms of rights.

In this case—indeed in the particular and limited version of justice in a liberal legal ideology—rights have done exactly what they are intended to do: the individual political subjects are both free and equal to encounter (or as the case may be, *not* encounter) each other in certain spaces of the city. Rights has constructed “subjects that are ‘free agents,’ equal before the law, stripped bare of mutual obligation and dependency, left to sink or swim, apparently, on the basis of their own merits or talents”¹²⁷. All play by the same rules, regardless of whether the game board is level. The law promises equality, and rights has guaranteed it.

¹²⁷ Don Mitchell, "The SUV Model of Citizenship: Floating Bubbles, Buffer Zones, and the Rise of the 'Purely Atomic' Individual.," *Political Geography* 24 (2005). Pg 78. A careful reader will note that I am quoting (a later) Mitchell here on the other side of the argument. I freely admit that this suggests inconsistency in one of our arguments.

4.3 Rights and the City

These criticisms should give us pause. Despite being a tool widely championed for their ability to open debate about inclusion, equality, and justice, the vision offered may be incomplete when coupled with their legal enactment. We have seen how rights-usage in the debates around panhandling bump into a particular world-view, that of liberalism¹²⁸. We've seen how rights may serve to convert a conversation about social justice into fairly insipid fare, and how there may be lingering questions about the view of autonomy meant to be realized within liberal forms of rights. Rights, it seems, are not without their difficulties.

However, we may recall that the dominant 'right to the city' arguments invest heavily in the stock of rights, claiming them as a tool by which the powerless may be heard. All of these difficulties with rights are not unknown to those advocating right to the city arguments. Indeed, Mitchell, in particular, spends some time working them through. Yet, despite an acknowledgement of the difficulties with rights he concludes that:

"Rights and rights talk...are simply too important in the contemporary world to abandon in favour of some even more nebulous notion of morality...or institutionalized social struggle."¹²⁹

Rights, to use the contemporary language, are "too big to fail". Perhaps. Yet there is something missing from these arguments which claim that rights are

¹²⁸ For the moment I shall rely on simple definition of liberalism based upon the central tenets of anti-statism and a belief in an atomistic individual (cf. Bakan). As the etymology of the word suggests, liberalism is centrally concerned with how to maximize liberty, both of the individual and the market. I hope to draw attention to the difficulties inherent in the particular and limited conception of 'liberty' in liberalism below. For a more complete, and nuanced, discussion, see: Gilbert, Emily. 2009. "Liberalism" in *The International Encyclopedia of Human Geography*, R. Kitchin and N. Thrift, eds. Elsevier.

¹²⁹ Mitchell. *The Right to the City*, 26

the best way forward for the marginalized to claim their space in the city. We have heard from judges, lawyers, advocates, and academics, yet we have somehow missed consulting those who may know most about the actual practice of rights by marginalized people. Despite a tremendous amount of critical scholarship on the Right to the City, there has been an utter lack of consultation with the marginalized people who would be asked to give voice to the rights-based argument.

Indeed, what appears to be missing from the particular play of rights I've presented here is the lived-experiences of those most affected by such legislation: the panhandlers themselves. For, contrary to the law's view of itself, the game board is not always level, and some of the players may not only be suspicious of the emancipatory force of rights, but may not even consider themselves subjects for whom the force of rights is available.

5: RESEARCH QUESTIONS

Though there has been much research on the foundations of rights themselves¹³⁰, and critiques of the work that rights do¹³¹, less attention has been focused on the substantive reality of the ways in which rights are conceived of (and not conceived of), performed (and not performed), and structured in the experience of those directly affected by rights. In line with an emergent critical scholarship exploring this gap¹³², my research will lend a vital understanding to a deeper and more engaged study of rights in the spaces of their practice, and through the politics of their enactment.

Panhandlers in particular, due to their social and political position—often constituted as a threat to safety and popularly portrayed as an infection which “spreads its tentacles like a cancer through the body politic”¹³³—would seem to be ideal candidates for the emancipatory promise of rights. However, to the

¹³⁰ Eg. Campbell; Donnelly; Ignatieff; Jones.

¹³¹ Joel Bakan, *Just Words: Constitutional Rights and Social Wrongs* (Toronto: University of Toronto Press, 1997); Jeremy Bentham, "Anarchical Fallacies," in *'Nonsense Upon Stilts': Bentham, Burke and Marx on the Rights of Man*, ed. Jeremy Waldron (London: Methuen, 1987); Nicholas Blomley and Geraldine Prat, "Canada and the Political Geographies of Rights," *Canadian Geographer* 45, no. 1 (2001); Wendy Brown, "'The Most We Can Hope For...': Human Rights and the Politics of Fatalism," *South Atlantic Quarterly* 103, no. 2/3 (2004); Duncan Kennedy, "The Critique of Rights in Critical Legal Studies," in *Left Legalism/ Left Critique*, ed. Wendy Brown and Janey Hally (London: Duke University Press, 2002); Fran Klodawsky, "Recognizing Social and Economic Rights in Neoliberal Times: Some Geographic Reflections," *Canadian Geographer* 45, no. 1 (2001); Karl Marx, "On the Jewish Question," in *'Nonsense Upon Stilts': Bentham, Burke and Marx on the Rights of Man*, ed. Jeremy Waldron (London: Methuen, 1987).

¹³² Engel; Neilsen, "Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens About Law and Street Harassment."; Austin Sarat, "'The Law Is All Over': Power, Resistance and the Legal Consciousness of the Welfare Poor," *Yale Journal of Law and the Humanities* 2 (1990).

¹³³ Michael McCarthy, "Begging the Question: While Governments, Business and Anti-Poverty Activities Discuss What to Do, Down-and-Outers Pan City Streets for Silver," *Vancouver Courier*, June 14 1998.

degree that rights have been engaged in the debate around panhandling, there has been a noticeable lack of exploration into the ways in which rights are conceptualized by panhandlers themselves. Instead, the focus has been external, assuming that constitutional rights, such as freedom of expression, are the relevant factors at play. Thus, an analysis of the rights-consciousness and conceptualizations of panhandlers *themselves* is long overdue in this debate, and promises novel insights into the substantive workings of rights from a first-hand perspective.

Thus, I seek to empirically explore the ways in which rights are conceived of, utilized, and experienced by panhandlers. Guiding research questions are:

- What rights do panhandlers see as being most at issue in their everyday lives in general, and whilst begging in particular?

An exploration of this question will serve to ground the research in the rights-consciousness of panhandlers. As we have seen above, those seeking to utilize the power of rights to strike down anti-panhandling legislation frame the issue as one of a right to freedom of expression. Yet, is this what panhandlers themselves will identify as the relevant right at play? Or are there more pressing concerns and conceptions of what rights may be most relevant in their day-to-day lives, and whilst panhandling? Do panhandlers conceive of their interactions and situatedness in a rights-frame? Do rights affect their access to space? An exploration of rights, as framed by panhandlers themselves, will allow me to analyze whether rights are indeed envisioned within the dominant liberal

framework, or whether broader conceptions of rights are present. This will lead directly into:

- Are panhandlers likely to invoke their conceptions of rights? Why or why not?

This question will allow me to bridge from the abstract into the substantive, with an analysis of whether rights are considered 'actionable' by panhandlers. Do panhandlers see barriers to the performance of their rights? Are there perceived limitations in liberal forms of rights that are actionable only against state bodies? Are rights, as conceived by panhandlers, enforceable within the current sociopolitical frame?

Taken together, these questions will allow me to critically interrogate whether rights are *conceived* of by panhandlers as neutral pre-political entitlements to which they have equal access, and whether rights, as *experienced* by panhandlers, fulfill their inclusionary promise. Overall, I will be able to explore whether rights are indeed neutral pre-political entitlements, or whether they may serve to create particular and limited types of political subjects, circumscribing potential political actions, and curtailing opportunities for social justice. I will juxtapose these findings with the strong arguments within geography for a "right to the city" in order to explore the potentialities, and limits, of such arguments.

5.1 Methods

In order to explore the various ways in which experiences and understandings of the use of rights and public space are conceptualized, negotiated and maintained, the study utilized a sequential multiple-method approach following three main lines of inquiry, with corresponding research phases. This method allowed for maximum flexibility, while maintaining clear direction and focus on the end research objective, whilst allowing for the triangulation of findings. This research was broken down into three separate, yet interconnected, phases, each of which informed the others.

In **Phase 1**, I undertook a three-part literature review. Stage 1 examined the specific legislation in BC that affects the lives of panhandlers through an archival examination of laws, bylaws, and case law affecting panhandlers. This provided the research with a clear picture of what the current legal landscape is in BC in terms of legislation directly relating to panhandlers. Stage 2 involved an analysis of the legislation in the rest of Canada, with a focus on Ontario (and a brief foray into Seattle), to develop context. Stage 3 broadened the scope both in terms of theory and focus to examine the academic literature written in geography and other disciplines on public space, rights, homelessness, and panhandling and compared it to the information found in the first 2 stages. Thus, I was able to examine both local and national context in terms of international knowledge. This helped to inform, guide, and refine the research goals.

Phase 2 was integrated with the interviews in Phase 3, and involved field observation of the street scene. Field observations were conducted from August

2007, immediately preceding the application of interviews with panhandlers. This established a solid grounding for the research, whilst familiarizing me with the areas to be studied and any changes to the street environment.

Phase 3 of the research involved direct interviews with panhandlers to gather both qualitative and quantitative data regarding their understandings of rights and public space, and the influence that legislation had on their day-to-day experiences. This direct contact is important as most research in this area theorizes about the relationship between rights and panhandling, without directly consulting the experiences and lived understandings of panhandlers themselves. Interviews were primarily semi-structured with a modest amount of structured closed-response questions for quantitative analysis. Interviews varied in length but averaged 45 minutes, and a modest stipend was offered¹³⁴. Interviews were conducted during October and November of 2007. Overall, twenty participants were interviewed. The average age of the sample was forty-one¹³⁵, and there were sixteen male respondents and four female. The average time participants had panhandled for was just under 6 years¹³⁶. I conducted 12 interviews in the Commercial Drive area, and 8 in the West End/ downtown Vancouver. Respondents, on average, had been in Vancouver for fifteen years. Fifty-five percent of the sample was homeless (on average for 5.5 years) at the time of the interview. The others lived in SROs.

¹³⁴ Kraus, D and J. Graves. *Research Project on Homelessness in Greater Vancouver - Volume 3: A Methodology to obtain first person qualitative information from people who are homeless and formerly homeless*. Prepared for the Greater Vancouver Regional District. April, 2002.

¹³⁵ high 59, low 28, median 41. All averages reported above are means. Of these seven were first nations, twelve white, 1 other

¹³⁶ 5.81 years mean average. Median 4 years. High 23 years, low 2 months.

Data Analysis: Qualitative data from the in-depth interviews were analyzed using Nvivo, a qualitative software package designed to assist in the coding and analysis of key themes and issues.

6: WHAT RIGHTS DO PANHANDLERS SEE AS BEING MOST AT ISSUE IN THEIR EVERYDAY LIVES IN GENERAL, AND WHILST BEGGING IN PARTICULAR?

“Struggle for social justice in the city—for the right to the city—must therefore seek to establish a different kind of order, one built not on the fears of the bourgeoisie but on the needs of the poorest and most marginalized residents.”¹³⁷

Thus far we have seen how, throughout North America, governments and industry have worked together to advance the ‘Broken Windows’ model of crime—situating street poverty and its associated economic and social activities as indices of social disorder requiring punitive sanction. Rather than calling for measures to alleviate or eliminate poverty, these efforts seek to criminalize it via the surveillance, control, and domination of public space. In this view, the panhandler is seen as a visible sign of street disorder which, if left untended, will lead to an escalation of crime. One consequence of this neoliberal turn has been an increase in both the number and severity of laws which regulate panhandling.

However, these laws have not gone unchallenged. As we have briefly seen in Chapter 3, such challenges at court generally boil the issue down into a competition between two competing rights-based arguments: the right to freedom of expression vs. the right to safety.

We have seen, in Chapter 4, how a reliance on liberal modes of thought inherent in North America, and more generally in Western legal traditions, has

¹³⁷ Mitchell, *The Right to the City*, 9

limited the potential of challenges to such legislation by relying upon the language of 'rights'. Although panhandlers in particular (due to their social and political position) would seem to be ideal candidates for the emancipatory promise of rights, the reality is not so simple when rights bump into the social imaginary of liberalism. We've then briefly revisited "rights to the city" arguments, finding a bit of a flaw: despite claims that rights are the way forward for marginalized people, there has been a noticeable lack of exploration into the ways in which rights are thought about and used by marginalized people themselves.

Thus, the focus on rights so far has been exercised in an external manner, assuming that constitutional rights, such as freedom of expression, are the relevant factors at play, or that wider perceptions of rights, such as possession and use of the city, are on the forefront of beggars' minds. However, we may expect that panhandlers, occupying a space of social and economic marginality—and often constituted as a threat to public order that must be 'fixed'—view the force of rights in a particular way. In what follows, I will begin to explore how rights are thought about and used by panhandlers themselves, grounding formal and abstract ideas of rights in the spaces of the everyday.

Overall, this will highlight how a reliance on liberal forms of rights, which view individuals as isolated monads, has limited discussion of alternative strategies for social justice while masking the everyday realities of oppression.

6.1 Safe Streets?

How, and to what extent, do panhandlers see rights present in their worlds? Will panhandlers agree that a right to safety on the streets and a right to expression are the relevant factors at play? And if not, then why is this where the dominant rights-discourse goes with the topic?

We'll begin with a look at the notion of "Safe Streets", as it would seem to be implicit in debate around the topic. After all, the Bill is named the *Safe Streets Act*, so one could reasonably imagine that safety on the streets is at issue. As MLA Lorne Mayencourt opened the debate during the 2nd reading of the BC *Safe Streets Act*:

"The problem that we have in our community is aggressive solicitation. We're talking about people that get in people's faces and threaten them or make them feel very uncomfortable while they're asking them for money."¹³⁸

A worthwhile concern, it seems. As we have seen earlier, debates around *Safe Streets* type legislation generally take as a starting point this feeling of discomfort when a pedestrian encounters a panhandler asking for money. A large amount of the justification behind such legislation as the *Safe Streets Act* is centered in the notion that the streets must be made into a safe space for the public. This is, in theory, an inclusive notion of the public, as Attorney General Geoff Plant explains: "It is about making our streets safer for all of us."¹³⁹

¹³⁸ *Official Report of Debates of the Legislative Assembly (Hansard)*, 2004 BC Parliament, MONDAY, MAY 10, 2004, Volume 25, Number 6, 2004; 1105.

¹³⁹ *Official Report of Debates of the Legislative Assembly (Hansard)*, 2004 BC Parliament, Thursday, October 7, 2004, Volume 26, Number 7, 2004; 11464.

However, there may be more going on here than meets the eye. Though all but the most ardent neo-liberal critics would likely refrain from denying the panhandler a mantle of citizenship, such legislation would seem to speak toward a particular and limited form of safety—likely focussed upon the norms of safety as imagined by a particular segment of society. However, the picture may be more complex than this. Indeed, as the legal scholar Jeremy Waldron¹⁴⁰ reminds us: “The fellow members of one’s community are not necessarily people like oneself; they are, rather, those with whom ‘one cannot avoid interacting’”. Although, presumably, legislation such as the *Safe Streets Act* represents what at least the lawmakers or special-interest groups clearly see as the legitimate use of public space, we can easily imagine that, from the point of view of a panhandler, the comfort issue is seen slightly differently. This is brought into harsh focus rather quickly during direct interviews with panhandlers themselves, as we can see from my chat with Alan¹⁴¹, a 28 year old man:

Q: What about the fact that some people argue [panhandling] makes them uncomfortable?

A: Well, it makes me uncomfortable too. You know, when it’s raining out and I’m sleeping on the sidewalk, it’s not very comfortable.

Thus, it would seem to appear that the notion of comfort is conceived of differently from those on the street. But, critics may argue, we are discussing

¹⁴⁰ Page 404: Waldron, J. “Homelessness and Community.” *University of Toronto Law Journal*, 50(4). (Fall 2000): 371-406

¹⁴¹ Names of participants throughout are pseudonyms.

safety, not comfort. Yet, research¹⁴² unequivocally shows that street people are at a higher risk of victimization than members of the housed public. While this should come as no great surprise, it seems puzzling that this fact is overlooked in a conversation about safe streets.

While, perhaps, the safety in not being accosted by a poor person asking for change carries great valence in some circles, in others there is less certainty about what the *Safe Streets Act* will accomplish. As Frank, a 43 year old male explained to me:

“And how does the *Safe Streets Act* make me any safer? It doesn't. [laughs] It has no benefits for me. It has only deterrents for me. It only has bad things for me. No benefits. It would deter me if I was to follow it to the letter to not panhandle. That would result in my stealing and/or selling drugs. That would increase crime rather than decrease crime.”

From this point of view, common amongst those on the street, the law is not seen as a balancing of rights designed to avoid inconvenience—but as a direct circumscription of their already limited freedoms. While in the popular discourse we can talk about the balancing of rights, there is no balance felt here: the *Safe Streets Act* is viewed as a one-sided attack with no benefits, making an attempt to eke out a meagre existence through tough times feel like an illegal option. This is felt with great irony, as it seems from many reports that current beggars turned toward panhandling from their limited options in order to *avoid*

¹⁴² Berti, Mario and Jeff Sommers. “‘The Streets Belong to People That Pay For Them’: the Spatial Regulation of Street Poverty in Vancouver, BC.” in *Poverty, Regulation and Social Exclusion: Readings on the Criminalization of Poverty*, edited by Diane Crocker and Val Johnson, Fernwood, forthcoming 2009; Berti, M. (2009). Handcuffed Access: Homelessness and the Justice System. *Urban Geography* (under review).

breaking the law. As Claude, a 58 old male told me about his decision to pursue panhandling:

“I used to walk into similar stores in Montreal, like Safeway, which is for food and I would actually steal, you know, cheese, whatever it may be. After a few times of being caught doing this, you go to prison, you don’t just get a fine. So then I realized hey, maybe if I panhandle, ask for the money, then I can go buy the food. This way I don’t end up going to prison. So I figured it out that way. I figured it’s a lot easier to ask people for the money and buy the food, than actually going and stealing it and end up in prison for it, yeah.”

Panhandling, it seems, is a careful choice attempting to balance needs against legal repercussions. Sometimes, this is a choice between trying to gain sustenance through the stealing of food, as above, but it can also be a choice against even less desirable options, as Emilia, a 45 year old female detailed to me when explaining her decision to resort to panhandling:

“So I ended up getting laid off. And I ended up having to fight, like I was saying, the Welfare for my money. So I didn’t have enough time in to collect disability or compensation from work. So I had to resort to panhandling. It was either that or turning a date¹⁴³ or--. But I didn’t really want to break the law. So it was like saying - something that I could still keep my dignity but not you know, resort to illegal – like illegal activities.”

Thus, the limitation felt by the imposition of legislation such as the *Safe Streets Act* is felt as very very personal. When one is poor, hungry, desperate, and attempting to eke out a legal existence, panhandling is considered the best choice amongst the limited few that one has. The alternatives, I might suspect, would be even more undesirable even to those who see a public space predicated on rigid order.

¹⁴³ “Turning a date” is street-speak for engaging in prostitution.

Indeed, within the discourse around “safe streets” those *not* living on the street consistently define perceptions of “disorder” as the main issue. Looked at through this lens, the urban abject’s presence and behavior is an imposition that is incongruent with the enjoyment and use of space; the “street person” is an inconvenience and a pest, that, left unregulated, will impact the bottom line of businesses’ pursuit of profit and of citizens’ commute or enjoyment of their Sunday stroll. Yet, as we’ve seen, if we reorient ourselves to see such regulations from a street-entrenched point of view, the picture is markedly different.

Often the intersection through which the homeless and poor come into contact with the larger public is in the pursuit of sustenance. While the homeless person is, necessarily, always in public space, he or she does not always need to be in public *view*; hence, were it not for the street encounter where a plea for money is made, the average person would have little direct encounter with the poor and homeless. Thus perceptions of public disorder—in the form of requests for financial help that are perceived as threatening by those who receive them—inexorably link into poor peoples’ means of income; it is because marginalized people must eke out their day-to-day existence that they *must* become visible to more privileged others.¹⁴⁴ As framed by neoliberal discourse, this presentation of visible poverty is, always already, a discussion of public dis/order.

¹⁴⁴ What I really mean here is, of course, a *legal* means of income. There are certainly other sources of income available that depend upon invisibility (such as theft, as we’ve seen); thus, a rather obvious question that could be posed is, if you make forms of income that are a minor nuisance because of their visibility illegal, where will the income-generating focus turn?

It is troubling when discourse, and indeed social relations, involving a gentrified public equate “public disorder” with “means of survival” as experienced by a marginalized populace, for within these legalistic and politicized definitions of disorder sit the very essence of the urban poor’s attempts to eke out an (increasingly quasi-)legal and non-violent form of survival. It seems puzzling, then, that this very expression of an attempt to sustain oneself in a legal and non-violent means is targeted for increased regulation and stigmatized without offering meaningful and sustained alternatives.

6.2 Expression?

So, overall, we can see that panhandlers don’t appear to think that this law makes the streets safe for *them*. This, of course, begs the question of what sort of vision of public space, and of the street, is implicit in the legislation. Who is considered a political subject worthwhile of using the street, whose safety is of concern here? But, to go in too deep here would be to digress a bit, because what I really want on focus on here is the freedom of expression argument. As this argument is the one heard at court, the argument seeking to defend panhandlers against this regulation, then surely panhandlers must recognize that they are expressing themselves whilst panhandling? Surely, this argument will show us the validity and applicability of rights, saving them from their dark decline?

Some panhandlers in my sample, did indeed recognize that they were expressing themselves whilst begging. As Frank, who we met previously, explained to me:

I think it brings awareness to people. I have on occasion spoken with young kids, mothers, "Give the man a quarter," and I tell the kid, "Don't do dope." [laughs] You know, "Listen to your mom, because if you don't you're going to end up sitting on this corner in 15 years.

Thus, panhandling involves a communication with the world which imparts a general lesson that most of those advocating a neoliberal ideology would likely agree with: if you make the wrong choices and disrespect authority, harm will befall you. However, sometimes the message may be a bit more specific, and a bit less popular. Louise, a 28-year old woman I met, felt (upon introspection) she communicated a fairly tangible message about poverty, available services, and safety by the message on the sign that she used when panhandling:

Louise: I guess sometimes I am saying, like, with my sign, you know, I am saying shelters aren't always free and there's not enough of them and they're not safe. My sign says, "Please spare change for safe shelter." And I always highlight the "safe." I make the word "safe" thicker.

Q: I saw that. It was in bigger letters.

Lousie: Yeah. And I guess I am sort of abstractly making a point. And people ask me, "Well, why don't you just go to the women's centre or whatever," and they miss, you know, the word "safe" is—my things have been stolen. I've been harassed. In fights. Sometimes it's dirty, right?

Whilst some could identify specific messages in their panhandling communiqués, others took a blunter view more demonstrative of the general worth of communication, regardless of the message¹⁴⁵, noting that their freedom of speech would be infringed upon if they were not allowed to panhandle.

¹⁴⁵ *qq.v.* communication, at page 34 for our earlier discussions of the worth of communication, both with and without a tangible message.

Indeed, for the most part, when expression was invoked it was conceived of in broad strokes. In this view, the message itself may not be the most important consideration, but having *the freedom to communicate* is seen as of fundamental importance. The idea of muzzling expression, speech, or communication is met with great resistance. When asked why panhandling should be allowed, Alan, who we've met above, was quite insistent that it should be because:

“You can't have freedom of speech and freedom—you can't pick and choose the—you can't say that we're going to have freedom, and then pick and choose what those freedoms are. It's one or the other. We either have it or we don't. You can't—once you start playing around with what freedoms we're going to have and not have, who gets to choose? What's next? You know, like, a crippled person can't go into McDonalds because they don't want to pay for the opening of the door? You know, because they don't feel that they should have the right to that small minority of people. You know, what's next? You know, like, blind people can't have Braille because it costs more? You know, like, where does it stop?”

A strong defence of expression. As one of the bedrocks of modern liberal democracies, expression is given great worth and the defence of a right for one is the defence of a right for all, lest we tread down a slippery slope of rights denial. Indeed, as Alan continued, expression is important because it levels the playing field: all should be allowed the same freedoms on an equal footing:

“we have freedoms, we're allowed. Why is Greenpeace allowed to stand on the side and ask for money? I mean, we should—we all, we have freedom of speech. Why can't we ask someone for spare change? I mean, where does—what does freedom of speech mean if we can't use it?”

A fair question. Alan was not alone in his general defence of a freedom of expression, as expression is a right which engenders strong feelings. As we'll recall from above, communication is viewed as “an intrinsic part of a genuinely

worthwhile human life [; thus,] the denial of free speech...is an affront to the equal worth of humanity as we admire and treasure it”¹⁴⁶. To deny expression is to deny autonomy: indeed, it is to deny the humanity that lays at the heart of a person. As Claude explained, it is part of the human condition,:

“It’s like if I’m alive—it’s a freedom of speech. Like I’m asking you a question, can you spare? If you can’t spare just say no thanks whatever. You just don’t need to insult me, whatever. Just, it’s just common sense.”

People expressing themselves while panhandling, it seems, do indeed embrace the communicative aspects of their behaviour, and confirm the academic (and legal) argument about the abstract worth of the autonomous individual that is affirmed by the very act of communication.

6.3 Why do you Panhandle?

So far we have indeed seen promising results for the freedom of expression argument heard at court, and for the general valence of rights echoed in the halls of academia. Some panhandlers, in some circumstances, certainly recognize not only that they are expressing themselves, but that the communicative element of the expression is of a broader fundamental worth than their itinerant need. However, to be fair, the responses noted thus far occurred only after considerable conversation, and I might say, a little pressing on the topic.

Yet, were we to ask, bluntly, “why do you panhandle?” to a sample of panhandlers, would we expect to hear the same sort of reply—a reply valuing expression, rights, the claiming of space, and a general affirmation of

¹⁴⁶ Campbell. Pg. 147

communication as being of primary importance? We might expect so, as this is what the dominant academic and legal discourse we've detailed so far has told us are the important factors at play. However, this is simply not the case. Whilst some panhandlers do, after consideration, admit that that an expressive element exists, more common responses voiced less concern with abstract expression, concentrating instead upon immediate needs.

"I'm on welfare and that just don't cut it, you know" (Eddie, 4)

"Like, maybe I'm really hungry, and I want to eat or something?" (Cameron, 43)

"Why? 'Cause I have no money and I got to make enough for the day, right?" (Sean, 28)

"I just want something to eat...I don't make enough on welfare to make—to get me through the month and I like to eat, right?" (Luke, 40)

"I was hungry...thought it might be a good way to make some money, or eat. Not make money but survive." (Frank, 43)

Or generally, as I think you are starting to get the picture:

"For money?" (Alan, 28)

"Well I, you know I want to eat." (Ben, 39)

"Why do you think?" (General)

Thus, it seems that, although the argument is distilled into a conversation of freedom of expression in court, this might be a bit of a stretch—from the point of view of a panhandler. It seems as though we are focussing on "expression" at the expense of other, much more relevant, concerns.

The contrast between the dominant legal rights discourse, as used at court, and the actuality of the situation, from the point of view of a panhandler, paints a stark contrast. It is here that we can most clearly begin to see a limitation in terms of the way that rights are used in the situation.

However, there is still hope for the “right to the city arguments”. Thus far we have merely seen that the rights most relevant in panhandlers’ day-to-day lives are different from the way in which the dominant discourse paints them. Yet, this fact alone does not invalidate the possibility of panhandlers claiming rights of a different form. Perhaps there is still potential for panhandlers in this situation to use rights-based arguments to worthwhile effect if we merely change the message. Panhandlers, being equally placed citizens, can still use the language of rights for “naming, claiming, and blaming”¹⁴⁷ (at least some of) the sources of their oppression, thus bringing awareness to their struggles and opening the door to their right to the city.

6.4 Summary - In Their Words

“I guess there's a certain amount of the people who do walk away feeling like they've done something good for society or for a person or a situation. Or in my case for a child. I know a lot of people have actually said, "I'm happy to give you groceries for your child." But I don't intend to be doing that. I'm not out there thinking, "Oh, well. I'll get people to give me money, and then they'll feel good about it, and then my job is done. ...I'm just out there to make sure that my daughter and I survive." Simple as that.” (Debby, 28).

¹⁴⁷ Felstine, W. L. F., R. Abel, et al. (1980-81). "The Emergence and Transformation of Disputes: naming, blaming, claiming." *Law and Society Review* 15(3-4): 631-654.

7: PANHANDLERS LIKELY TO INVOKE THEIR CONCEPTIONS OF RIGHTS? WHY OR WHY NOT?

“I suggest that “rights talk”—and even more *the practical assertion of rights*—remains a critical exercise if social justice is to be advanced rather than restricted”¹⁴⁸

As we have seen, there seems to be a gap between the legal discourse of rights (eg. freedom of expression) and the rights that panhandlers see as being most at issue in their day to day lives. Certainly, the freedom to express one’s views in a public space seems like an important concept; however, it seems troubling that this is the apparent limit of the emancipation promised by rights in this situation. More apparent (and immediately relevant) concerns are ignored in order to focus upon somewhat lofty notions of “public expression” and “the marketplace of ideas”. Even more strangely, the discourse is framed around a commonsensical notion of the importance of expression. Surely, one would imagine, basic sustenance (and indeed, survival) may be an important, and rather commonsensical, component predating even notions of public expression. Rights, however, dare not tread there. I shall put aside, for the moment, a deeper exploration of the possible reasons for this, in the interests of fleshing out the picture a bit more.

Panhandlers, as we will see below, do not necessarily see even some of their most basic rights as being ‘actionable’. Despite (or perhaps because of) their constant interaction with legal authority, they are slow to seek help from the

¹⁴⁸ Mitchell, *The Right to the City*, 6 (italics added).

justice system. I suggest that the underlying narrative from panhandlers is one in which they view the law as a force that applies *against* them, but does not work *for* them.

For the great majority of people, it seems, the law operates invisibly. Although we all encounter the law in the operation of our everyday lives, it is seldom questioned. The law is commonly thought of, when it even does enter consciousness, as a system that serves to protect our interests in the world. Oftentimes, it is only in the crossing of a legal boundary that the operation of the law becomes visible. For most people, perhaps, this is not a common occurrence. Many go about their day to day lives comforted by a buffer of private space, without thought to the legal overlay of their landscape¹⁴⁹. Most spend a relatively brief time navigating the spaces of the public to the private realms of their jobs, and after many hours of productive work, can again briefly traverse back to rest comfortably in their homes, confident in the buffering afforded by their private space. The law, it seems for many, is 'out there'—omnipresent, but merely as part of the background. The public is a part of the landscape to pass through.

In contrast, for the homeless¹⁵⁰ the law is constantly in view. While people who are housed have at least one place where they may (largely) do as they choose, for the homeless this luxury does not exist. Homeless people lack a "*place* that can be delimited as [their] own and serve as a base from which

¹⁴⁹ Ewick, Patrick, and Susan Sibley, eds. *The Common Place of Law: Stories from Everyday Life*. Chicago: University of Chicago Press, 1998.

¹⁵⁰ We might recall that a majority of the sample (55%) in the current study is homeless, and all have a tenuous housing situation.

relations with an *exteriority* ... can be managed”¹⁵¹. For the homeless person, “there is no place governed by a private property rule where he is allowed to be whenever *he* chooses, no place governed by a private property rule from which he may not at any time be excluded as a result of someone else's say-so”¹⁵².

The nature of panhandling as an activity also brings people into close contact with the law. In contrast to more traditional means of earning an income, which generally take place buffered by the laws of property, panhandling necessitates public-ness. In the pursuit of a means of sustenance, the panhandler must be in public space, and as such, is always at risk of an encounter with the law. As such, for the panhandler, their very means of survival is contingent upon an understanding of how to negotiate the law in public space.

Thus, for both the homeless person and the panhandler, everyday reality is overdetermined by the law. The constant threat of exclusion renders the law, for the homeless person, and for the panhandler alike, as an immediate and visible presence.

Earlier, I trust you'll recall, we briefly examined a growing literature within geography concerning the legal regulation of public space. We have seen that most of this work views public space as an immensely important resource, and

¹⁵¹ de Certeau, M. 1984. *The Practice of Everyday Life*, (trans. Steven F. Rendall) Berkeley: University of California Press: 36 (my emphasis).

¹⁵² Waldron, J. 1991, Homelessness and the Issue of Freedom' *UCLA Law Review*. 39, 295-324; 299 (emphasis in original).

expresses malaise with the 'privatization'¹⁵³, 'shrinking'¹⁵⁴, or even the 'annihilation'¹⁵⁵ of public space. As the metaphoric canary in the mine shaft, much of this work examines the effects of laws regulating the behavior and use of public space by the homeless, the public poor, and other marginalized actors in urban cores. Rights, it is suggested in much of this literature, can provide a vehicle for marginalized people to open up claims to public space.

In this chapter, my aim is both broader, and more precise. I seek to expand upon this literature that explores the effects of the regulation of urban spaces upon the homeless, and other marginalized actors in urban cores, by examining the perceptions that panhandlers *themselves* hold toward their relationship with the law. Borrowing from Law and Society literature on legal consciousness, I examine how the justice system is conceived of from the point of view of a panhandler. I suggest that through experiencing many of the drawbacks of the law, and few of the advantages, panhandlers¹⁵⁶ come to understand the law as a force that applies against them, but does not work for them. I suggest that further research is needed to expand the current geographical focus from an instrumental view of such regulations towards a

¹⁵³ Collins, Damian, and Nicholas Blomley. "Private Needs and Public Spaces: Politics, Poverty, and Anti-Panhandling Bylaws in Canadian Cities." In *New Perspectives on the Public/Private Divide*, edited by Law Commission of Canada. Vancouver: UBC Press, 2001.

¹⁵⁴ Mosher, J. (2002). The Shrinking of the Public and Private Spaces of the Poor. In J. Hermer & J. Mosher (Eds), *Disorderly People: Law and the Politics of Exclusion in Ontario* (pp. 41-53). Halifax; Fernwood.

¹⁵⁵ Mitchell, Don. "The Annihilation of Space by Law: The Roots and Implications of Anti-Homelessness Laws in the United States." In *The Legal Geographies Reader*, edited by Nicholas Blomley, David Delaney and Richard Ford, 6-18. Oxford: Blackwell, 2001.

¹⁵⁶ I do not mean to suggest that panhandlers are a homogenous group. However, I do wish to suggest that, for those who are marginalized, the law is seen differently than it is for those for whom it carries a less immediate presence.

deeper understanding of the complicated nature in which power is experienced and internalized by panhandlers themselves.

7.1 The Legal Consciousness of Panhandlers

Central to the Western conception of law are the ideas of impartiality, neutrality, and equality. Indeed, the law views itself as a neutral force for fairness and justice, treating all equally. This is epitomized in the metaphoric image of Themis (Justice), who holds a set of scales in one hand, to weigh the facts, and a sword in the other, to mete out justice. Justice is blindfolded to ensure that the facts are weighed neutrally, and that justice is dispensed equally, and access is available to all. Justice is an impartial machine, blind to class, gender, race or social hierarchy: the alleged wrong enters the system and, after considerable rumination, a dry righteous verdict emerges.

However, this view of the law assumes a great deal, and is critically interrogated by recent research within the law and society movement.

Understanding the law, it is argued, requires more than simply assessing whether it is effective in accomplishing its intended aims. Such analyses of legal regimes are incapable of accounting for individual experience with the law, and thus overlook the decentered nature of power. The law, it is claimed, cannot be simply understood as external brush acting upon a blankly receptive canvas. Indeed, "individuals come to the law (and the law comes to them) with a body of knowledge, assumptions, ideology, and experience with the law and legal actors

that affects whether or not they will assert their legal rights"¹⁵⁷. Thus, to understand how the law actually works, we require an analysis of the law's actual *effects* upon ordinary people. Looking at, and thinking about, the law in this manner shifts our focus from an instrumental view of legal processes towards, instead, trying to understand the actual affects of the law¹⁵⁸. How does the law affect people? How can we study the way that the law is embedded in social life, normative systems, and social institutions? How is the law experienced in people's everyday realities?¹⁵⁹.

One way to go about this is to study the "legal consciousness" of everyday people, examining how they think about the law and their understandings of the way that the law actually "works" in their everyday lives. In this view, ordinary people provide a point of access to privileged knowledge of the operation of law. Thus, if we wish to gain knowledge about the actual practice of the law, we must seek to "understand how legality is experienced and understood by ordinary people as they engage, avoid, or resist the law and legal meanings."¹⁶⁰.

7.2 The Liberal Legal Imaginary, revisited

In western liberal democracies, there is the notion of a group of rational individuals who come together to form a social contract. For these "citizens

¹⁵⁷ Neilsen, L.B. "The Work of Rights and the Work Rights Do: A Critical Empirical Approach." In *The Blackwell Companion to Law and Society*, edited by Austin Sarat, 63-79. Oxford: Blackwell, 2004; 69.

¹⁵⁸ Engel, D. 1995. Law in the Domains of Everyday Life: The Construction of Community and Difference. In *Law in Everyday Life*, eds. A. Sarat and T. Kearns, 123-170. Ann Arbor: University of Michigan; Engel, David. 1998. "How does law matter in the constitution of legal consciousness?" In Bryant Garth and Austin Sarat, (Eds), *How Does Law Matter?* Evanston, Illinois: Northwestern University Press.

¹⁵⁹ Sarat, A., and T. Kearns. 1995. Beyond the Great Divide: Forms of Legal Scholarship and Everyday Life. In *Law in Everyday Life*, eds. A. Sarat and T. Kearns, 21-61. Ann Arbor: University of Michigan.

¹⁶⁰ Ewick, Patrick, and Susan Sibley, eds. *The Common Place of Law: Stories from Everyday Life*. Chicago: University of Chicago Press, 1998; 35

engaged in social cooperation”¹⁶¹, the law represents a normative agreement of shared social principles, backed by the force of the state.

The “law is...embodied as a set of expectations and understandings about behavior”¹⁶². It seems reasonable to infer that, to be accepted as functional by the populace, these expectations would include an understanding that: (1) the law is prohibitive. It delineates the actions that, as a society, we commonly believe to be harmful¹⁶³; (2) the law offers reassurance. If others are protected from harm then so am I. This is a basic sense of fairness expected by reasonable citizens who are engaged in the social contract.

Citizens are reasonable when, viewing one another as free and equal in a system of cooperation over generations, they are prepared to offer one another fair terms of social cooperation . . . and they agree to act on those terms...provided that others also accept those terms. For those terms to be fair terms, citizens offering them must reasonably think that those citizens to whom they are offered might also reasonably accept them¹⁶⁴

Of course, this more general notion of cooperation under the social contract can be applied in many ways; however, here our focus is on simple expectations around the fair enforcement of the law: people are not allowed to harm others without expecting to be punished by the state and, in turn, people are protected (by the state) from others harming them. This is the internalization of a notion of *justice*, supported by the law. This internalization is important for,

¹⁶¹ Rawls, J. 2001. *Justice as fairness : a restatement* (ed. Erin Kelly). Cambridge; Harvard University Press; 18.

¹⁶² Cotterrell, R. 1992. *The Sociology of Law: an introduction*. London; Butterworths; 145.

¹⁶³ Of course, there is a very substantial literature offering renderings that are more critical on this point than I suggest here. However, I wish to stay on-topic.

¹⁶⁴ Rawls, J. 1993. *Political Liberalism*. New York; Columbia University Press.; xliv.

as Marshall and Barclay remind us, “the law’s power depends on the values, beliefs, and behavior of individuals. The law on the books has less power than the perception of law by those who would invoke it or violate it.”¹⁶⁵ Part of this perception of law is the notion that the law applies equally to everyone.

Thus, without these basic understandings the law could continue to exist (with much more blatant force), but it could not meaningfully be called *justice*. For this, it is important that people accept the belief that the law is both a force that can potentially be used against them, and a resource that they can potentially mobilize and seek protection from. I am particularly interested, here, in the latter—the law as a resource.

For most people, perhaps, “to call the law a resource is to speak precisely. It is a source of support that people may draw on in the same way they draw on other resources in their environment... Law may be an intangible resource, as when one invokes the law’s authority to order another’s behavior, or a tangible one, as when one calls the police to achieve the same end”¹⁶⁶. In contrast, I suggest that panhandlers do not view the law as a resource for them; rather, it is seen simply as a force—a force that applies *against* them, but does not work *for* them.

¹⁶⁵ Marshall, A.M. and S. Barclay. 2003. In Their Own Words: how ordinary people construct the legal world. *Law and Social Inquiry*, 28, 3, 617-628; 622.

¹⁶⁶ Lempert, R. 1998. A resource Theory of Criminal Law: Exploring When it Matters. In Bryant Garth and Austin Sarat, (Eds), *How Does Law Matter?* Evanston, Illinois: Northwestern University Press; 236.

7.3 Formal Equality and Isonomy

Indeed, in speaking to panhandlers we quickly learn that the story they tell of their relationship with law is incongruent with the law's view of itself. Most often, this was clearly seen in respondent reports of their interactions with the police. As Alan explained to me:

“The police definitely treat us differently than they do average people. They treat us—I don't know, they have more right to push us around or make us do things than other people. They can just search us if they want, yeah.”

Thus, there is a feeling that the relationship with the police is not occurring on equal ground. The police, Alan seemed to feel, behave as though panhandlers have few rights and sometimes apply the law in a manner which is difficult to understand at best, and at worse, outright unfair.

I witnessed a puzzling exchange myself one day whilst conducting interviews. A tiny lady was silently panhandling alone on a street in the downtown core, not near a bus stop, payphone, or any captive audience. She held a small sign, and was squished in between a newspaper box and, quite ironically, a Charity donation meter¹⁶⁷, to such an extent that it could reasonably be thought ludicrous to suggest that she impeded traffic in any way. As I was about to approach her to ask if she might be interested in chatting with me, two police officers approached, spoke at her for some length, and handed her a ticket. She ran off quickly and in tears. Try as I might, I found it difficult to

¹⁶⁷ Such meters are becoming increasingly common in urban areas. They resemble parking meters, only they accept donations for charity. An interesting analysis could be done of a logic whereby such meters are all right, but the embodied beggar is not.

imagine what she could have gotten a ticket for, at least on a reasonable reading of any statute that I was familiar with.

The next day I was lucky enough to encounter her again (in much better spirits), and took the opportunity to ask about the previous day's exchange with the officers. Louise explained it to me quite bluntly:

Louise: They came up, they told me not to panhandle on Robson, they gave me a ticket¹⁶⁸. They ran my name, and they told me to leave.

Q: So did they say you can't panhandle on Robson, that it's illegal because--?

Louise: No, it's not illegal. They just told me not to because they can.

As you might read in, Louise was not especially convinced of the impartiality of the law, and felt that the officers had targeted her unfairly. Indeed, it seems that for panhandlers the impartiality of the law is far from a foregone conclusion, and justice may not be as blind as we imagine. Quite to the contrary, as Claude explained to me, appearance is very important in the eyes of the law:

“My dealing with the—any sort of law enforcement or security, the second you are dressed as a non normal human being, of the working class nature, you are definitely homeless or a panhandler or on the street. You are definitely from the form of human beings that are necessarily going to get a ticket, or arrested, or told to move on... Because you are not of the working class, normal nature, [you are] dressed as a vagrant, you are, you are somewhat demeaned, not allowed the normal laws of a normal human being.”

¹⁶⁸ Although Louise had 'lost' the ticket, it was likely for Obstructive Solicitation (70a, Streets and Traffic Bylaw). How she was imagined as obstructive, though, is beyond my understanding—especially considering the juxtaposition with the panhandling parking-meter.

It is interesting to note the observation that having a shabby appearance, and being deemed homeless, made one “not allowed the normal laws of a normal human being”. There is a troubling perception here that rights, as instruments granted exclusively to humans¹⁶⁹, are lost. Being homeless is to be defined as sub-human. Indeed, it a totalizing discourse, as Claude continued:

“It makes no difference that I am a civil engineer, this or that, in the past. Right now, I look like a vagrant, I’m a panhandler, harassing people for money.”

Appearance, it seems, may be important after all. Indeed, there was a very strong consensus¹⁷⁰ amongst panhandlers that the police treat you differently based upon your appearance¹⁷¹. Those with the appearance of being ‘street people’, it was agreed, were easily identified by the police and targeted for (what they felt was) harassment. It seems that the roots of the stigma are deeper though, as Claude went on:

...the bottom line of all of it, is money. The more you have, the higher your stature is in society. It’s the weirdest thing of it, but that’s how it’s always been.

And even me, when you look at it, that’s the paradox of it all. That money, I’m asking for it, and if I were to have more of it and not have to ask, obviously I’d be accepted by society in the upper level. God knows what, but that’s the way society works. But I’d be more of a human being, if I don’t ask for it. But because I ask for money and I’m poor, I’m less of a human being.

¹⁶⁹ q.v. rights, ch 1

¹⁷⁰ A careful reader will note that, in what follows, I imply a strong consensus amongst the respondents as to a variety of themes, but then rely on only a few panhandlers to voice these sentiments. This is merely in consideration of space, as the voices are fairly unanimous.

¹⁷¹ Cf. Sommers, J., C. LaPrairie, M. Berti, and T. Laviolette. 2005. Policing Homelessness: The Report on the Research Project on the Regulation of Public Space and the Criminalization of Homelessness in Vancouver: National Homelessness Initiative: National Research Program. (CSGC# 0666305).

To be poor, then, is to be less human. This is felt with a certain irony. In Claude's case, he notes that by asking for money he becomes 'different'. Indeed, a very common sentiment amongst those in my sample was that money and rights have a definite relationship. As Frank put it to me:

I have the distinct impression that I don't have a lot of rights because I'm poor, because I don't pay taxes, because I don't support the \$250,000-a-year senator's job, because I don't pay his wage. I don't feel like he's concerned about me, right? And he shouldn't be because I'm not paying anything, right? [laughs] So why should he be—and I'm not concerned about his laws primarily. I've survived out here for a long time and I'll hopefully continue, you know, without his laws encumbering me or telling me what I can or can't do. (Frank, 43)

This is an overwhelming sentiment expressed by those on the street. Money and justice have an intimate relationship. It is also interesting to note here how Frank identifies feelings of a rather peculiar, and uni-directional, relationship with the law. The law is not there for protection, it is there as an "encumbrance". I sought to draw Frank out a bit by asking him about his more general feelings of his relationship with the law, and if he could expect protection from it should a problem arise. He was kind enough to explain the situation to me:

"If somebody came by and robbed me, and I called 911 and they came, and I said, "Look, I had my hat out and I had \$14 in there, and I got robbed," the cop would probably say, "Too fucking bad, buddy." Personally I think [the law] doesn't protect me. I guess it protects—I don't know who it protects...I guess it protects those people who have money. I'm assuming [the *Safe Streets Act*] was put into legislation by people who have money. [laughs]

Thus it seems as though not having money is equated with having neither the protection afforded by the law, nor the rights implied in citizenship. The law is

put in place by those with money to protect their own interests. This is a strange notion of equality, and of citizenship, indeed. I explored the citizenship theme further with a 39 year old man named Ben, who told me about the notion of citizenship involved when one becomes a panhandler, and the protection that one can then expect from the law when one thus encounters a problem:

BEN: I'm sort of reserved to the fact that I'm a second-class citizen you know, and may not - it doesn't bother me really 'cause I'm not trying to be a part of the big conglomerate up there that the rest of the world is. You know I'm just, I'm happy just hanging out being me you know.

Q: How are you a second-class citizen? What do you mean?

BEN: Well you know. Like the cops don't walk down the street telling other people to go away, just the panhandlers you know. I've had the cops pull up right in the middle of a heated argument with someone who thought I was a bum, you know about to lose it, and they told the gentleman to go away. So he went away. And then they took me to jail for the night.

We can see that panhandlers have a certain amount of well-founded suspicion of the notion that the law is there to serve their interests and of the concept of formal equality in the justice system. This has troubling, but not yet fatal, implications for "right to the city" style arguments. Mere suspicion of the notion of equality contained in the law may cause some hesitation, but it would not supersede utilizing such a powerful tool as rights, one might imagine. If rights contain the power that Mitchell (and others) would have us believe, then surely panhandlers can see the benefit in asserting them?

7.4 Assert rights?

So, the question remains: what if a panhandler were to assert their rights? Surely the law, and the wider public, would be forced to listen. Indeed it is upon this premise that ‘right to the city’-style arguments implicitly depend. As Mitchell puts it, “ ‘rights talk’—and even more *the practical assertion of rights*—remains a critical exercise if social justice is to be advanced rather than restricted”¹⁷². The marginalized, as we might recall the argument goes, can use rights to pry open citizenship and claim space.

Indeed, in order to realize the vision of an inclusive city, a city made for and by its inhabitants, the practical assertion of rights is deemed critical. Such a practical assertion of rights, by those most often socially and spatially marginalized in the quest for a sterilized public space, is the best tool that we have to claim and realize the potential of the city; as a space for the social; as a space for the political; and most importantly, as a space for the people. Public space should be (indeed *must* be) regulated, organized, and imagined as a site for political agency and the practical exercise of rights. It is the magic space of inclusion for everyone, but *especially* for the politically disenfranchised and marginalized. For, only in public space can the politically invisible not only be made visible, but where their very existence as rights-bearing members of the body politic cannot be denied.

Thus rights, in Mitchell’s vision, carry the potential for great power in the hands of the oppressed. Rights, we are told, are the tool that can open

¹⁷² Mitchell, *The Right to the City*, 6 (italics added).

discussion, and provide a platform for the marginalized to gain recognition (both socially and politically) of their belonging in, to, and of the city as equally placed citizens. Rights *must* be asserted, as they are the way forward to claim an inclusive vision of public space, and give voice to political struggle. Indeed, as Mitchell sums up his carefully reasoned arguments in defence of rights: “all this is to say (to put it bluntly), “rights” *must* be at the heart of any Marxist and socialist project of urban transformation.”¹⁷³

Yet there is a gap here. Despite his careful and reasoned argument in defence of a political space for the marginalized to claim their rights, despite an impassioned plea for a space not only where these rights can be used, but indeed a space *created* by the very exercise of these rights, Mitchell makes two shaky assumptions: that the marginalized will recognize that they have useful rights to assert, and that they will assert these rights to rally against injustice.

These assumptions, as part of the popular imagination of rights (and indeed, of liberal legalism in general) may seem like firm ground upon which to place an argument. However, as we have already seen, the story the law tells us about itself is somewhat different from the story of the law conveyed by those who actually experience it.

How, then, do marginalized people on the street see the practice of their rights-assertion? To put it delicately, the notion of asserting one’s rights to affirm political inclusion and work towards justice was met with some hesitation by

¹⁷³ Mitchell, *The Right to the City*, 38 footnote 16, italics added. To be entirely fair, and allow context, the footnote concludes “even while the limits of rights, and the need to continually struggle over them, must constantly be acknowledged”. I believe that my point addresses the limits of this hope, below.

those in my sample. Indeed, many laughed out loud at the notion of them trying to assert rights at all. It would be difficult to put it clearer than Claude did in our conversation, speaking about an encounter with a police officer where he did not feel he was breaking the law:

A: I was [panhandling] and this guy quoted me some—this guy knew his law and he knew his exact laws about everything...He quoted some, you know, code, whatever and violation and said that ...he knows his job and I better move.

So from him, from his description and the way he acted towards me, I moved. 'Cause I knew he was going to write me a ticket if I started to be intrusive upon his knowing of the law, and didn't move, he was going to write me a ticket.

Q: So if you were to question--?

A: Yeah, if I was going to say, "Fuck you, I'm staying here. I am not breaking a law." He would have shown me right away.

Q: Okay. But what if you were to just politely, you know, be like "I have a right to be here," that's--?

A: Oh, no...My dealing with the—any sort of law enforcement or security, the second you are dressed as a non normal human being, of the working class nature, you are definitely homeless or a panhandler or on the street. You are definitely from the form of human beings that are necessarily we're going to get a ticket, or arrested, or told to move on.

As mentioned above, to be deemed marginalized is to be put in a certain category with regard to rights. Thus, to assert one's rights, it seems, may not be so simple when one is a street person. Virtually all of my respondents felt the same way. In fact, it seems as though if the assertion of rights accomplishes anything, it is exactly the opposite of the bold claiming of space and affirmation of political inclusion. One is told to move on, at best. This, many felt, was the very

most that could be accomplished from an assertion of rights. However, there were worse (and more likely) outcomes. As Frank, for example, put it in our conversation when I asked him:

Q: So what do you think would happen if you said, "I have a right to be here"?

A: [laughs] Definitely a verbal duel would ensue. Probably would point out—a good officer would point out that's a law against obstructive panhandling. There's a law—the sergeant one time said—I said, "I'm not asking for anything." He said, "Well, what's your hat out there for?" I said, "My hat's not on my head." He said by your hat being in front of you, his interpretation of the law is that I'm asking for money. So it's real—I think to argue with them would just encourage them to put you in handcuffs and take you down—call a paddy wagon and transport you down to the station. And there's six or seven hours of your life.

Once again, it seems, the wonder of the law is in the interpretation. And, rather than leading to a claiming of space, the assertion of rights may simply lead to handcuffs and a paddy wagon. For those who have learnt the lessons of law from experience, the authority of the law is not to be questioned—even with the aid of rights. To ask for recognition of rights is to ask for trouble.

Thus we see that the enforcement of the spatial restrictions which deems some panhandling 'aggressive' (based upon location) is difficult to counter from a street perspective—even if one feels one is carefully following the rules. Authority is perceived as absolute. Indeed, and rather ironically in light of "right to the city"-style arguments, it seems as though there are many ways for a panhandler to behave aggressively, even outside of the wording of panhandling legislation such as the *Safe Streets Act*. As 59 year old Freddie put it when I asked him:

Q: And how would it work if you were like, I don't know, "I have a right to be here. Why should I move along?"

Freddie: That would be becoming aggressive then, in their eyes too.

Q: So questioning the authority is becoming aggressive?

Freddie: Well, yeah. Well, that's how they are, the cops, you know. You start that line of thing and start acting like that, and then they become assholes, right? So I use the friendly approach. By just being cooperative, it saves a lot of bullshit. That's just my own way of doing things. (Freddie, 59)

Thus, it seems as though, for the marginalized, asserting one's rights may not lead to the result that Mitchell and others would have us believe. Indeed, many times panhandlers deliberately *do not* assert their rights, as from their experience this will lead them elsewhere, certainly, than freedom.

Overall, this should give us pause for thought. A large majority of panhandlers, it seems, feel that they cannot exercise their rights. Oftentimes, this is intimately related to their interactions with the police, perceptions of a lack of social worth, and a perceived understanding of rights (and law) being created by those with money *for* those with money. Indeed, rights are seen as being less than useful and have the potential (when attempted to be exercised) to be positively harmful, it seems.

I do not claim to have formulated an exhaustive list here of the complex ways in which rights are actually experienced in the lives of marginalized people¹⁷⁴. However, we have seen indications of a specific legal consciousness

¹⁷⁴ Indeed, there are rich interpretations present which I will suggest, in future work, are inherently geographical.

held by the great majority of panhandlers in this sample that view the justice system as a weapon to be wielded against them, rather than as a shield of protection. Put a different way, we could observe that panhandlers do not have an experience of rights, they have an experience of authority—unquestionable, immediate, inescapable authority.

7.5 Summary - In their words:

Ben: Oh yeah. Well you know. I like had a cop just walk up to me; boot my hat with money and said, “get the fuck out.” I’m like, “what?” “Like get out of here man.” What am I doing wrong, you know? And these are times when I thought I was following all the rules. Like, “I just don’t want to see your fucking face here. Now move it! Or else you’re going to jail for the night!” So of course I get up and move, you know. But there’s no explanation. So it was aggression on his behalf. And you know, I thought I was following all the policies of panhandling.

And I always follow all the policies, but that time I had been. Who knows? Maybe he saw me not following them on some previous day and decides to give me a hassle that night when I was following them. Who knows? But he didn’t tell me nothing. He just said get the fuck out of here or else you’re going to spend the night in jail. So what am I going to do? I got to leave.

Q: Well, some people argue that in this situation you could just, you know what they call – like assert your rights. Like, ‘no officer, I have a right to do this. If not, please tell why not’. What would happen if you did that?

Ben: They’ve got all the toys, all the knowledge you know. You try and assert your rights they’ll find a way. They’ll find a way to bring you to jail, you know what I mean? Whether it’s verbally assaulting an officer or some obscure by-law I’m infringing upon, you know they’ll find a way. And they found ways for me too, to bring me into jail before. (Ben, 39)

8: CONCLUSION

While there is much research within geography on urban marginalization in general, and “right to the city”-style arguments in particular, there is a significant lack of scholarship, to date, grounding such research in the everyday lives and experiences of marginalized actors in urban cores, such as homeless people, street sex-trade workers, and panhandlers—*especially* work that involves speaking to the people themselves. This is a troubling gap.

Indeed, from direct engagement with panhandlers we see that there is more occurring here than simple barriers that can be easily overcome by abstract policy arguments which speak for, rather than consult with, direct experience. For in directly engaging with panhandlers we learn many valuable lessons that would seem vital for any translation from theory into policy.

In this case we have seen that the majority of panhandlers, it seems, do not see their everyday begging activity as implicated within the bounds of rights. When asked why they panhandle they are not appreciative, perhaps, of the social goods which they are accomplishing—being more concerned with everyday needs such as food and shelter. That there is no right that can encompass these more direct needs is telling

In addition, there is a very real perception on the part of panhandlers that they are excluded from the justice system in cases where it could do any good for them. It is a perception of being outside of the system in a particular and

personal way: when felt and experienced as an outsider the law is conceived of as an instrument to be used against me—not used for me; It is to protect people from me, not to protect me from people. This creates a category of the panhandler as a secondary (or even non) citizen that most would find disturbing.

Such findings provide us with an example of the importance of studying “legal consciousness”. In this case, such a framework has provided us with insight into the legal consciousness of panhandlers; that is, their everyday understanding of the way the law actually “works” for them, or in this case against them. If people do not feel that the law is willing or able to attend to their needs, it creates a pre-filtering that will ensure that the law is used in a unidirectional way. While access is formally guaranteed, panhandlers did not feel that it was a reality.

Examples of studies highlighting ways in which the law is used as an outside force to either control or evict the homeless from public space are numerous. Generally, there is a conflation between street people and “disorder”, which in turn leads to neighborhood decline¹⁷⁵.

In Vancouver, BC, there has been a marked increase in the past 10 years of laws seeking to mend the panhandler as ‘broken window’. These have included laws seeking to eliminate “aggressive panhandling” in the form of both a provincial “*Safe Streets Act*” and a municipal “Obstructive Solicitation” by-law, as well as a strengthened Trespass Act to make it easier for merchants to exclude undesirables from their property. Most recently, an initiative named “Civil City”

¹⁷⁵ q.v. chapter 2

has been announced, two of the four primary goals of which are to “eliminate aggressive panhandling [and homelessness], with at least a 50% reduction by 2010”¹⁷⁶. Such projects are deeply intertwined with the logic of Broken Windows, and can reasonably be expected to disproportionately impact the poor and marginalized, such as panhandlers. Thus, panhandlers do not come upon their suspicion of the law by accident. They have very real reasons to feel as though there may be some exclusionary practices going on.

8.1 What have we learned about the law?

Indeed, the law experienced by the marginalized is “a law of practices, not promises, of material transactions, not abstract ideals”¹⁷⁷. This brings us back to the popular representation of justice, as mentioned above—the iconic figure of Themis, blindfolded to ensure equality and neutrality. Indeed, upon closer inspection, the image of Justice blindfolded “carries a suppressed reference to legality as partial, corruptible, human...lurking underneath that blindfold is an idea of justice whose sight must be incapacitated in order to remain impartial”¹⁷⁸. Contrary, perhaps, to the popular imagination, panhandlers have no illusions of the neutrality of justice.

However, this is not necessarily an observation limited to panhandlers. Indeed, we could posit that panhandlers, through having constant interaction with

¹⁷⁶ Perhaps coincidentally, Vancouver will host the Olympic Games in 2010. Project *Civil City* was cancelled during the writing of this thesis after a change in political leadership.

¹⁷⁷ Sarat, Austin. ““The Law Is All Over”: Power, Resistance and the Legal Consciousness of the Welfare Poor.” *Yale Journal of Law and the Humanities* 2 (1990): 343-79; 378.

¹⁷⁸ Ewick, Patrick, and Susan Sibley, eds. *The Common Place of Law: Stories from Everyday Life*. Chicago: University of Chicago Press, 1998; 228.

the law, probably know a great deal more about the reality of its practice than the rest of us who directly encounter it on a less regular basis. Perhaps, as Ewick and Silbey¹⁷⁹ suggest, “those who are most subject to power are most likely to be acutely aware of its operation”? If so, and if we take the legal consciousness of the homeless in this sample seriously, this gives us cause for concern.

The law guarantees that everyone has formal access to it. To accept the law as a neutral force that acts in an equal manner requires that people construct themselves as legal subjects—on the perception that they are citizens for whom the justice system is both a force and a resource. Indeed, this is likely most people’s perception of the system, most people with limited experience. However, if those who have the most day-to-day interaction with the law (being those who are always in public space, and always visible to the law) and hence should know the most about the system, note the many barriers to accessing justice—it would seem to have troubling implications for everyone. Indeed, “this is a society which celebrates individualism and equal access to the due process of the law. Yet, there are some problems which seem less worthy of this equal access and less appropriate for legal intervention”¹⁸⁰. Perhaps then, even though access is formally guaranteed, this is simply not the reality. Similar to Sarat’s observations of the legal consciousness of the welfare poor, we are all “grounded in the realities of a society in which race, wealth, and power matter”¹⁸¹.

¹⁷⁹ Ibid at 235

¹⁸⁰ Merry, S. 1990. *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans*. Chicago; University of Chicago Press; 182.

¹⁸¹ Sarat, Austin. “The Law Is All Over”: Power, Resistance and the Legal Consciousness of the Welfare Poor.” *Yale Journal of Law and the Humanities* 2 (1990): 343-79; 359

Panhandlers, through their experience with the law, have no problem recognizing this reality.

8.2 What have we learned about rights?

It appears that all may not be as clear-cut as it may have appeared originally. Despite a claim of neutrality, we have seen how rights work in particular and limited ways to create political subjectivities. Thus, a conversation that could be about poverty, cuts to social programs, the general housing market, capitalism, or any one of a number of other rather relevant contextual issues becomes, instead, a conversation about the dyadic interaction between the individual mobility rights of a pedestrian, and the expressive rights of a panhandler. By defining the needs of the individual political subjects through rights, the conversation has been limited to these two competing rights-claims.

This is troubling indeed when we recall that panhandlers, contrary to the rights-based arguments advanced on their behalf, do not see expression as of primary concern whilst panhandling. It is unsurprising, perhaps, that more immediate needs, such as food and shelter, would take priority. Yet, liberal rights cannot address these immediate concerns. As a result, the needs of panhandlers have not only been put outside the bounds of rights (to do so would implicate that there was a way back in), they have been fairly efficiently politically defused through distraction and oversimplification. This is the advantage of setting the terms of the argument, as the liberal legal imagination has done behind the scenes.

Thus, it seems as though the use of rights in the debate around panhandling can only offer, at best, a rather shallow form of social justice. While the imposition of laws targeting begging are troubling, it is also rather disconcerting that it seems as though the *absolute limit* of an argument against such laws is that we ought to allow people to beg—rather than attempting to offer a more meaningful solution¹⁸². Although popularly viewed as the ultimate tool of emancipation, the language of rights can offer no help here.

Liberal rights claim to be the ultimate tool of emancipation, providing everyone with the base conditions necessary to realize their autonomy. Yet, we have seen that the conceptualization of emancipation inherent in rights is rather peculiar, due to the notion of ‘formal equality’. Because of the atomistic nature of the liberal imagination, social context is either ignored or irrelevant. Thus, rather than an acknowledgement that a law against begging will disproportionately impact marginalized people, the liberal legal imagination simply reaffirms the ‘contextually neutral’ nature of the law. This denial of power differentials and absolute lack of context is really quite remarkable. But this is what rights do. They level the playing field by creating perfectly isolated atomistic individuals hovering in an acontextual plane. Panhandlers, occupying a space of social and economic marginality, are seen as equally placed atomized individuals exercising

¹⁸² For a similar example of the pyrrhic nature of such victories (and, a successful one), see: *Victoria (City) v. Adams*, 2008 BCSC 1209. In this case, the court found that a bylaw preventing homeless people from erecting temporary shelter in public parks violated section 7 of the *Canadian Charter of Rights and Freedoms*, and was not saved by section 1. As a result the bylaw was struck down. Thus, rights won a grand victory by allowing homeless people to sleep in parks; that is, rights allowed homeless people to be homeless.

a right to freedom of expression, which must be balanced with the claims of other equally placed citizens.

These findings, I suggest, have important implications for those interested in “right to the city”-style arguments.

8.3 ‘The Right to the City’, revisited

While there is a growing (and valuable) literature examining the effects of laws regulating public space (with a particular focus upon the exclusionary effects of such regulations) the relationship between the law and the legal subject is not so simple as to be fully explained simply by a thoughtful examination of the legal regulation itself; nor can it be examined simply in terms of the overall effectiveness of the law in accomplishing its intended aims; nor merely by a critical analysis of what those intended aims may be. While all of these projects are valuable, such structural foci overlook the ways in which the law is experienced, understood, and utilized (or, importantly, *not* utilized) by people themselves.

Indeed, it is precisely this gap between theory and practice that the “right to the city” arguments take for granted: by buying into the notion of the formal equality of the law (with its attendant difficulties, as we have seen above), such arguments assume that the experience of marginalized people, in asserting rights, will be successful. Put another way, the argument assumes that marginalized people will recognize that they are fully formed citizens, capable of exercising their voices, and hence will do so. Given the critical stance that ‘right

to the city'-style arguments generally take towards power, it seems puzzling indeed that the assumptions underlying the law (which really is *the* formalized system of power) are not inspected more carefully. This lack of critical reflection on legal power and social context has at least two attendant difficulties which are rather severe.

The first is an assumption that marginalized people, despite the social stigma attached to and ingrained in their marginalization, will consider themselves to have political voice enough to give rise to their rights. Indeed, it assumes that those most downtrodden will have the most luck exercising their rights. This is, after all, one of the main tenets in the mythology of rights. However, as geographers, we should be aware of the difficulties attendant in shifting from abstract to material space. Because marginalized people do not live in the abstract world, real world perceptions and experiences, we might assume, have an effect. By following the terms of the argument onto an abstract plane, and (perhaps inadvertently) playing by the rules of that realm, we've missed an important opportunity to gain traction and effect material change *here*, in reality. Indeed, we have utterly ignored reality—especially the reality of what it means to be marginalized, where the assertion of a right is not as clear-cut as imagined. When faced with this reality, claims of rights as the way forward for marginalized people to gain and claim a “right to the city” could be considered a bit quixotic, at best. And, at worst, such arguments could be considered to do as much harm as good by reifying existing power structures and mythologies—with the paradoxical

effect of supporting the very systems of oppression that are being argued against.

The second implication is broader and even more damning. Rights, we are taught to believe, work. Putting a claim into a language of rights gives it immediacy and worth. It moves a claim from the realm of the desirable to the realm of the necessary. Yet, the question remains: necessary for whom? The power of rights, to work, requires a system in place for the hearing of the rights; we need a way to go from the abstract space, to the material space. This is what the “right to the city” is about, after all. In our system, this path is oftentimes through the justice system (as we have seen above). However, as we have also just seen, those who have the most immediate experience with the law (and thus, we may assume, can speak towards the actual workings of it) question (indeed outright deny) the notion of formal equality present in the law’s self-imagination. If we are to take their experience seriously, this has troubling implications with wide effects: not only are rights not as powerful as we may believe, but the fundamental tenet of formal equality in the eyes of the law may be more myth than reality.

8.4 Reflections

8.4.1 The way forward

There can be no denying that the aspirations in ‘right to the city’-style arguments are noble, particularly as advanced by Mitchell. Indeed, I strongly

agree that it is a goal worth pursuing. My argument is about the means, not the ends. Perhaps, then, our paths are not far off one another.

Mitchell holds his reservations about rights, as do I. Perhaps in an effort to be pragmatic, though, he embraces them as the best way forward. Yet, ironically, in pragmatism I suggest that they are not. Where does our difference lie?

What troubles me most is that Mitchell's argument, despite being grounded in real world struggles, occurs in an imaginary context. He (inadvertently, I presume) assumes a flat liberal world where rights are worth something, whilst seemingly ignoring the effects of institutionalized and normalized oppression upon the willingness of individuals to assert their rights. Put another way, I suggest that his argument, as well as other 'right to the city'-style arguments, does not pay enough attention to the context in which such struggles occur—they underestimate the reach of liberalism. Yet, as we have seen here, the liberal imagination runs deep and wide through such debates, and affects not only the forms of argument that occur (particularly, in this case, utilizing the language of rights), but the very things that can be argued about. I'm left with the feeling of having encountered a sage and insightful historian, who looks back at rich data sources on the fall of Rome, for example, and then tells me what the people were thinking and doing, and why. Sometimes, in the absence of other sources, such arguments are useful and, indeed, imperative. However when other, richer, more immediate, more relevant, and more insightful sources are available, I must question why they are not consulted. Indeed,

Mitchell, despite a grand argument, never talks to a marginalized person directly, relying instead upon archival sources. I cannot help but feel that, were he to do so, his argument may be slightly different—perhaps the same goals would be advanced, but the means would be slightly different. Indeed, as it stands his argument, and similar ‘right to the city’-style arguments, both overlook and undervalue the effects of liberalism in constituting rights, and perhaps most importantly, in the general social imagination. As such, the best results that can be hoped for from such arguments, I suspect, will still contain the seeds of the problem.

Mitchell, when talking about rights, seems to interpret them broadly. He means both normative and legal rights, both imaginary and practiced. This allows him flexibility in his argument, but at the same time, this means that he’s talking less about the practical nature of rights, in a specific historical context, and more about the abstract nature of rights. Part of the strength (and criticism) of rights is their indeterminacy¹⁸³. Where he seems to be comfortable with this, I am somewhat suspicious of the possible dissimulation of material reality that this entails. For, as we have seen, rights do not necessarily work in the neutral apolitical way that is popularly imagined. Indeed, I suggest that to accept rights is to accept a particular vision of what justice is, and to accept a particular path there. Rights can be used in many ways with many results. And rights-talk has been heavily involved in grand victories for previously marginalized groups¹⁸⁴.

¹⁸³ Tushnet, M. 1984. “An Essay on Rights,” *Texas Law Review* 62, 1363-1412.

¹⁸⁴ Cf. *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954); *Hernandez v. Texas*, 347 U.S. 475 (1954); and many others.

This, I think, cannot be denied. However, what is less clear is the actual process through which these victories have been won.

Indeed, in his argument for the championing of rights, Mitchell lists many victories. Yet, these victories have something else in common besides rights-talk—most of the advances that he talks about are on a group scale. They are not so much examples of the individual assertion of rights, but reflect collective organization. When he speaks of rights, it occurs to me that what he is really speaking of is grassroots organization. The victories gained by rights may have been victories gained by individuals, but they were also victories gained by groups, united in one voice. This has an uncomfortable relationship with the liberal legal imaginary. Perhaps, we could argue that the assertion of a right enabled a powerful rallying call, a suture, a common voice for a struggle, a place where many voices could meet in the pursuit of one goal—but there is nothing that would particularly lead us to believe that this rallying call, this common voice, had much to do with rights. Perhaps rights provided a focal point to rally behind, but then again perhaps needs, oppression, or indeed space itself provided a focal point to rally behind. If we view the situation as an external observer then there is no particular reason to believe that any one had more difference than the others, aside from our common liberal imagination telling us that it did. This is the tautological nature of a justice argument that takes a liberal world-view for granted: a victory for social justice has been won, therefore rights were involved. After all, rights are what win victories for social justice.

In addition, if we accept that Mitchell is talking about rights exercised as groups, it could be suggested that he has undervalued the reach of the liberal legal imaginary of rights—as liberal forms of rights, as we have seen, are not especially fond of groups. Indeed, liberal forms of rights are designed, by their nature, to protect the individual *from* the majority¹⁸⁵. I have difficulty picturing the rights based victory that such champions of rights speak of, where atomistic individuals individually and separately, with no concern for each other, exercised their rights in defence of their goals, which by mere coincidence were in common. The point that they rallied *together* is lost. Indeed, once again, there is no particular reason to believe that these victories had anything to do with rights.

Here I have demonstrated a gap between the reality of being marginalized on the street, and the dominant rights-based narratives. Furthermore, we've seen how panhandlers question whether they are able to assert even the limited forms of rights available to them. I have suggested that the problem may be deeply inherent in rights themselves: specifically, in a strong liberal ontology present in rights discourse, which views individuals as isolated monads and limits discussion of alternative strategies for social justice while masking the everyday realities of oppression. Liberal rights, to put it bluntly, bring in as many problems as they do solutions. In addition, I have suggested that the struggle toward the 'right to the city', that Mitchell and others speak of, may have better paths forward than rights themselves. Ironically then, I suggest that while the struggle towards

¹⁸⁵ See for example, discussion on the intents of the framers of the US Constitution in: Nedelsky, J. (Spring, 1990). "Law, Boundaries, and the Bounded Self", *Representations*, 30; 162.

a “right to the city” may be a noble and worthwhile goal, it is far from a foregone conclusion that rights themselves (as currently imagined) are the best means to get there.

8.5 Afterthoughts – toward a geography of rights

Where then does that leave us? I hope that the reader will forgive me if I admit that I am unable to definitively solve the issues raised here in the current work. If I have merely raised questions and served to slightly demystify the workings of rights I will consider the project successful. However, I would like to offer some preliminary thoughts on alternative framings of rights that may escape some of the limitations set by liberalism.

We have seen how rights, as currently envisioned, may work in particular and limited ways—occasionally acting more as a blinder than a lens. We have seen how, rights within a strong context that I (and others) have called a liberal imagination, can only have limited emancipatory potential. But, is this the “most that we can hope for”¹⁸⁶ from rights? Perhaps, from liberal forms of rights that envision the individual in such strict and absolute separation from the collective ‘threat’, it is. A rather depressing conclusion, indeed.

But whilst still teetering on the edge of the chasm, and before offering a final surrender into the void, we would do good to pause and re-examine our footing. A geography of rights will help steady us. Recall that rights, from a

¹⁸⁶ Brown, Wendy. ““The Most We Can Hope For...”: Human Rights and the Politics of Fatalism.” *South Atlantic Quarterly* 103, no. 2/3 (2004): 451-63.

Kantian conception, are intended to “further the...autonomy of individual persons over their own body, mind, and circumstances”¹⁸⁷. From a liberal view, this autonomy is guaranteed by the isolation of the individual within the strong and impermeable boundary of rights. However, there is an assumption here that has not been dealt with.

8.5.1 Exploring Boundary and Autonomy

As we have seen, rights work to erect a wall of protection around the individual, a wall that seeks to separate the individual from the dangers of government and the tyranny of the majority¹⁸⁸. However, because of the limitations inherent in liberal conceptions of rights (which focus on formal equality), the actual substantive practice of rights works to obscure existing power structures by giving people a false sense of security, equality and justice—but merely a *sense* of these notions, rather than a reality.

Even a cursory observation will note that this conception is rife with geographic terminology. Indeed, as Nedelsky¹⁸⁹ suggests, the strict boundaries ingrained in private property are illustrative, and perhaps foundational, of our conceptions of rights¹⁹⁰. In fact, “property provided a [rather ideal] symbol for this [liberal] vision of autonomy, for it could both literally and figuratively provide the

¹⁸⁷ Campbell. pg 54.

¹⁸⁸ Nedelsky.

¹⁸⁹ Jennifer Nedelsky, "Law, Boundaries, and the Bounded Self," *Representations* 30 (special issue: law and the order of culture) (1990).

¹⁹⁰ The right to own property is, after all, a fundamental right in liberal doctrine.

necessary walls [to] most perfectly isolate” the “most perfectly autonomous man.”¹⁹¹

But is this the most productive way to reify the autonomy of individuals that lies at the heart of rights discourse? Visualizing the individual as a citadel which must be protected from outside intrusion ignores the many ways that people are formed, not in isolation, but through connectedness and relationships to others¹⁹². For, in the more complex reality of the everyday, there is not a ‘separate self’. People exist, and are formed, not in isolation, but in relationships with others. If we acknowledge this broader reality, then it follows that “the collective must also be seen as the *source* of the self.”¹⁹³

Indeed, there are many types of boundaries, and perhaps it would behoove us to “focus on the complexities of the *interpenetration* of the individual and collective¹⁹⁴”. Thus, these relationships which form us¹⁹⁵ (that traditional rights discourse ignores and obscures) must be examined for their oppressive, as well as their emancipatory, realities.

It is only through this rounder investigation of rights, and a less myopic vision of autonomy-formation, that we can free ourselves from the narrow constraints of liberal modes of thought that “lead man to see in other men not the

¹⁹¹ Ibid. 167

¹⁹² Ibid.

¹⁹³ Blomley, 1994. pg 14 (*italics original*).

¹⁹⁴ Ibid. pg 182 *emphasis added*.

¹⁹⁵ ...and which we form. Nedelsky would lead us to think, for example, of the relationship of a child to its parents. I think we could also imagine many other complex formulations; indeed, upon little introspective thought, it becomes clear that it is difficult to envision many ways that we *are* formed in isolation, leaving aside the broader conception of whether *anything at all* is formed in this solitary manner.

realization, but the limitation, of his own freedom¹⁹⁶ and begin to focus on the other transformative potentialities in our, more complex, realities.

Thus, if what we really value in the individual is autonomy, and if autonomy is what rights are designed to protect, then we must incorporate these essential notions of relatedness into our rights discourse and realize that “what is essential to the development of autonomy is not protection against intrusion, but constructive relationships [thus the important question is:] how can we structure relationships so that they foster rather than undermine autonomy[?]”¹⁹⁷.

This is only an example of how a geographically informed accounting of rights can aid in dissecting (and perhaps re-envisioning) rights, yet I think it holds promising potential for future work. A geography of rights can help to draw attention not only to rights themselves, but perhaps most importantly, to the assumptions underlying them in this particular historical context. For without closer attention to the geographical assumptions in liberalism, we may miss an opportunity to affect meaningful change.

¹⁹⁶ Marx. pg 146 (commas added for clarity)

¹⁹⁷ Nedelsky. pg 168

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