Chapter 1

The Annihilation of Space by Law: The Roots and Implications of Anti-homeless Laws in the United States

Don Mitchell

"Globalization" is a powerful ideology. The popular media are enthralled with the idea. Space, it seems from reading the papers and watching the news, has simply ceased to exist. [. . .]

Yet as a number of geographers have shown [. . .] globalization is in fact *not* predicated on the "annihilation of space by time," no matter how evocative that metaphor may be, but rather on the constant production and reproduction of certain *kinds* of spaces. For capital to be free, it must also be fixed in place. [. . .] Not just at the global scale, but in all the locations that capital does business, perpetual attempts to stave of crisis by speeding up the circulation of capital lead to a constant reconfiguration of productive relations (and productive spaces). Together these trends – toward rapid turnover, and toward the concomitant appearance of globalization – create a great deal of instability for those whose investments lie in fixed capital, especially the fixed capital of the built environment. While capital could never exist without some degree of fixity – in machines and buildings, in roads and parks – the very unevenness of capital mobility lends to places an increasing degree of uncertainty. Investment in property can be rapidly devalued, and local investors, property owners, and tax-collectors can be left holding the bag. Or not. Together or individually, they can seek to stabilize their relationship with peripatetic capital by protecting long-term investment in fixed capital through tax, labor, environmental, and regulatory inducements. But this process in itself can lead to a frenetic place-auction, as municipalities and states compete with each other both to attract new investment and to keep local capital "home."

This is precisely where the ideology of globalization is so powerful: by effectively masking the degree to which capital must be located, the ideology of globalization

allows local officials, along with local business people and property owners, to argue that they have no choice but to prostrate themselves before the god Capital, offering not just tax and regulatory inducements, but also extravagant convention centers, downtown tourist amusements, up-market, gentrified restaurant and bar districts, and even occasional public investment in such amenities as museums, theaters and concert halls. Image becomes everything. When capital is seen to have no need for any particular place, then cities do what they can to make themselves so attractive that capital – in the form of new businesses, more tourists, or a greater percentage of suburban spending – will want to locate there. If there has been a collapse of space, then there has also simultaneously been a new, and important reinvestment in *place* – a reinvestment both of fixed (and often collective) capital and of imagery. For Kirsch (1995:529) a world thus structured leads to the obvious question: "what happens to space *after* its collapse; how do these spatiotemporal transformations impact our everyday lives . . . ?"

For many cities in the United States, the answer to this question, quite perversely, has led to a *further* "annihilation of space" – this time not at the scale of the globe and driven by technological change, but quite locally and driven by changes in law. In city after city concerned with "livability," with, in other words, making urban centers attractive to both footloose capital and to the footloose middle classes, politicians and managers of the new economy in the late 1980s and early 1990s have turned to what could be called "the annihilation of space by law." That is, they have turned to a legal remedy that seeks to cleanse the streets of those left behind by globalization and other secular changes in the economy by simply erasing the spaces in which they must live – by creating a legal fiction in which the rights of the wealthy, of the successful in the global economy, are sufficient for all the rest. Neil Smith (1996:45) calls this the "revanchist city" because of what he sees as a horrible "vengefulness" – by the bourgeoisie against the poor – that has become the "script for the urban future." Whatever the accuracy of this dystopian image (and it seems quite an acute reading to me), cities seem to have taken Anatole France at his word, ignoring the clear irony in his declaration that the law, in all of its magisterial impartiality, understands that the rich have no more right to sleep under bridges than do the poor. Such irony can only be so easily ignored if we somehow also agree, in the "impartial" manner of the law, that the poor have no greater need to sleep under bridges – or to defecate in alleys, panhandle on streets, or sit for a length of time on park benches. For this is what the new legal regime in American cities is outlawing: just those behaviors that poor people, and the homeless in particular, must do in the public spaces of the city. And this regime does it by legally (if in some ways figuratively) annihilating the only spaces the homeless have left. The anti-homeless laws being passed in city after city in the United States work in a pernicious way: by redefining what is acceptable behavior in public space, by in effect annihilating the spaces in which the homeless *must* live, these laws seek simply to annihilate homeless people themselves, all in the name of recreating the city as a playground for a seemingly global capital which is ever ready to do an even better job of the annihilation of space.

The purpose of this paper is to explore the nature and implications of antihomeless laws – and their relationship to the ideology of globalization and "livability" – in four main areas. First I will examine the changing legal structure of public space in American cities, focusing specifically on the rash of laws passed in the

1980s and 1990s that seek to limit the actions of homeless people. This section will begin the examination of the implications of these laws by questioning not only the discourses surrounding the laws, but also the effect the laws have on the freedoms accruing to homeless people. I will show how these laws attempt not just the annihilation of space, but also the annihilation of the people who live in it. Second I will show how these changes in the legal structure of public space serve an increasingly nervous bourgeoisie as it seeks to grapple with insecurities endemic to the economy. This section explores some of the economic roots of anti-homeless legislation. The ways in which economic logics come together with a language of morality to recreate the public sphere after an image of exclusivity is the topic of the third section. My argument here is that anti-homeless laws both reflect and reinforce a highly exclusionary sense of modern citizenship, one that explicitly understands that excluding some people from their rights not only as citizens, but also as thinking, acting persons, is both good and just. Here, then, not only do I explore the implications of these laws in terms of the effects on citizenship and the public sphere; I also complicate the economic analysis of the previous section by showing how the laws also have roots in long-standing ideological or cultural concerns about the relationship between the deviant poor and the up-standing bourgeoisie. In the final section I show that, lurking within the discourses surrounding anti-homeless laws is a concern with urban – or more broadly landscape – aesthetics. The recent wave of anti-homelessness, and the laws that reinforce it, raise important and related questions of, first, the relationship between aesthetics and economy, and second, the relationship between public space and landscape. At the risk of oversimplifying, I will suggest that public space and landscape should be seen as oppositional ideals, oppositional ideals that say much about how we regard the construction and purpose of the public sphere.

Anti-homelessness Laws and the Annihilation of the Homeless

> No one is free to perform an action unless there is somewhere he is free to perform it. . . . One of the functions of property rules, particularly as far as land is concerned, is to provide a basis for determining who is allowed to be where (Waldron, 1991:296).

Consider this incomplete but by now quite familiar litany, a litany that shows so clearly how the annihilation of space by law is proceeding:

- In San Francisco, laws against camping in public, loitering, urinating and defecating are being enforced with a new-found rigor even as the city repeatedly refuses to install public toilets.
- In Santa Cruz, Phoenix, St. Petersburg and countless other cities, it is illegal to sleep in public.
- In Atlanta and Jacksonville, it is a crime to cut across or loiter in a parking lot (in Atlanta in May, 1993, at least 226 people were arrested for "begging, criminal trespass, being disorderly while under the influence of alcohol, blocking a public way or loitering in a parking lot" [*Atlanta Journal and Constitution* July 12, 1993]).
- In New York, it is illegal to sleep in or near subways, or to wash car windows on the streets.

- In February 1994, Santa Cruz contemplated following Eugene, Oregon and Memphis, Tennessee's lead by requiring beggars to obtain licenses, a process that would include fingerprinting and photographing potential beggars, and requiring them to carry their photo-license at all times.
- In Baltimore, police were empowered to "move along" beggars even as it found its aggressive panhandling law overturned by a federal judge.
- In May, 1995, Cincinnati made it illegal to beg from anyone getting in or out of a car, near automatic teller machines, after 8 pm, or within six feet of any storefront; the city also made it illegal to sit or lie on sidewalks between 7 am and 9 pm; Seattle and a dozen other cities have similar laws.

The intent is clear: to control behavior and space such that homeless people simply cannot do what they must do in order to survive without breaking laws. Survival itself is criminalized. And as David Smith (1994:495) argues, the "supposed public interests that criminalization is purported to serve" – such as the prevention of crime – "are dubious at best." Instead, there are, as we shall see, numerous other reasons for criminalizing homelessness, reasons that revolve around insecurity in an unstable global market and a rather truncated sense of aesthetics developed to support the pursuit of capital. Sometimes, as in the Seattle example outlined below, authors of anti-homeless legislation are quite honest in their reasoning, even if they still like to wrap that reasoning in a mantle of crime prevention. The hope is simply that if homeless people can be made to disappear, nothing will stand in the way of realizing the dream of prosperity, social harmony, and perpetual economic growth. Anti-homelessness legislation is not about crime prevention; more likely it is about crime invention. [. . .]

Sleepless in Seattle

[. . .] [T]he cutting edge for these sorts of restrictions probably rests with Seattle [. . .].

As early as 1986, Seattle had passed an aggressive panhandling law. The law was later declared unconstitutional. In any event, City Attorney Mark Sidrin was not content with its effectiveness, and therefore pushed for a suite of new laws in 1993 that outlawed everything from urinating in public to sitting on sidewalks. The new laws further gave the police the right to close to the public any alley it felt constituted a menace to public safety. Sidrin argued that such further restrictions on the behavior of homeless people (that is laws closing spaces used by the homeless to activities the homeless must do there) was necessary to assure that Seattle did not join the cities of California as "formerly great places to live." The danger was palpable, if still subtle:

> Obviously the serious crimes of violence, the gangs and drug trafficking can tear a community apart, but we must not underestimate the damage that can be done by a slower, less-dramatic but nonetheless dangerous unraveling of the social order. Even for hardy urban dwellers, there comes a point where the usually tolerable "minor" misbehaviors – the graffiti, the litter and stench of urine in doorways, the public drinking, the aggressive panhandling, the lying down on the sidewalks – cumulatively become intolerable. Collectively and in the context of more serious crime, they create a psychology of fear

> that can and has killed other formerly great cities because people do not want to shop, work, play or live in such an environment (Sidrin, 1993).

The logic is fascinating. It is not so much that "minor misbehaviors" are in themselves a problem. Rather, the context within which these behaviors occur ("more serious crime") makes them a problem. The answer then seems to focus not so much on addressing the context; instead, "[t]o address the misbehavior on our streets, we need to strengthen our laws. We need to make it a crime to repeatedly drink or urinate in public, because some people ignore the current law with impunity. . . ." (Sidrin, 1993). Sidrin recognizes that "law enforcement alone is not the answer" and thus supports expanded services for the homeless. "At the same time, however, more services alone are also not the answer. Some people make bad choices" – such as the "choice" to urinate in public; to sit on sidewalks. "We also need to address those lying down day after day in front of some of our shops. This behavior threatens public safety. The elderly, infirm and vision impaired should not have to navigate around people lying prone on frequently congested sidewalks."

There is another, perhaps more important, danger posed by those sitting and lying on streets: "many people see those sitting or lying on the sidewalk and – either because they expect to be solicited or otherwise feel apprehensive – avoid the area. This deters them from shopping at adjacent businesses, contributing to the failure of some and damaging others, costing Seattle jobs and essential tax revenue" (Sidrin, 1993). Sidrin argues in the end that homeless people in the streets and parks "threaten public safety in a less-direct but perhaps more serious way. A critical factor in maintaining safe streets is keeping them vibrant and active in order to attract people and create a sense of security and confidence." And security is precisely the issue:

> If you were to write Seattle's story today, you might borrow Dicken's memorable opening of "A Tale of Two Cities," "It was the best of times, it was the worst of times." From Fortune Magazine's No. 1 place to do business to the capital of "grunge," from high-tech productivity perched on the Pacific Rim to espresso barristas on the corners, it is the best of times in Seattle. We're even a good place to be sleepless.

Especially if you are homeless. Under Sidrin's proposals, exceptions to the "no sitting" provisions would be made for "people using sidewalks for medical emergencies, rallies, parades, waiting for buses or sitting at cafes or espresso carts" (*Seattle Times* Aug. 28, 1993). The target of these laws is obvious. And their effect was both predictable – when enforcement was emphasized downtown, many homeless people moved to outlying business districts, prompting numerous complaints from merchants in those areas – and important to understand. To the degree that laws can annihilate spaces for the homeless, they can annihilate the homeless themselves. When such anti-homeless laws cover all public space, then presumably the homeless will simply vanish.

The annihilation of people by law

Arguing from first principles in a brilliant essay, Waldron shows that the condition of being homeless in capitalist societies is most simply the condition of having no place to call one's own. "One way of describing the plight of a homeless individual might

be to say that there is no place governed by a private property rule where he is allowed to be" (Waldron, 1991:299). Homeless people can only be on private property – in someone's house, in a restaurant bathroom – by the express permission of the owner of that property. While that is also true for the rest of us, the rest of us nonetheless have at least one place in which we are (largely) sovereign. We do not need to ask permission to use the toilet or shower or to sleep in a bed. Conversely, the only place homeless people may have even the possibility of sovereignty in their own actions is on common or public property. As Waldron explains, in a "libertarian paradise" where *all* property is privately held, a homeless person simply could not *be*. "Our society saves the homeless from this catastrophe only by virtue of the fact that some of its territory is held as collective property and made available for common use. The homeless are allowed to *be* – provided they are on the streets, in the parks, or under bridges" (Waldron, 1991:300).

Yet as city after city passes laws specifically outlawing common behaviors (urinating, defecating, standing around, sitting, sleeping) in public property:

> What is emerging – and it is not just a matter of fantasy – is a state of affairs in which a million or more citizens have no place to perform elementary human activities like urinating, washing, sleeping, cooking, eating, and standing around. Legislators voted for by people who own private places in which they can do these things are increasingly deciding to make public places available only for activities other than these primal human tasks. The streets and the subways, they say, are for commuting from home to office. They are not for sleeping; sleeping is what one does at home. The parks are for recreations like walking and informal ball-games, things for which one's own yard is a little too confined. Parks are not for cooking or urinating; again, these are things one does at home. Since the public and private are complementary, the activities performed in public are the complement of those performed in private. This complementarity works fine for those who have the benefit of both sorts of places. However, it is disastrous for those who must live their whole lives on common land. If I am right about this, it is one of the most callous and tyrannical exercises of power in modern times by a (comparatively) rich and complacent majority against a minority of their less fortunate fellow human beings (Waldron, 1991:301–2).

In other words, we are creating a world in which a whole class of people simply cannot be, entirely because they have no place to be.

As troublesome as it may be to contemplate the necessity of creating "safe havens" for homeless people in the public space of cities, it is even more troublesome to contemplate a world without them. The sorts of actions we are outlawing – sitting on sidewalks, sleeping in parks, loitering on benches, asking for donations, peeing – are not themselves subject to total societal sanction. Indeed they are all actions we regularly and even necessarily engage in. What is at question is where these actions are done. For most of us, a prohibition against asking for a donation on a street is of no concern; we can sit in our studies and compose begging letters for charities. So too do rules against defecating in public seem reasonable. When one of us – the housed – find ourselves unexpectedly in the grips of diarrhea, for example, the question is only one of timing, not at all of having no place to take care of our needs. Not so for the homeless, of course: a homeless person with diarrhea is entirely at the mercy of property owners, or must find a place on public property on which to relieve him or herself.

Similarly, the pleasure (for me) of dozing in the sun on the grass of a public park is something I can, quite literally, live without, but only because I have a place where I can sleep whenever I choose. We are not speaking of murder or assault here, in which there are (near) total societal bans. Rather we are speaking, in the most fundamental sense, of geography, of a geography in which a local prohibition (against sleeping in public, say) becomes a total prohibition for some people. That is why Jeremy Waldron (1991) understands the promulgation of anti-homeless laws as fundamentally an issue of freedom: they destroy whatever freedom homeless people have, as people, not just to live under conditions at least partially of their own choosing, but to live at all. And that is why what we understand public space to be, and how we regulate it, is so essential to the kind of society we make. The annihilation of space by law is, unavoidably (if still only potentially) the annihilation of *people*.

The degree to which anti-homeless legislation diminishes the freedom or rights of homeless people is not, of course, an important concern for those who promote anti-homeless laws. Rather, they see themselves not as instigators of a pogrom, but rather as saviors: saviors of cities, saviors of all the "ordinary people" who would like to use urban spaces but simply can't when they are chocked full of homeless people lying on sidewalks, sleeping in parks and panhandling them every time they turn a corner. And theirs is not simply a good or just cause; it is a necessary one. "The conditions on our streets are increasingly intolerable and directly threaten the safety of all our citizens and the economic viability of our downtown and neighborhood districts" according to Sidrin (*Seattle Times* Oct. 1, 1993). Or as columnist Joni Balter put it "Seattle's tough laws on panhandling, urinating and drinking in public, and sitting and lying on the sidewalk are cutting-edge stuff. Anybody who doesn't believe in taking tough steps to make downtown more hospitable to shoppers and workers wins two free one-way tickets to Detroit or any other dead urban center of their choice" (Balter, 1994). Here is the crux of the issue. Urban decline is seen to be the result of homelessness. Detroit is "dead" because people "make bad choices" and panhandle on the streets, urinate in public, or sit on sidewalks, thereby presumably scaring off not only shoppers, workers and residents, but capital too. Seattle, though perhaps in the midst of the "best of times," faces just this same fate if it does not crack down on homeless people and their bad behaviors. Capital will avoid the city, downtown will decline, Seattle will become a bombed out shell resembling Detroit or Newark. Hence, the homeless must be eliminated. [. . .]

The legal exclusion of homeless people from public space (or at least the legal exclusion of behaviors that make it possible for homeless people to survive) has increased in strength during the late 1980s and early 1990s, creating and reinforcing what Mike Davis (1991) has called for Los Angeles "a logic like Hell's." This Hellish logic is of course a response to another quite Hellish one: the logic of a globalized economy that is successful to the degree people buy into the ideology that makes their places to be little more than mere factors of production, factors played off other factors in pursuit of a continual spatial fix to ever-present crises of accumulation. It is a response, then, that seeks to re-regulate the spaces of cities so as to eliminate people quite literally made redundant by the capital the cities are now so desperate to attract.

It might seem absurd to argue that the proliferation of anti-homeless legislation is part of continual experimentation in devising a new "mode of regulation" for the realities of post-fordist accumulation. After all, the disorder of urban streets seems to

bespeak precisely the inability to regulate the contemporary political economy. But as Lipietz (1986:19) argues, a "regime of accumulation" materializes in "the form of norms, habits, laws, regulating networks, and so on that ensure the unity of the process, i.e. the appropriate consistency of individual behaviours with the schema of reproduction;" and as Harvey (1989:122) further comments, such talk of regulation "focuses our attention on the complex interrelations, habits, political practices, and cultural forms that allow a highly dynamic, and consequently unstable, capitalist system to acquire a sufficient semblance of order to function coherently at least for a certain period of time." Hence cities are grappling with two, perhaps contradictory, processes. On the one hand they must seek to attract capital seemingly unfettered by the sorts of locational determinants important during the era when fordism was under construction. That is, they must make themselves attractive to capital – large and small – that can often choose to locate there or not. On the other hand, they (together with other scales of the state) must create a set of "norms, habits, laws, regulating networks" that legitimize the new rules of capital accumulation, rules in which not only is location up for grabs, but so too do companies seek returns of greater relative surplus value by laying off tens of thousands of workers in a single shot, outsourcing much labor, resorting to temporary labor supply firms, and so forth.

These processes are continually negotiated within the urban landscape itself. Within capitalist systems, the built environment acts as a sink for investments at times of over accumulation in the "primary" circuit of capital, the productive system. This statement, however, should not be read to imply either that the landscapes thus produced are somehow "useless" to capital or that local elites, growth coalitions, or a more nebulous "local culture" has no direct influence on the form and location of such investment. Rather, investment in the built environment is cyclical, and occurs within an already developed built environment. "At any one moment the built environment appears a palimpsest of landscapes fashioned according to the dictates of different modes of production at different stages of their historical development" (Harvey, 1982:233). The key point, however, is that under capitalism, this built environment must "assume a commodity form" (Harvey, 1982:233). That is, while the use values incorporated in any landscape may (for different parts of the population) remain quite important, the determining factor of a landscape's usefulness is its exchange value. Buildings, blocks, neighborhoods, districts can all be subject, as market conditions change, as capital continues its search for a "spatial fix," as other areas become more attractive for development, to rapid devaluation. Quoting Marx, Harvey (1982:237) argues that "[c]apital in general is 'indifferent to every specific form of use value' and seeks to 'adopt or shed any of them as equivalent incarnations.'" People feel this in their bones; they understand the incredibly unstable, tenuous nature of investment fixed in immovable buildings, roads, parks, stores and factories. If, therefore, the built environment appears as "the domination of past 'dead' labour (embodied capital) over living labour in the work process" (Harvey, 1982:237), then the goal of those whose investments are securely tied to the dead is to assure that the landscape always remains a living memory, a memory that still living capital finds attractive and worth keeping alive itself. Investments – dead labor – must therefore be protected at all costs. If a built environment possesses use value to homeless people (for sleeping, for bathing, for panhandling), but that use threatens what exchange value may still exist, or may be created, then these use values must be shed. The goal for cities in the 1990s has been

to experiment with new modes of regulation over the bodies and actions of the homeless in the rather desperate hope that this will maintain or enhance the exchangeability of the urban landscape in a global economy of largely equivalent places. The annihilation of space by law, therefore, is actually an attempt to prevent those very spaces from being "creatively destroyed" by the continual and ever-revolutionary circuits of capital.

Hence, what cities are attempting is not a tried and true set of regulatory practices, but a set of experiments designed to negotiate the insecure spaces of accumulation and legitimation at the end of the twentieth century. The goal is to create, through a series of laws and ideological constructions (concerning, for example, who the homeless "really" are), a legitimate stay against the insecurity of flexible capital accumulation. That is, through these laws and other means, cities seek to use a seemingly stable, ordered urban landscape as a positive inducement to continued investment and to maintain the viability of current investment in core areas (by showing merchants, for example, that they are doing something to keep shoppers coming downtown). In this sense, anti-homeless legislation is reactionary in the most basic sense. As a reaction to the changed conditions of capital accumulation, conditions themselves that actively (if not exclusively) produce homelessness, such legislation seeks to bolster the built environment against the ever-possible specter of decline and obsolescence. It actually does not matter that much if this is how capital "really" works; it is enough that those in positions of power believe that this is how capital works. As Seattle City Attorney Mark Sidrin told the city council, the purpose of stringent controls on the behavior of homeless people is designed "to preserve the economic viability of Seattle's commercial districts" (*Seattle Times* Aug. 3, 1993); or as he wrote more colorfully in an op-ed piece, "we Seattleites have this anxiety, this nagging suspicion that despite the mountains and the Sound and smugness about all our advantages, maybe, just maybe we are pretty much like those other big American cities, 'back East' as we used to say when I was a kid and before California joined the list of 'formerly great places to live'" (Sidrin, 1993). The purpose, then, is certainly not to gain hold of the conditions that produce so much anxiety, but rather to condition people to it, to show its inevitability, and thereby, if not to positively benefit from it, then at least not to lose either. Regulation is designed not to regulate the economy, but to regulate those who are the victims of it. [. . .]

Regulating the homeless takes on a certain urgency. "Refusing" to conform to the dictates of new urban realities, homeless people daily remind us of the vagaries of the contemporary political economy. By lying in our way on the sidewalks, they require us to confront the possibility that what the collapse of time and space so celebrated in laudatory accounts of the new economy leaves in its wake is certainly not a collapse of material space: the spaces of the city still exist in all their complexity. Kirsch's (1995:529) question is worth asking again: "What happens to space *after* its collapse?" Seemingly, it gets filled by homeless people. For law-makers the immediate thing that happens after the collapse of space is that control over space within cities is seemingly lost; the long-term solution is thus to re-regulate those spaces, annihilate the homeless, and allow the city to once again become a place of order, pleasure, consumption and accumulation. The implications of such policies – such means of regulation – seem clear enough for homeless people. As Waldron (1991:324) so clearly shows, "what

we are dealing with here is not just 'the problem of homelessness,' but a million or more *persons* whose activity and dignity and freedom are at stake." But so too are we creating, through these laws and the discourses that surround them, a public sphere for all of us that is just as brutal as the economy with which it articulates.

Citizenship in the Spaces of the City: A Brutal Public Sphere

> Now one question we face as a society – a broad question of justice and social policy – is whether we are willing to tolerate an economic system in which large numbers of people are homeless. Since the answer is evidently, "Yes," the question that remains is whether we are willing to allow those who are in this predicament to act as free agents, looking after their own needs, in public places – the only space available to them. It is a deeply frightening fact about the modern United States that those who *have* homes and jobs are willing to answer "Yes" to the first question and "No" to the second (Waldron, 1991:304).

The importance of anti-homeless laws to the freedom of homeless people seems clear – and important enough. But beyond that, these laws also have the effect of helping to create and reproduce a brutal public sphere in which not only is it excusable to destroy the lives of homeless people, but also in which there seems scant possibility for a political discourse concerning the nature of the types of cities we want to build. That is, these laws reflect a changing conception of citizenship which, contrary to the hard won inclusions in the public sphere that marked the civil rights, women's and other movements in past decades, now seeks to re-establish exclusionary citizenship as just and good.

Craig Calhoun (1992:40) has argued that the most valuable aspect of Habermas' *The Structural Transformation of the Public Sphere* (1989) is that it shows "how a determinate set of sociohistorical conditions gave rise to ideals they could not fulfil" and how this space between ideal and reality might hopefully "provide motivation for the progressive transformation of those conditions." In later work, Habermas turned away from such historically specific critique to focus on "universal characteristics of communication" (Calhoun, 1992:40). Others, however, have retained the ideal of a critical public sphere in which continual struggle seeks to force the material conditions of public life ever closer to the normative ideal of inclusiveness. Calhoun (1992:37) suggests that social movements, not just dispassionate individuals, have been central in "reorienting the agenda of public discourse, bringing new issues to the fore". As Calhoun (1992:37) notes, "The routine rational-critical discourse of the public sphere cannot be about everything all at once. Some structuring of attention, imposed by dominant ideology, hegemonic powers, or social movements, must always exist." Theories of the public sphere – and practices within it – therefore, must necessarily be linked to theories of public space. Social movements necessarily require a "space *for* representation" (Mitchell, 1995:124). The regulation of public space thus necessarily regulates the nature of public debate: the sorts of actions and practices that can be considered legitimate, the role of various groups as members of a legitimate public, etc. Regulating public space (and the people who live in it) "structures attention" toward some issues and away from others.

Similarly, the perhaps inchoate interventions into public debate made by homeless people through their mere presence in public forces attention on the nature of homelessness as a public problem and not just one residing in the private bodies and lives of homeless people themselves. This is the "crucial *where*" question to which Cresswell (1996) has recently drawn our attention. Cresswell argues that regulating people is often a project of regulating the purity of space, of creating for any space a set of determinant meanings as to what is proper. Yet these proprietary places are continually transgressed; and these transgressions are just as continually redressed through dominant discourses which seek to reinforce the "network or web of meanings" of place such that the pure and proper is shored up against transgression. The object of such discourse, Cresswell (1996:59) writes, "is an alleged transgression, an activity that is deemed 'out of place' " – for example, just those sorts of "private" activities in which the homeless engage in public space, and which are now the subject of such intense legal regulation. By being out of place, homeless people threaten the "proper" meaning of place.

But there is more to it than that. By being out of place, by doing private things in public space, homeless people threaten not just the space itself, but also the very ideals upon which we have constructed our rather fragile notions of legitimate citizenship. Homeless people scare us: they threaten the ideological construction which declares that publicity – and action in public space – must be voluntary. Citizenship is based on notions of volunteerism in contemporary democracies. Private citizens meet (if only ideally) in public to form a (or the) public. But they always have the option of retreating back into private, into their homes, into those places over which they presumably have sovereign control. The public sphere is thus a voluntary one, and the involuntary publicity of the homeless is thus profoundly unsettling. Efforts like Heather MacDonald's (1995) to show the voluntary nature of homelessness are therefore crucial for another reason than that outlined above. Such efforts provide an ideological grounding for reasserting the privileges of citizenship, for reassuring ourselves that our democracy still works, despite the unsettling shifting of scales associated with the annihilating economy. As homelessness grows concomitantly with the globalization of the economy (eroding boundaries, unsettling place, throwing into disarray settled notions about home, community, nation and citizenship), homeless people marooned in public frighten us even more. Not there but for the grace of God, but rather there but for the grace of downsizing, out-sourcing corporations, go I. So it becomes vital that we re-order our cities such that homelessness is "neutralized" and the legitimacy of the state, and indeed our own sense of agency, is maintained. The rights of homeless people do not matter (when in competition with "our" rights to order, comfort, places for relaxation, recreation and unfettered shopping) simply because we work hard to convince ourselves that homeless people are not really citizens in the sense of free agents with sovereignty over their own actions. Anti-homeless legislation helps institutionalize this conviction by assuring the homeless in public no place to be sovereign.

Anti-homeless legislation, by seeking to annihilate the spaces in which homeless people must live – by seeking, that is, to so regulate the public space of the city such that there literally is no room for homeless people, recreates the public sphere as intentionally exclusive, as a sphere in which the legitimate public only includes those who (as Waldron would put it) have a place governed by private property rules to call their own. Landed property thus again becomes a prerequisite of effective citizenship.

Denied sovereignty, homeless people are reduced to the status of children: "the homeless person is utterly and at all times at the mercy of others" (Waldron, 1991:299). Reasserting the child-like nature of some members of society so as to render them impotent is, of course, an old move, practiced against women, African Americans, Asian and some European immigrants, and unpropertied, radical workers throughout the course of American history.

But such moves are not just damaging to their subjects. Rather, they directly affect the rest of us too. "[I]f we value autonomy," Waldron (1991:320) argues,

> we should regard the satisfaction of its preconditions as a matter of importance; otherwise, our values simply ring hollow so far as real people are concerned. . . . [T]hough we say there is nothing dignified about sleeping or urinating, there is certainly something inherently *un*dignified about being prevented from doing so. Every torturer knows this: to break the human spirit, focus the mind of the victim through petty restrictions pitilessly imposed on the banal necessities of life. We should be ashamed that we have allowed our laws of public and private property to reduce a million or more citizens to something like this level of degradation.

We are recreating society – and public life – on the model of the torturer, swerving wildly between paternalistic interest in the lives of our subjects and their structured degradation. In essence we are recreating a public sphere that consists in unfreedom and torture. Or as Mike Davis (1990:234) puts it in a chillingly accurate metaphor: "The cold war on the streets of Downtown is ever escalating." To the degree we can convince ourselves that the homeless are the Communists of our age, we are calling this public sphere just. And that has the effect of legitimizing not only our own restrictions on the autonomy of others, but also the iniquitous political economy that creates the conditions within which we take such decisions. [. . .]

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