Abstract

Critical urban studies scholarship has documented numerous particular uses and misuses of law in urban contexts. This article argues that case studies of specific campaigns about urban space are insufficient, and that if we want to understand the quotidian negotiation of urban norms and urban order we need to undertake systematic studies of the everyday, largely unpublicized workings of the whole array of municipal legal tools that influence how spaces and activities are organized. This argument is pursued by way of an inventory of all the legal forces converging on a single streetcorner, the intersection of Bloor and Saint George streets in Toronto. Since Toronto’s legal arsenal is very similar to that used by North American cities generally, the inventory is of more than local interest.

Keywords: law, urban studies, Toronto, urban order, streets

What can legal studies contribute to our understanding of the everyday life of urban streets? It is well known that examining the formal law in the books (the statutes passed by legislatures and the doctrines taught in law schools) is of limited use if our focus is the lived experience of street life, since even in fairly orderly cities in the global North formal law is often out of keeping with actual regulatory practices (e.g. Philippopoulos-Mihalopoulos 2007). Statutes and doctrines, however, do not exhaust the field of law. The vast “law and society” literature that since the 1960s has explored the actual workings of law, in the global South as well as in the North, has shown that if one pays careful attention to the numerous, uncoordinated mechanisms of law, regulation, and rule enforcement that exist on any site, “law” in this larger, more inclusive and less statist sense is an undeniably important component of everyday life (e.g. Ewick and Silbey 1998). And yet, despite decades of interdisciplinary empirical research that sheds much light on questions of urban order, governance, resistance, regulation, and dispute resolution, the work of socio-legal scholars has been largely neglected by urbanists. An important anthology that is an exception to this trend, Illegal Cities: Law and Urban Change in Developing Countries, notes in its introduction that most urban research “takes the legal phenomenon for granted,” adding that while critical urbanists are happy to talk about “the state,” they rarely pay attention to specific legal mechanisms (Fernandes and Varley 1998:6). This is corroborated by the fact that a recent influential urban
anthropology anthology generously acknowledges the contribution of
cultural/symbolic approaches and of political-economy perspectives, but
is absolutely silent on legal studies (Low 1999). To point to just one
glaring omission, Boaventura de Sousa Santos, a brilliant socio-legal
scholar who has over three decades produced a highly influential, theo-
retically sophisticated body of work, some of it directly relevant to issues
of street life in the global South (see especially Santos 1977), is almost
never cited in urban studies contexts.

The failure of qualitative urban studies research to seriously address
and analyze the legal dimensions of urban life is probably rooted in a
certain culturalist bias of long standing, a bias that goes back to Chicago-
school urban sociology, for more mainstream traditions, and to the
Marxist dismissal of law as mere superstructure, for more left-wing tradi-
tions. Even scholars who avoid using the term culture in the 1950s sense,
and who do not explicitly make cultural-determinist arguments, often
write as if the legal mechanisms that have helped to shape the spaces
within which urban life takes place could be simply ignored. Jane Jacobs’
tremendously influential study of street life in the Greenwich Village of
the 1950s generally presents legal mechanisms as bureaucratic, top-down
obstacles preventing spontaneous interactions (Jacobs 1961). In one
important passage she does look at law more constructively, advocating
for “zoning for diversity,” a planning idea that has now become common
place in downtown regeneration projects but which was then quite
revolutionary (Jacobs 1961:252–4). But on the whole, she tends to see
legal structures and legal regulation as hampering the “life” of “great
American cities.” This was very forgiveable in 1961, since the law-and-
society movement had not yet been born; but decades later, it is very
unfortunate that the movement’s painstaking collective documentation
of the ways in which everyday life is governed by law and in turn shapes
law has not been, by and large, utilized in urban studies research.

Jacobs’ well-known research venue, Manhattan’s Greenwich Village,
is a case in point. It is true that the zoning system that allowed apartments
over shops and high densities—regulatory architecture without which the
interesting street life documented by Jacobs would not have existed—was
itself a response to certain economic and cultural factors. Real estate
prices and local cultural practices put pressure on the municipal legal
system, such that high densities and mixed uses persisted in Greenwich
Village even as most of America had economic and social diversity zoned
out in the period from the 1920s to the 1960s (Caro 1974; Haar and
Kayden 1989). In other words, in Greenwich Village as elsewhere, legal
mechanisms are of course social/political. Nevertheless, ordinances
setting minimum and maximum building heights, densities, and spatial
requirements such as setbacks from the sidewalk, once formalized, in turn
come to exercise a certain unquantifiable constitutive power. In the long
run, such legal mechanisms contribute to making some built forms and
activities disappear while normalizing other modes of urban life.

One brilliant but rarely cited anthropological study of suburban
zoning shows that the hegemony of the classic middle-class American
suburban family home is in no small part due to zoning and other ordinances. Ordinances require certain setbacks, establish rules about parking and driveways and vegetation that normalize suburban housing, impose minimum lot sizes that maintain class homogeneity as well as built-form homogeneity in the face of market pressures to diversify, keep shops out of residential areas, and even regulate the number and kin relations of household members (Perin 1977). Perin’s ethnography shows that while racism, cultural prejudices about the inner city, and the U.S. romance with the automobile are no doubt responsible for making suburban life attractive in the first place, the suburbs would be a lot less homogeneous if zoning ordinances micromanaging built forms, streets, and uses had not been instituted. Legal mechanisms are themselves the products of economic forces and political maneuvers, but once put in place they can and often do exercise great influence over city life. In particular, certain ways of arranging buildings and streets and living things come to appear as natural when they are in fact the result of legal rules that may not always be followed but that normalize spaces by setting standards (e.g. Ben-Joseph’s study of street standards, 2005).

In this article, I draw (mainly indirectly) on the findings of a five-year research project on urban law “in action” in the city of Toronto in order to persuade urban anthropologists and sociologists to pay greater attention to the workings of legal mechanisms—focusing particularly on those that do not act persons directly (as does the criminal law) but rather have the effect of shaping the spaces within which human interaction takes place. The coercive governance of urban persons and groups (e.g. panhandlers) by police officers has been studied by many urbanists (e.g. Neil Smith, Don Mitchell). The rather more silent workings of largely municipal legal assemblages that work on human-nonhuman hybrids so as to shape spaces—acting on persons in a less direct manner—is a rather different process, however, and it is this process that I seek to highlight here (cf. Valverde 2005). Since this is meant as a short contribution to a collective analysis of “the street,” it would not make sense to attempt to summarize all the research I have done on bylaw enforcement, municipal licensing, and municipal management of neighborhood disputes. I will simply illustrate the theoretical point about the importance of everyday, constantly acting law by performing an inventory of the legal mechanisms that act on a single streetcorner of Toronto—choosing an intersection for which I have many years of Jane Jacobs-style personal experience, since in-depth qualitative knowledge is important if one is going to make informed conclusions about the effects of law.

Bloor and St. George: anatomy of an intersection

Visually, the intersection of Bloor Street—one of Toronto’s major arteries—and St. George, which among other things functions as a gateway to the highly urbanized main campus of the University of Toronto, appears as always already divided into three main kinds of
spaces: the sidewalks, the roadway, and the buildings placed at each of the four corners. The sidewalk can be described as a complex assemblage (Latour 2002; 2005) composed of cement, technical specifications, provincial planning law, a few rather stunted trees, some permanent signs embedded in the concrete (some put up by the city, some by the university), lamp posts, posts to lock bikes, an ornamental structure that looks like a grand gate over St. George Street but is not a gate, a ream of municipal by-laws, and, last but not least, the customary social practices that govern the circulation of people, bikes, and objects. The roadway is in turn a complicated assemblage made up not only of asphalt, painted lines, traffic lights, and vehicles but also of provincial traffic laws, municipal parking rules, and other formal and informal rules governing interactions amongst vehicles and between vehicles and other entities (pedestrians, cyclists, curbs, painted lines). The third element—the four buildings at each corner—which will receive less attention in this article since the focus is on “the street” and not so much on the buildings that line streets, is also a hybrid made of heterogeneous components—bricks, cement, building codes, aesthetic norms, people, offices, businesses, glass panes, elevators, zoning by-laws and regulations, and architectural plans.

The formal and informal laws and regulations that govern the space of Bloor and St. George cannot be directly observed by someone standing at the corner: but they quickly become apparent if one closely observes such evident phenomena as the coordination of vehicular movement across the intersection. Traffic laws may well be texts. But most of the time they have the same effect as physical barriers, at least in Toronto, where drivers only go through red lights exceptionally, not normally as is the case in other cities. Similarly, building codes are only read by contractors and architects, but the effects of such codes are clearly visible to the most casual passersby. Since my larger research project has shown that in institutional and commercials buildings in Toronto, building codes are generally followed (unlike in residences in older areas) it is methodologically appropriate to
place building codes on the same analytical level as fences and walkways. To put it more generally, since physical and discursive structures have similar effects on the study area, a Bruno Latour style of analysis, that is, one that initially puts humans and nonhumans, cultural and physical entities, on the same epistemological plane, is appropriate (Latour 1993; 2002; 2005; Valverde 2005).

Having outlined the three main types of spaces for which we need to document the relevant legal mechanisms, and set out one important methodological proviso, we can now turn to a more detailed (but by no means exhaustive) consideration of the legal underpinnings of the three elements initially identified by visual inspection—the sidewalk, the roadway, and the buildings.

A brief legal anatomy of the sidewalk

1. The decline of standard-issue concrete and the rise of partially privatized streets

Sidewalks in Toronto were for many decades made of standard, plain, grey concrete. In recent years, many neighborhoods in search of “distinction” (Bell and Jayne 2004), particularly those geared to promoting tourism or niche boutique-style shopping, have persuaded the city to embellish the sidewalk with cobblestone-style bricks, colored tiles, and other aesthetic features. The same quest for district distinction has led to the proliferation of expensive-looking lampposts and planters for flowers and small trees. These entities—tiles, cobblestone-style bricks, lamps, flowers—are simultaneously physical, economic (since there is usually a public-private partnership to fund the embellishments), and legal/discursive. Thus, the ornamental iron and concrete gate on either side of the official entrance to the campus, on St. George just below Bloor, is a local instance of a larger process that promotes competition between micro-neighborhoods and visible differentiation.

The legal infrastructure that supports micro-local downtown beautification projects that only perpetuate inequalities between neighborhoods—since they leave the drab inner suburbs even drabber, by
comparison—is by no means unique to Toronto (Frieden and Sagalyn 1989). The legal tools required to isolate a small area of the city and put it under private-public rule were pioneered in New York City in the Times Square Business Improvement District set up in 1992 and in inner-city London, in Thatcher-era legal forms whereby public-private enterprise bodies became mini-sovereigns of small parts of London (Deakin and Edwards 1993; Fainstein 1994).

Nicholas Blomley’s recent legal history of the North American sidewalk has shown that sidewalks were long regarded by urban planners and engineers as standard-issue public spaces wholly devoted to purposive commercially oriented movement—spaces in which the capitalist logic of constant circulation consigned any stationary or merely idle person or object to the status of an impediment to proper pedestrian movement (2007). The craze for marking the boundaries of select districts and distinguishing them from the larger, greyer city by physically remodelling the sidewalk to add special colored street signs, ornamental lamp posts, iron fencing, colored bricks or tiles, and hanging flowerpots has somewhat dislodged the utilitarian, engineer-driven circulation rationality of earlier decades. But it is crucial to note that these improvements, which are never distributed equally throughout the city, much less allocated using an equity logic, require a certain legal infrastructure. Generally, city officials designate an area as an “empowerment zone” (in the US), or, in Toronto an “area in need of improvement” (Ruppert 2006:62–74). In each jurisdiction legal arrangements are made, for instance, to enable private security guards hired by the local business association to perform certain functions previously monopolized by the police; financial arrangements by which public funds flow in accordance with local business desires are also legally certified.

The competitive logic that sets one district against another in the quest for distinction and trendy shopper dollars is a complex phenomenon with roots in global and national economic and governance trends (Zukin...
2009). But in Toronto as elsewhere, district distinction requires certain legal changes. The case of St. George Street is somewhat unusual in that here the university played a role that elsewhere in the city is performed by the BIA—business improvement area. But whatever the specific arrangements for each micro-space, once an area has been legally marked off from the rest of the city—as an empowerment zone to which US federal funds will flow, or as a special space that is not only provided with flowerpots but also policed by private security—the capacious neoliberal legal infrastructure that is the public-private partnership ends up having its own effects on the everyday life of the sidewalk. A couple of years ago, when the university had inaugurated one of its fake monumental gates to mark it off from the rest of downtown, I wrote an article for the official university bulletin entitled “The gated university.” There I predicted that non-university affiliated citizens who previously used St. George Street as they use any other public street might begin to feel less welcome, due to the proliferation of architectural and botanical markers that created the “gated university” effect. I have not conducted a study of the experiences of those who use the now beautified sidewalks of St. George Street to test the hypothesis, but the vast “crime prevention through environmental design” literature suggests that such physico-cultural markers do indeed work to keep out those who do not have business inside the gate. And elsewhere in Toronto, the partial privatization of public spaces has been well documented (Ruppert 2006; and see articles archived on the pro-public space Toronto website www.spacing.ca).

2. Municipal sovereignty and the permit system

Parks, sidewalks and other spaces that are experienced as “public” because they are owned and maintained by the city are by no means actually common property. Rather, these spaces are the private property of the municipal corporation (Isin 1992). The exercise of municipal sovereignty means, among other things that any objects placed on or near the sidewalk—the blackboards prompting passersby to enter the restaurants near the intersection, newspaper boxes on the northwest corner—all require special permits from the municipality. All outdoor signs, even if placed wholly on one’s privately owned building, also require permits, and are subject to size and lighting restrictions. My larger research project has shown that despite the fact that the city only has about 140 “generalist” by-law enforcement officers (in contrast to about 5,000 police officers), municipal inspectors do in fact enforce the sidewalk-object permit system, making occasional rounds to ask small business owners whether their signs, however small, have permits. To obtain these permits, business people must visit City Hall in person—one cannot get permits online.

In addition to the numerous rules governing signs put on private property, any architectural feature that extends over the sidewalk require zoning by-law amendments that must be approved by the appropriate committees, and sometimes also by the City Council as a whole. No such
projection exists in this streetcorner; but a building projection that created a “gated community” aesthetic for the university at a nearby location (Harbord Street) had to obtain City Council permission “to permit illuminated signage on condition that the owner [the university] enter into an Encroachment Agreement with the City of Toronto with respect to the glazed cornice . . .” (Variance from chapter 297, Signs, of the former City of Toronto Municipal Code, 1999).

3. Sidewalk trees

As Irus Braverman’s comprehensive study of the governance of urban space through trees has shown, the entities placed in sidewalk planters or small holes covered by grates are more than biological: they are a hybrid of vegetable matter and regulatory material (2008). An elaborate set of rules creating compromises between the conflicting logics of the urban foresters and arborists on the one hand and the engineers on the other determines the size, shape, and location of the small holes in which sidewalk trees are planted in Toronto, as in other North American cities. The governance of the placement of street trees and of the small bits of earth in which they are planted is part of what administrative law scholars would call regulation rather than law. Each city has its own complicated set of rules governing the trees themselves, how deeply they are planted and what the surrounding area looks like, and these are classified as technical standards rather than law. But from the broader law and society perspective, technical tree standards, which Braverman’s research shows are enforced more rigidly than zoning by-laws, are also part of the legal apparatus that literally constructs the experience of walking on the sidewalk.

4. Street food

The only street foods one can buy in the vicinity of St George and Bloor are hot dogs and sausages. The license to sell previously frozen hot dogs and sausages (including veggie dogs and halal beef sausages), from carts that have to be taken away each evening, is municipal, and costs many thousands of dollars per year (depending on the location). The number of licenses is frozen at 176, regardless of demand. Each license is both site-specific, so that the vendor cannot move even a few feet along the sidewalk to avoid sun or rain, and food-specific (a provincial public health by-law restricts cart-based vendors to hot dogs, sausages and condiments). A few larger trucks exist that have licenses to sell either Chinese food or chips, but there are no more than a handful of such licenses (see Toronto Municipal Code chapter 315).

Between 2007 and 2009 much energy was spent by Toronto vendors, groups supporting ethnic and healthy foods, and one lone city councilor, in reforming the compulsory hot dog rule (Valverde 2008). Countless hours were spent by municipal officials and activists at meetings, public events, and consultations. And much time was spent in the Council
debating whether the city ought to commission and own special carts to accommodate foods other than hot dogs or whether private enterprise should be encouraged. Health officials, on their part, demanded that only food made in already approved (that is, commercial) kitchens be allowed—thus shattering the dream of the ethnic/health food activists, who imagined that with a legal reform, new immigrants with cooking skills could set up their own street food-vending businesses. The cumbersome process, and the high licensing fees demanded by the city, meant that when the city finally unveiled its “a la cart” ethnic food program during the long weekend of May 2009, a mere eight vendors were available to offer street food other than hot dogs to Torontonians. Clearly, the hot dog vendor who has for years sold hot dogs and sausages to university students at our street-corner need not be afraid of losing his customers to purveyors of falafels and burritos.

Finally, while no ice cream vendor has a permit for our particular street-corner, the ice cream truck-based vendor licensed to work two blocks away, outside the Royal Ontario Museum, is regulated not only by the same arcane vending license system that regulates hot dog vendors but also by a specific section of the vending by-law that prohibits playing the distinctive ice-cream truck music after dusk. He was fined for this offense even though there are no residences in the vicinity, and even though a police officer chose the night of the great black-out of August 2003—when ice-cream trucks were doing well because they do not need power, unlike every other business—as the time to enforce the ice-cream truck music by-law section (personal communication D, 2003).

5. Begging

For the past ten years sidewalk activity in Toronto and elsewhere in Ontario has been regulated by the Safe Streets Act, passed by the neo-conservative provincial government of the late 1990s but not repealed by the Liberals, who have been in power for seven years. This law prohibits begging near the bank machine at the north east corner as well as “aggressive panhandling” anywhere. It also prohibits more enterprising activities, including squeegeeing (Hermer and Mosher 2002).

6. Entertainment

In Toronto, musicians are allowed to use amplification to perform in public only rarely—in programmed events at some designated squares
and parks. An official told me that a license to play music (acoustically) and collect donations can be given to anyone who asks, but one rarely sees such entrepreneurs, which suggests that if there is such a permit system, nobody knows about it. When this official was asked whether police would move a busker along due to the risk of obstructions on the sidewalk, she responded that musicians might indeed be made to move from sidewalks, but would be free to play in parks. However, neither the physical layout nor the customary law of Toronto parks encourage giving money (Toronto parks follow the Anglo-Protestant theory of parks as restful refuges from commercial life). Musicians can and do play for donations inside the subway—the only place one can actually play instruments throughout the long winter months—if they pass an audition and obtain a license; but the number of such licenses is strictly limited. Only a minority of subway stations have regular buskers.

7. Using the sidewalk to rest

Lying down or sleeping on the sidewalk is not forbidden by any law of general application in Toronto, unlike in some other cities. However, camping is not allowed either on sidewalks or in city parks and it is difficult to sleep or even take a short nap outdoors, other than in the short summer months, without some kind of protection. (Whether cardboard boxes or sleeping bags count as camping is a contentious legal question, I was told by an activist who advocates for homeless Torontonians). Even if one is awake, merely sitting on the sidewalk can be regarded as obstructing pedestrian traffic. During legal strikes, police always force picketers to move along, even if they just move in a small circle: standing for any length of time is not allowed. But in the interests of legal accuracy it should be noted that the phrase commonly used by local activists, “the criminalization of homelessness” is accurate for some American cities but not quite accurate for Toronto. Neither the criminal law nor provincial laws prohibit loitering or begging—or even sleeping, although sleeping in public spaces is highly restricted by parks by-laws and by site-specific by-laws (e.g. City Hall square has its own by-law, which bans singing, tree-climbing, and sleeping among other activities).

More importantly, while criminal and quasi-criminal statutes are indeed often used against the poor, the Trespass to Property Act seems to be more important in the everyday life of Toronto’s urban indigent poor than the criminal law. It is this act that authorizes private security guards as well as police to move people who are sleeping in privately owned spaces such as doorways, stairs, parking garages, and subway stations (the latter are owned by the Toronto Transit Commission, a city body that is nevertheless a landowner like any other). It seems that the logic of moving along triggered by the Trespass to Property Act is more frequently used to govern visibly indigent people than actual criminalization.
8. Skateboarding

Again in contrast to other cities, Toronto does not prohibit skateboarding in any legal code of general application. However, much ingenuity has been used, along St. George Street as well as in numerous other inviting spaces, to make skateboarding physically impossible. The decorative quasi-benches that contain the flowerbeds on St George have been fitted with pieces of metal for the precise purpose of making it impossible for skate boarders and roller-blade virtuosos to use those spaces. The metal bits could be seen as a coercive substitute for properly passed laws—but a more Latourian perspective would suggest that since much of the legal apparatus that shapes and governs urban street life is not in fact liberal (as discussed above under municipal sovereignty, and below under property standards) there is perhaps little point in making an ontological distinction between the metal bits that make skateboarding impossible (without rendering it illegal) and the legal bits that ban all foods other than hot dogs from the sidewalks of St. George and Bloor.

9. Snow removal: making niceness compulsory

In the winter, large posters on public transit shelters exhort Toronto-nians: “Be nice! Clear the ice!” The posters fail to mention that it is actually compulsory for owners and occupiers to shovel snow and remove ice from sidewalks abutting their property within 24 hours of a snowfall. (Elderly or disabled people can apply to have a city crew do the job). Students of the French ancien régime might recognize the clearing snow and ice rule as a corvée, an illiberal practice by which sovereigns demand that subjects personally carry out public works. But, perhaps because the current fiscal crisis of the city makes it unlikely that citizens will rise up and demand that public sidewalks be cleared by paid public employees, there have been no visible challenges to the prevailing notion that Canadian niceness is what causes citizens to engage in public works and laboriously break up ice after a sudden temperature drop causes slush to harden—a frequent event in Toronto’s winter season.

The roadway

The inventory of regulatory forces converging on Toronto’s sidewalks may have given an Orwellian impression of sidewalk life. However, sidewalks are veritable gardens of edenic freedom compared to roadways. As Alan Hunt has documented, the regulation of traffic has arguably played a great role in enabling what US law calls “the police power of the state” to proliferate (Hunt 2006). Toronto is no exception.

1. Walking/marching

It is illegal to walk on the paved roadway except at designated crosswalks, and then only when the light is green. These are very significant
restrictions on political freedom. The only demonstrations that can be
held without a series of prior permits are those tiny enough to fit into
Toronto’s notoriously narrow sidewalks, or on the designated protest
space that is the front lawn of the provincial legislature (where protest-
ers, surrounded by four lanes of fast traffic on either side, have little
chance of being heard or seen).

If one wants to take to the streets in Toronto, one will need to first
go to the police services’ traffic department to obtain a “road closing
permit.” Then one needs to proceed to a different department to obtain
a “parade permit.” Police being generally on the side of vehicular traffic,
they will do their best to limit the time of the march/demonstration, and
will often suggest that marches proceed on streets that are not very
busy—which of course defeats the purpose of demonstrating. In addition,
organizers of large events can be told to obtain liability insurance (so that
anyone injured tripping on the sidewalk sues the organizers, not the city).
Years ago I was involved in organizing a large peace demonstration,
and we spent many days frantically phoning around to find a sup-
portive organization that would “loan” its liability insurance to the
demonstration—finally, the demonstration was saved by the United
Church of Canada, which graciously offered to be the official sponsor of
the demonstration.

2. Driving

The regulation of traffic is a much neglected topic in the sociology of law.
But traffic stops and driving licenses play a huge role not only in racial
profiling but in the illiberal governance of people and activities. Since
one can only drive by the grace of having a license—which is, in law,
always a privilege—identification can be demanded from drivers (but not
from pedestrians). And since vehicles too have their own license, which
again is a conditional privilege like all licenses (Valverde 2003), cars can
be stopped and in many instances searched, whereas pedestrians
cannot—in Canada at any rate. I have not personally seen police stop-
ing cars or drivers at this intersection to ask for identification or look for
drugs or guns; but the absence of enforcement—especially its absence
during an urban space-time unit in which university people and tourists
predominate—does not mean that law’s power is diminished, as we shall
see below in the case of the property standards by-law. Law’s power does
not suddenly become stronger when an instance of racial profiling takes
place. In fact, law’s power to govern citizens illiberally through vehicle
licensing and drivers’ licensing is furthered by the fact that not all drivers
or all vehicles are equally likely to be stopped, and not all intersections
are equally likely to be under surveillance by the drug squad or other
police. If white middle-aged university professors like me were as likely to
be stopped as they drive as young black men, the coercive underpinnings
of the laws that govern urban drivers and their vehicles would perhaps
begin to be scrutinized.
3. Parking

From the point of view of law’s effects on urban experience, it is very significant that municipalities are authorized to demand substantial amounts of money from citizens for the privilege of temporarily leaving their vehicles on streets that are presumably already paid for by the very same citizens, qua taxpayers. It is also significant that while complaining about the high cost of parking is a regular indoor sport, in Toronto as elsewhere, no legal challenges to the city’s authority have been recorded. In Toronto, the municipality has few powers to levy fees and even fines, which means that parking fees (both from street parking and from city-owned garages) is a very important source of revenue. Over the years, free parking (previously available during evenings and on Sundays) has become almost extinct. Having paid for one’s car, for the plate, for the license to drive it, and for the roadway (though taxes), citizens could be forgiven for feeling that they own the street and they should be able to park on it, at least for short periods of time that do not interfere with others’ enjoyment of the street. Yet the sovereignty of the municipal corporation is sufficiently strong as to deter potential challenges to using parking fees as a key revenue source.

Municipal regulation of privately owned buildings

The two key instruments of municipal sovereignty over private property are the zoning by-law and the property standards by-law. (U.S. cities have similar ordinances, incidentally, with the exception of Houston, which does not employ zoning). There are other important legal-technical-cultural mechanisms like sewage and water provision, gas, electricity, and telephone lines and associated legal charges, and of course municipal property tax regimes. For the sake of simplicity we will confine ourselves to the two legal tools that generally do the most work in shaping the publicly visible spaces that comprise “the street.”

1. Zoning and zoning appeals: the state of exception as the rule

On zoning, which in Toronto is arranged through a legal structure that is very similar to and probably copied from the New York City 1916 zoning ordinance, suffice it to quote a recent city staff report:

The City of Toronto currently has 43 different zoning by-laws inherited from the six pre-amalgamation municipalities. The by-laws contain over 1 million words, over 13,260 regulations, over 10,000 site-specific amendments, 1550 definitions and 276 different zones. (City of Toronto, Chief Planner’s report, March 27, 2009).
Since technical knowledge is often a useful and remunerative source of professional capital, one could hypothesize that planners and urban designers who know at least a good part of the regulatory system are keen to preserve their knowledge monopoly, and that this is the reason for the irrational complexity of the system. However, my empirical observation of planning hearings and disputes suggests otherwise. City planners admit that even they cannot possibly know all of the rules, and it is the chief planner’s office that is leading the current, 2009 campaign to rationalize and simplify zoning.

So, if professional monopoly is not the reason for the proliferation of complex (and often contradictory) rules, what is it? My research suggests that it is the legal system’s very structure, its regulatory architecture that encourages a constant proliferation of site-specific exceptions and rules that apply only to micro-spaces, and that thus, on the long run, creates the regulatory monster that is the City of Toronto zoning by-law. What U.S. planners call “spot zoning,” that is, obtaining a site-specific exception to the rules that generally govern height, density, parking spaces, uses, and other features of street life, is in Toronto the only practical way of getting ahead with development proposals. Why? Precisely because the incredibly cumbersome and geographically limited character of the zoning rules make more general, policy-driven, rational, city-wide change difficult if not impossible. A developer who is building condos in the downtown core only has an interest in ensuring that height exemptions are routinely granted by the Committee of Adjustment that hears zoning variance cases for downtown. (Toronto’s four Committees of Adjustment, composed of appointed citizens, are equivalent to U.S. zoning boards of appeal; each of the four committees operates quite independently both of the other committees and of the planning department). Given the decentralized appeals system, which routinely grants exceptions that are in keeping with exceptions recently granted by the same committee, neither a developer working on a single type of building nor neighborhood associations worried about highly local issues have any interest in looking at the city as a whole.

A curious legal-social fact that has greatly shaped the everyday life of the street in Toronto is that the exception can easily become more prevalent than the norm. On many streets in downtown Toronto, “legal nonconforming uses” (that is, properties that have been legally authorized to exist through grandfathering or though having “variances” granted by the relevant committees) are more numerous than properties that actually conform to the zoning by-law. At our intersection, the residence on the southeast corner is much taller than the official by-law allows, but in recent years very tall buildings have been routinely tolerated, as exceptions, along arterial roads such as Bloor Street, without anybody imagining that the zoning by-law itself ought to be changed. This peculiar state of exception developed over time because it is relatively easy to get exemptions, through the “Committee of Adjustment” system or, if that fails, through the provincially appointed Ontario Municipal Board, which often overrides municipal planning decisions.
and by-laws. A change in the overall zoning system, however, would have to be initiated at another scale—city council—and, most likely, approved by the provincial government, which is the real authority on planning law in almost every Canadian city (Levi and Valverde 2006). But larger-scale rationalization continues to elude Toronto zoning law and practice, not surprisingly, since virtually none of the stakeholders has an interest in overall change, in policy change. Local developers usually specialize either in suburban tracts or in downtown dense housing. Citizen groups too are overwhelmingly micro-local. The energy that might conceivably have gone into general reform, harmonization, and other forms of rationalization, goes instead into seeking particularistic solutions.

This is not an unintended effect. Edward Bassett, the lawyer who devised the first U.S. zoning by-law (for New York City, in the 1910s), realized that without a mechanism that would grant exceptions fairly easily, private owners would combine to ensure that courts (which in the U.S. were often very protective of private property) would eventually invalidate whole zoning by-laws and perhaps even abolish the municipal power to zone (Haar and Kayden 1989; Makielski 1966).

The particularistic logic of exceptionalism and one-off compromise has produced at least some of the built forms one sees at our intersection (perhaps all four, but I have not conducted the archival research that would be necessary to determine this). First of all, the Bata Shoe Museum projects a little over the sidewalk due to its postmodern cantilevered wall, and so would have needed a zoning variance and probably also an encroachment agreement with the city. Secondly, on the other side of St. George Street, the university’s plan to build a much-needed new residence for students (a very tall building on the southeast corner) was held up at the Committee of Adjustment by Ms. Sonya Bata of the Bata Shoe Museum, the property across the street (personal communication, B, 2007). Ms. Bata and her lawyer provoked very lengthy legal delays, using the zoning appeals mechanism and its mandatory “public consultation” process. These site-specific tactics meant that the university had to spend vast sums providing temporary (hotel) accommodation for the hundreds of students who had been promised rooms in the new residence. The university also had to somewhat reduce the size of the residence, since, in keeping with their usual practice, the city planner and the city committee that had to grant permission for the residence did not enforce the letter of the (zoning) law but rather sought a compromise between the university’s needs and the neighboring owner’s objections about potential loss of sunlight (even though the museum has a tall blank wall facing the residence).6

2. Property standards

Toronto’s by-law enforcement officers can demand that private buildings be fixed up and maintained. If owners do not carry out repairs, the city can hire contractors, have the work done, and put the cost on the
property tax bill. Generally this is only done when neighbors make repeated complaints and when there are at least some safety hazards involved. Occasionally, however, purely aesthetic repairs are carried out and charged to the owner. In 2007, a particularly vocal city councilor repeatedly called city inspectors to have the lawns and gardens of rooming houses in his district cleaned up and tidied, with the cost being put on the rooming house owner’s tax bill.7

One section of the property standards by-law concerns “grass and weeds.” For many decades, weeds had to be removed, and the only entities allowed on one’s front yard were mowed grass and flowers. In the late 1990s a Ms. Sandra Bell took the city to court, with the support of the “natural gardening” movement, to challenge this by-law. Very unusually, Ms. Bell won the case. However, the by-law was not actually struck down. Rather, the city merely created an exception to allow for “consciously planned” and “naturalized” gardens (Bell v City of Toronto, 1996). Ungardened yards remain illegal in Toronto, and it is the private owner’s responsibility to prove that a yard that looks weedy to an inspector is actually a planned naturalized garden.

None of the four properties at each of our intersection’s corners have unkempt gardens or rickety porches. They are all well-maintained institutional buildings catering to University of Toronto students, university professors and staff, tourists visiting the city, and trendy locals who like to frequent the two “Bar Mercurio” locations. But just as the zoning by-law exercises its power silently and continues to shape the city’s spaces even when no zoning variances are being negotiated, so too the property standards by-law, which like many other city by-laws combines aesthetic and functional rationalities in a single legal text, quietly shapes the appearance of the buildings and yards even in the absence of officers enforcing the graffiti or long weeds by-laws.

Conclusion

Mitchell Duneier’s exemplary study of sidewalk selling in Greenwich Village in the 1990s showed that the relative order and harmony experienced by vendors and their customers in the early 1990s was as much a product of the relevant ordinance as the competition and disorder produced in the later, post-Giuliani period by draconian ordinances (1999). The power of law was more visible in that second period, since a legal change banning almost all sidewalk vending caused previously cooperative vendors to compete with one another for customers and space. But the law’s power did not increase, it was simply used differently, more visibly. In general, urban space-time units which look peaceful, for instance, Jane Jacobs’ 1950s Greenwich Village, are as much the product of law as spaces in which one can directly witness illegally built shacks being razed or vendors and panhandlers being removed by police (Azuela 1987; Fernandes and Varley 1998). Jacobs’ Village, as Duneier reminds us, was in no small measure a product of

For many decades, weeds had to be removed, and the only entities allowed on one’s front yard were mowed grass and flowers.
nation-wide as well as local regulatory practices that kept blacks “in their place” and out of Manhattan. Similarly, the relative order and peace visible at the corner of St. George and Bloor on a sunny May afternoon in 2009 are the products not only of global economic forces and nation-wide cultural trends but also—to an extent that cannot be quantified but is definitely non-trivial—by the force of local law. Street scholars of the future may thus do well to include legal structures and legal tools in the scope of their research. The legal bits are as much part of the fabric of street life as the cultural, the economic, and the architectural bits.

Notes

1Sharon Zukin’s recent article in this journal is a case in point, since the article compares “state-led” gentrification in Harlem to “market-led” gentrification in Brooklyn (2009). While for purposes of that article these rough categories may suffice, if one wanted to understand exactly which state agencies led which gentrification processes one would have to pore over the legal details of many ordinances, agreements, and contracts. “The state” does not do anything; specific legal mechanisms do, however.

2Jane Jacobs initially distinguished between the micro-neighborhood used by most residents every day and what she calls “the district”, a somewhat larger area that can coincide with the boundaries of named neighborhoods (Jacobs 1961:114–5). In Toronto, districts in this sense have become extremely popular in recent years, with the local daily newspaper organizing a months-long participatory debate on the number of such grassroots-defined neighborhoods (originally set by the city at 173 but recently raised to 239) and their precise boundaries. See special insert map, The Toronto Star Sunday August 30, 2009; and see the “neighborhood profiles” section of the City of Toronto website (www.toronto.ca).

3I attended many of these and spoke at a public forum sponsored by the group “multistory”, which was very active in the reform of the food vending by-law in 2006–07 but has become inactive.

4No map of the whole city showing “legal nonconforming uses” could be located, but a planner told me that my own estimate that over half of many downtown streets, residential as well as commercial, consisted of “exceptions” was not inconsistent with her experience as a planner (personal communication, G, 2006).

5Systematic observation of all four Committees of Adjustment was carried out during 2006–08.

6For a critical account of the university’s approach to urban planning, which unfortunately but typically ignores legal mechanisms, see Reid (2005).

7Ride-alongs with by-law enforcement officers from the Municipal Licensing and Standards department were carried out over the summers of 2004, 2005, and 2007.

References Cited

Azuela, Antonio

Ben-Joseph, Eran
Blomley, Nicholas  
2007 How to turn a beggar into a bus stop: Law, traffic, and “the function of the place.” Urban Studies 4(9):1697–1712  

Braverman, Irus  

Caro, Robert A.  

City of Toronto  
2009 Draft new zoning by-law: Summary and public consultation process. (Chief Planner memo to Planning and Growth Management Committee, March 27, 2009).

Deakin, Nicholas and John Edwards  

Duneier, Mitchell  

Ewick, Patti and Susan Silbey  

Fainstein, Susan  

Fernandes, Edesio and Ann Varley  

Frieden, Bernard and Lynne B. Sagalyn  

Haar, Charles, and Jerold Kayden, eds.  

Hermer, Joe and Janet Mosher  

Hunt, Alan  

Isin, Engin  

Jacobs, Jane  

Latour, Bruno  
Levi, Ron and Mariana Valverde
2006 Freedom of the City? Canadian cities and the quest for governmental status.

Low, Setha M, ed.

Makielski, S.J.

Perin, Constance

Philippopoulos-Mihalopoulos, Andreas

Reid, Dylan

Ruppert, Evelyn

Santos, Boaventura de Sousa

Valverde, Mariana

Zukin, Sharon