

**SEEING LIKE A CITY AND SEEING LIKE A NEIGHBOUR:
OWNERSHIP AND CITIZENSHIP AT THE URBAN LEVEL**

Mariana Valverde

University of Toronto

m.valverde@utoronto.ca

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NOTE:

**THIS IS A DRAFT - THE LAST FEW PAGES ARE ESPECIALLY ROUGH.
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IMPROVED VERSION.**

Introduction

The field of urban/municipal law offers a rich variety of sites in which to explore the constitution and the effects of ownership claims that include but go beyond the strictly economic (Alexander 1999, Blomley 2003, 2005). In general, municipal governance provides numerous sites on which ownership claims, themselves a mixture of individual and collective claims, merge with claims about the well-ordered city that work as expressions of citizenship.

The legal infrastructure of municipal law facilitates these slippages from the economic to the moral to the political. One reason is that, municipally, ownership of real property has always carried with it certain civic duties. These include not only the customary duties of civic governance and philanthropic endeavours, but also the obligatory duties imposed on all real property owners (and sometimes also occupiers) by the complex web of largely (though not exclusively) municipal rules whose genealogy lies in medieval town regulations (Webb and Webb 190X). Indeed, anyone familiar with zoning law, building codes, property standards ordinances, local environmental regulations and, last but not least, the often ignored draconian system of traffic and parking laws (Hunt 2006) will be unlikely to see the urban citizen's home as his castle.

In the US, these regulations have been justified since the nineteenth century through the doctrine of 'the police power of the state' (Novak 1996, Dubber and Valverde 2006). Nevertheless, the justification exercise imposed by courts has not necessarily shrunk the actual scope of the police power (see e.g. the *Kelo* 2005 decision of the US SC¹). But appeal court cases have provided venues and languages for discussions about the conflict between individual property rights and the patriarchal logic of the police power.

By contrast, in Canada, as in the UK, there is no specific legal doctrine or legal discourse justifying and limiting the exercise of largely local powers to micromanage urban space, including privately owned space – which means that police-like powers are largely taken for granted and blackboxed (Valverde, in Dubber and Valverde 2006).

¹ Susette Kelo's challenge to a municipal decision to expropriate non-blighted properties including her house to sell to bigger corporate interests promising the city various improvements of civic benefit was carried to the Supreme Court by the "Institute for Justice", a libertarian public interest law firm. However, even this case was not straightforwardly about economic property rights: one of the key amici briefs came from urban civic guru Jane Jacobs. (Brief is No. 04-108, December 2004, *Susette Kelo et al v. City of New London*). And perhaps more to the point, Ms Kelo lost.

In Toronto, as in other North American municipalities, private yards must not be paved over for parking, and must be properly gardened (as per the 'grass and weeds' bylaw). One's own porch and garage must be kept in good repair, and must not encroach too far into the yard, since zoning bylaws regulate the ratio of built-up space to yard area. Most money-making endeavours cannot be officially conducted from one's home, since commercial 'uses' are sharply limited, spatially. And, among numerous other restrictions, all modifications that affect the size and shape of the house require explicit permission from the city and often also permission from the neighbours, via the the Committee of Adjustment [Zoning Appeals Board].

These restrictions on the 'use and enjoyment' of one's property² could be challenged, in classic liberal fashion, as impositions detracting from the sovereign individual and his Lockean property rights. That numerous private activities on private property are subject to a series of prohibitions and permissions from the local sovereign, and that citizens are forced to engage in unpaid compulsory work – such as clearing the abutting sidewalks of snow and ice³ – are legal facts with more affinity to feudalism than to liberal individualism.

Liberal individualism, including the exercise of private property rights, is hardly absent from municipal spheres: big capital often carries the day in development decisions, in Toronto as elsewhere (e.g. Ruppert 2006). However, in my empirical research I have found that ordinary Torontonians rarely invoke liberal individualism and private property rights as they participate in neighbourhood affairs and in local disputes with other citizens or with the city. My research on municipal law in action suggests that while homeowners and small business people often object to what they see as arbitrary or unjust interpretations of rules, objections to the illiberal system of municipal bylaws are rarely voiced, whether in court challenges or in the public meetings and hearings of quasi-judicial committees in which I have been conducting research. My files contain countless examples of citizens denouncing this or that decision of the planning department, the parks department, and the officials who issue municipal business licences. I have also observed citizens express an almost paranoid suspicion about officials'

² The "use and enjoyment of one's property" is – or was– the fundamental principle of private nuisance law. Private nuisance has virtually disappeared, however [refs]

³ The city of Toronto recently undertook an advertising campaign in which the coercive force of the bylaw that requires occupiers to shovel snow from sidewalks within 24 hours of a snowfall was disguised as voluntary civic cooperation: "Be nice, clear the ice!" proclaimed large signs on transit stops. Similarly, the draconian new Barcelona bylaw regulating both public space and many private uses of private spaces, whose title is "Ordenanza... de convivencia" (getting alongness ordinance).

decision-making – but, on the whole, the critique is directed more at the **bureaucratic process** than at the **legal structure** that empowers municipalities to tightly regulate the use and enjoyment of one's real property.

If individual and group challenges to the exercise of municipal police powers rarely take a principled libertarian or even liberal property-rights approach⁴, what form do they take? Citizens certainly do speak from the perspective of ownership (which merges with the 'taxpayer' identity that has seeped into Canadian discourse from south of the border in recent decades). But the claims made, both against other private parties and against city officials and politicians, overwhelmingly emphasize the "propriety" dimension of ownership (Alexander 1999) more than economic property rights.

Empirical research conducted over the past three and a half years on zoning disputes, business licensing, street vending regulation, and property standards bylaw enforcement can therefore shed light on the larger question of ownership claims that are not primarily based on economic property rights.

Before offering some observations from the research, however, a preliminary note is in order. In analyzing and sorting my field notes and other information, I have found that it is impossible to clearly separate disputes between citizens and their government, on the one hand, from horizontal disputes among 'private' parties – contrary to my initial research proposal, which clearly separated the two axes of conflict. At the micro-level – a citizen's interaction with a municipal inspector on the front yard, for example, or a community meeting about an affordable housing development – conflicts, particularly when heated, often merge all municipal authorities into a single entity, and in turn merge 'city hall'

⁴ Court challenges are almost always limited to the specific content of a police-powers regulation. E.g. *Greenbaum v. City of Toronto* (1993), one of the few Supreme Court cases to depart from the usual judicial deference, struck down the city's policy of giving store owners/occupiers exclusive rights to use the sidewalk for vending, but never raised the issue of whether the sidewalk ought to be considered as public space, instead of a space owned by the municipal corporation to which citizens only have access by express permission. One of the few challenges to city bylaws that did employ a property-rights liberty argument was the unsuccessful challenge to the Calgary taxi licensing bylaw (*United Taxi Drivers v. Calgary*, [2004] 1 SCR 485.) In this case, the Alberta court of appeal, in keeping with the generally right-wing, free-The Alberta Court of Appeal, which is unusually right-wing, struck down the licensing system, in part from a property-rights perspective, but this was definitely reversed in the Supreme Court of Canada (Levi and Valverde 2006). For comparative purposes it is important to note that the Canadian constitution, unlike the American one, does not specifically protect property rights; however, in practice municipal powers to regulate private property are not stronger in Canada.

with private parties one dislikes (e.g. the neighbour next door; the charitable organization providing affordable housing).

City officials too often erase or actively deconstruct the boundary between private disputes and breaches of public rules. For instance, one bylaw enforcement officer described a common process that he called the “can of worms effect”. This takes place when an irate citizen calls in the inspectors regarding a nuisance-type problem in the adjoining property – only to then have their own property be subjected to close scrutiny for breaches of property standards and other bylaws. Since inspectors uniformly acknowledged that few private homes in the older parts of the city of Toronto actually comply with the municipal code, any visit by an inspector can, much to the surprise of the complaining citizen, turn into an investigation of illegality. The ‘can of worms’ effect is encouraged by the legal fact that although inspectors can enter and inspect yards at will, they can only enter private homes by permission. Unable to investigate the original complaint because of lack of access, and faced with complainants who often seem unreasonable, it is easy for the inspector to re-direct their gaze to the complainant’s own premises [MS’s ride along research, 2005].

This does not mean that the public law vs private law distinction is fictional. Generally speaking, it is true that in the field of municipal ordering public law has expanded and private law has contracted: the replacement of nuisance law by environmental regulations and zoning law is perhaps the best example (Cooper 2003, Peter Hall, Valverde 2006b, LTC). But one of the key features of municipal governance, in Toronto as in other cities (e.g. Baltimore neighbourhood study), is that the machinery of public law easily becomes a site for the staging and airing of civil society conflicts and private disputes.

If the logic of public law and the logic of private law are, at the level of municipal law and politics, constantly flowing into one another, then it makes sense that ownership-type claims will not be clearly distinguished from citizenship claims. And that is indeed what one finds, empirically. The numerous, often irate citizens I have observed at public meetings speak in the name of the collective good of the neighbourhood or the city as much or more as they speak in the name of private property rights. A cynical observer might dismiss the citizenship dimension of neighbourhood battles, arguing that people simply cloak their private economic interests in the discourse of what is good for the city (Neil Smith, Mele, Zukin). This is undoubtedly true in certain explicitly political campaigns, for instance new ordinances explicitly aimed against homeless people occupying city parks (Don Mitchell 2003, Ranasinghe and Valverde 2006). However, close observation of the micro-interactions that form the daily routines of neighbourhood and municipal politics suggests that expressions of either

individual property rights or collective bourgeois interests are by no means typical of the microphysics of municipal ordering.

Indeed, the most salient finding from a systematic observation of neighbourhood disputes at the Committee of Adjustment (Zoning appeals board) was that neighbours invested a huge amount of effort and time defending existing built forms because they were there, even though the proposed changes would, in many and perhaps even most cases, actually increase property values. [RS and VI observation, summer 2005].

A hearing in which older people spoke eloquently about the value of preserving a nondescript street of postwar bungalows from richer neighbours' efforts to build somewhat larger houses was not untypical of the run-of-the-mill, routine situations adjudicated at such meetings. A larger and newer house would increase the value of the surrounding properties: but this seemed to have little effect on the conduct of those inhabitants (admittedly not representative) that chose to exercise their right to voice their vision of 'the character of the neighbourhood'. (Zoning variances must be found to be 'in keeping with the character of the neighbourhood' to be approved. All manner of evidence about this elusive entity is admissible, and to compound the too-much-evidence problem, Ontario planning law does not clearly state whether the relevant character is the historic character or that anticipated by the planning department for the near future).

At another hearing, this one at a higher-level tribunal (OMB), a small group of residents opposed a plan by the Salvation Army to buy and renovate a run-down hotel that had – according to the local police superintendent and the local city councillor – become one big crackhouse. Although the plan included spending a large amount of money on a historically accurate, extensive renovation that would very likely increase the value of surrounding properties, some people nevertheless opposed it, and even obtained the services of a lawyer to defend a claim that did not seem to have an economic basis.

Thus, while it is undoubtedly true that big capital dominates in the larger-scale development decisions, and that class interests do drive a lot of local political activity and many legal initiatives, it is important to explore those processes and disputes visible at the micro level that are not readily explained in political-economy terms.

A dynamic analysis of the making of citizenship/ownership claims

A certain set of binary or quasi-binary oppositions recurred repeatedly across all

the mini-fields in which I did research. These oppositions do not always function in strict binary fashion; and they are not neatly lined up in the way that nature-culture lines up with female-male and East versus West. So we could call them pairs of quasi-binary knowledge moves. (A fuller analysis would take these as knowledge-power moves; but analyzing the accompanying exercises of power would require a separate, non-ethnographic analysis of the broader political context, so I will here limit myself to mapping the knowledge moves that were visible to me).

The first two oppositions are found at what legal scholars would call ‘the normative level’, but which I would prefer to call the level of rationalities of governance (since, unlike norms, rationalities that pull in opposite directions are not necessarily contradictory or mutually exclusive⁵). These are:

- A. conservation versus innovation
- B. uniformity versus diversity

As we shall see these two dualisms permeate all manner of otherwise quite heterogeneous disputes and conflicts.

Having given some examples of the dynamics of these two oppositions, we will go on to examine how two other quasi-binaries of a different order, distinguishing standpoints more than values, interact with the first set. The ‘standpoint’ quasi-binaries are:

- 1) experience versus expertise
- 2) the neighbourhood versus the city.

As we shall see there are affinities linking the two sets of pairs. For example, whereas some decades ago uniformity and efficiency were virtually uncontested as norms for urban planning⁶, today, claims made on the basis of expertise about city-wide issues are much more likely to feature diversity claims than to value

⁵ In the ‘governmentality’ literature it is common to assume that as new rationalities emerge (e.g. ‘the enterprise culture’, ‘the audit society’), older rationalities disappear or at least recede into the background. However, for some years now I have argued that rationalities of governance don’t necessarily disappear; governance is not a zero-sum game, and the relation between older and newer rationalities is not necessarily competitive. (E.g. Valverde 1998, concluding chapter).

⁶ E.g. Nigel Taylor, Urban planning theory since 1945 (London, Sage, 1998); Peter Hall (); Alison Isenberg, Downtown America: A history of the place and the people who made it (Univ of Chicago 2004).

uniformity (cf. Richard Florida 2002). And while paying some dues to 'conservation', claims made on behalf of the city (especially by experts) are also much more likely to stress innovation (change as good). Claims made at the neighbourhood level from the standpoint of experience, by contrast, are overwhelmingly defensive and backward looking – at least in form.

The affinities among the two pairs of opposites are, however, weak and mobile. Some urban neighbourhoods may attempt to distinguish themselves as particularly innovative and hi-tech, for example⁷, rather than as sites of repose, familial experience, and tradition. And expert planning discourse supports a wealth of claims about neighbourhoods, as well as about cities⁸. In addition, planners' mobilization of innovative techniques from green buildings to mixed-use zoning can be aimed at the 'restoration' of historic districts – a project in which the future and the past crash into each other in Walter-Benjamin fashion⁹. Indeed, the most innovative planners in Toronto speak constantly about "restoring the grid", even when what they actually describing is the creation of brand-new streets and alleyways. And as we shall see, neighbours conjuring up images of stable, undisturbed neighbourhoods are not always actually supporting historic practices. But the dizzying dialectics by which innovation and conservation turn into one another, as expertise and experience also engage in a dance, merge and split up again, will be taken up below.

1. CONSERVATION VERSUS INNOVATION

[OMB Lascelles avenue hearing (May 29, 2006)]

A company that had long owned and operated a series of mid-town, middle-class apartment buildings had applied for permission to convert some of the buildings to condos. The city refused permission, citing a general policy to preserve rental housing stock: hence the appeal to the Ontario Municipal Board [a provincial

⁷ A noted example of this in Toronto is Liberty Village, which began as hi-tech firms renovated industrial spaces with excellent transportation links in the disused Massey-Ferguson complex, formerly the site of Canada's leading agricultural machinery factories. More recently, a small area very near where I live has been baptized as "The film district". On the popularity of hi-tech and cultural-industry enclaves, see David Bell and Mark Jayne, eds., City of quarters: urban villages in the contemporary city (London, Ashgate, 2004).

⁸ Insert info on EU policy on neighbourhoods.

⁹ W Benjamin (Theses on the philosophy of history).

planning body that can and often does overturn municipal planning and zoning decisions, and even whole bylaws and official plans]. The company's lawyer was ready to swear that tenants would not be evicted and would enjoy lower rents, since the conversion would result in a much lower property tax rate. In addition, sitting tenants would be given favourable terms if they wanted to buy their units rather than continue renting. (Many apartment building owners are currently lowering rents, incidentally, precisely because of the competition from the thousands of privately owned and individually rented condos that have been built in recent years – but whether the company would have lowered rents in any case, just to keep their tenants is not really relevant for our purposes).

A long procession of tenants, mainly white and middle-class, testified at the hearing. Most were older people (though the buildings also contained young people described as 'in their twenties'). Many spoke about living in their apartments for ten or even twenty years; many spoke about riding their bicycles on the nearby paths and about their preference for a carless urban life (the buildings are served by a subway stop and a frequent streetcar line). Some noted that they were quite happy in an older building with no dishwashers and other fancy appliances. A retired school teacher spoke about being "a part of the tapestry of Deer Park" for thirty years, and refused to believe the landlord's promises about security of tenancy. "I feel like I may have to find another place to live, and the thought of leaving people behind upsets me." Another resident: "I am a senior with a fixed income and I can't purchase a condo at this time. All my activities are between St. Clair Avenue and Eglinton. I am a member of the community centre. In the summer I can sit on the balcony and have tea. It is quiet and green..."

The landowning company's lawyer tried to counter the nostalgic images of simple but pleasant urban living with images of improvement. Noting that high municipal taxes and static rents have meant that maintenance has suffered, the lawyer promised that the fountains would be fixed, garbage disposal (a source of tenant complaints) improved, and tenants would be given long leases. "Do you understand that it is not [the company's] intention that you move?" the exasperated lawyer asked. And: "Do you understand that if there is a conversion from commercial to residential status there will be a reduction of taxes and this will go to the tenants?"

Even the city's lawyer, who was opposing the conversion, felt obliged to point out that the proposed change in use did not mean that tenants would be subject to eviction. But the tenants remained unconvinced.

Only two of the tenants who testified seemed to be at all open to the

discourse of innovation and improvement. The other ten or so were adamantly opposed – opposed to change as such. The landlord's lawyer tried to persuade them by offering a signed document (probably a long-term lease) in which lower rents would be guaranteed while improvements to the property were made. But the tenants were immovable.

I do not mean to disparage these tenants; it may be that they knew enough about their landlord, or about landlord-tenant law, to have grounds for suspicion not apparent to an observer. But the same nostalgic discourse about the pleasures of simple but secure life recurred in situations in which the claims about improvement were extremely well founded, situations in which residents really had nothing to lose.

- OMB West Lodge hearing Sept. 2006; (OMB decision 3094, November 2006).

At this hearing, regarding a plan to add a new highrise to an existing pair of extremely run-down, notoriously cockroach-ridden highrises in a low-income downtown neighbourhood, tenants were not well represented – not surprisingly since refugees and poor immigrants form the bulk of the tenant body. The lone tenant representative and the handful of supportive neighbours who had been mobilized by a local activist, however, all used the same discourse of community, tradition, habits, and stability that was deployed by the much more privileged Deer Park tenants.

An older man living very near the highrise but in a owner-occupied Victorian detached home spoke wistfully about his kids (long grown up) having learned to ride their bikes on the highrise property. When he went on to claim that the new proposed tower would cast a shadow during much of the day on his front yard, it was as if his family's wellbeing was being directly attacked by the architect's plans.

Expert witnesses for the developer tried to trump the rose coloured reminiscences by using fancy visual aids produced by computer-aided design, representations of modernity and improvement. These expensive accoutrements were deployed to argue that the whole area would be improved by the proposed plan, and that the existing single-family homes would NOT be negatively impacted. Shadow impact studies in which the images rotated slowly to simulate the progress of the day were produced to this effect¹⁰.

¹⁰ [Find info on dispute about admissibility of computer-produced videos - are some types of

As in the previously mentioned hearing, the neighbours' zero-budget invocation of tradition and community remained untouched by the avalanche of professionally produced, full-colour, animated images of innovation and improvement¹¹. This may be because in these (as in other similar situations), innovation and conservation were not competing norms. Instead, the two rationalities found themselves at the same venue, but in such a way as to remain in relatively separate spheres.

An important factor in the separate-spheres, non-competing knowledge dynamic at work here was the strikingly different formats deployed by the parties. While neighbours sometimes do employ maps and professional-looking accoutrements, most of the time their arguments use only words, and homey rather than expert words at that, words that evoke experience, community, and tradition simply by naming pleasant habitual activities: "it's nice in the summer to sit in the balcony and drink tea..."

Whether adjudicators give much weight to this kind of homey testimony is impossible to ascertain, given the multidimensional nature of the conflicts observed and the fact that a huge amount of evidence that is clearly not given much weight is nevertheless admitted. But for our purposes we need not show that such first-person reminiscences are granted weight. What matters is that their power does not seem to be touched by the deployment of the discourse of innovation, competitiveness, and improvement. As Wendy Espeland has noted in the case of claims about aesthetic and other non-quantifiable concerns made during hearings held pursuant to environmental legislation, some kinds of claims do not really compete with each other: they are simply incommensurable (Espeland 1996).

2. UNIFORMITY VERSUS DIVERSITY

The quest for uniformity of built form, of use, and of socioeconomic class

technical means of representation banned as 'deceptive'?)

¹¹ Bruno Latour has commented that studying the Conseil d'Etat reveals that "France secretes documents through all her pores" [pg ? La fabrique du droit]. Planning law venues act in a similar manner as funnels for all manner of previously existing papers: but, in addition, unlike the Conseil, they also feature large chunks of oral speech with no written equivalent, and a large number of visual representations, that are secreted elsewhere – in architects' offices, landscape firms, and planning departments – but are capable of being turned into law.

pursued vigorously by urban authorities (and by individual white families) in the 1950s and 1960s has been destabilized in numerous cities around the world, and in parts of the US and Canada as well. Mixing land uses is no longer a cardinal sin. Which particular uses are mixable with which other ones, and in which neighbourhoods or streets, is of course a large question (cf. Blomley 2004; Downtown Inc and Downtown America). But invoking uniformity no longer puts an end to all discussions of urbanism.

Ellen Berrey recently conducted a participant-observation study of how 'diversity' works in the context of neighbourhood politics. In the Chicago neighbourhood she studied, 'diversity' was regarded as the local distinction, as the feature that positively distinguished it from more staid and/or uniform spaces – though, as she shows, it was mainly white educated citizens who spoke about diversity in glowing terms, with African-American public housing tenants generally avoiding that discourse in favour of more concrete demands (Berrey 2005)

In Toronto, by contrast, diversity belongs not to one neighbourhood against another, but to the city as such as against other cities (in the rest of Canada and in the rest of the world). In Toronto, diversity is more than an ideology or a discourse: it would be more accurate to call it an ethic. A whole series of heterogeneous everyday practices are thought to be authorized by the larger rationality of diversity (which, like 'democracy' is regarded as both a fact and a value). One hears many arguments about how far to go in supporting diversity (arguments in which the quite different practices enabled by the term are rarely distinguished). And at their democratic best, on rare occasions, people even argue about the actual content of 'diversity'. However, like the Protestant ethic, the ethic of urban diversity is not weakened by the fact that there are many interpretations.

It is crucial to remember that the success of diversity as the local ethic does not mean that uniformity is no longer in fashion. Uniformity (of built form, of land use, of household composition, and of class) is in fact constantly reproduced and promoted – for instance by neighbours opposing proposed commercial and institutional uses in homeowner dominated neighbourhoods. But since in Toronto diversity has no declared enemies, opponents of proposed changes involving greater socioeconomic and architectural diversity do not talk about the virtues of uniformity. Rather, they shift feet to talk about something else entirely -- environmental concerns, the practical difficulties of finding a parking space¹², or the

¹² Complaints about insufficient street parking are probably the top issue discussed at all levels of community planning consultation. Some have argued, with good evidence, that these complaints function as a substitute for racist or other exclusionary arguments that cannot be legitimately

value of trees.

Let us give an example. (OMB hearing on Donmount August 2005).

The city's plan to replace a crumbling 1960s public housing complex (Donmount) by a mixed public-private development received much local support but was opposed by a small group of neighbours all the way to the Ontario Municipal Board (for all intents and purposes the supreme planning authority). The neighbours, living in tiny nineteenth century homes, were speaking in the name of "Riverside", one of the gentrifying micro-neighbourhoods – rediscovered by local business improvement groups– that now make up what used to be called "South Riverdale".

The Riverside association – made up of middle-aged white 'old Canadians' (that is, not recent immigrants)– knew that they could not directly oppose the city's plan to re-build Donmount Court. Direct attacks on public housing, while not having the same close link to racism that such attacks would have in the US, were not politically viable -- especially since the new plan avoided the segregation of the poor that had been a marked feature of both the architectural and the social relations of Donmount. In the new plan, publicly owned rental buildings, many of them townhouses, would be mixed throughout the terrain with privately owned condo townhouse developments, on a 50-50 basis.

The planner who was the city's chief exponent at the OMB hearings, Frank Lewinberg, was not only an eloquent speaker of new urbanist discourse of (limited) mixing but was himself a kind of emblem of urban diversity. Anyone familiar with Toronto politics would know that he was the 'father' of the mixed-use policies and practices that started in the 1970s but flourished fully only thirty or so years later. The Lewinberg-designed St Lawrence market neighbourhood, in which cooperative housing, public housing, and private condos are combined in apparent harmony, has long been a beacon for both 'densification' and 'diversification', and has been favourably cited throughout North American urban studies literatures.

The Riverside neighbours, who were only visibly diverse in regard to sexual orientation (a factor that in the local context would be far less important than

voiced [study of mosque in East York -**find ref**]. While this argument is valid, it is rather reductionist. My observation of speech about parking is that it is risky (and somewhat arbitrary) to try to separate the actual experience of driving around one's home trying to find a spot from the translation of this existing frustration into other networks [Evidence from Donmount hearing, Hamilton and Munro streets].

class, race, and immigration status), were thus facing an uphill symbolic and legal battle. The tack they chose was to abandon both social and architectural discourses altogether and talk instead about nonhumans, most notably trees¹³.

The original Donmount 'park' design contained about 40 or 50 trees; but doubling the density would require building on land on which trees had stood. This, the city argued, was not the city's intention: but because the whole neighbourhood (not just the Riverside group) had voiced strong objections to the first plan, which had featured a tall highrise, trees would have to go. "If you lie the [proposed] tower flat on the ground, you have to cut down some trees", one city witness explained.

Cutting down mature trees on private property requires a permit. The city had already issued the permits, however (though it was not clear whether proper 'tree hearings' had actually been held, as provided by the private tree bylaw). There was thus no legal hook, by the time the OMB hearing took place, by which the rich symbolism of trees could be mobilized as an actor in the Riverside group's legal network. But this did not seem to matter. A longtime resident who regularly planted and looked after flowers and bushes in a small local park was given the floor for over an hour, and at the end of her testimony the adjudicator made a point of telling her "you're a credit to your community." In addition, a professor of botany discussed at some length how trees capture CO2 emissions, and pointed out that the city's plan to plant some new (small) trees was inadequate given the small amount of living space available for sidewalk trees. Finally, trees were the subject of what the Riverside group clearly saw as their piece de resistance: a Powerpoint presentation that mainly consisted of images of the threatened trees, with a sprinkling of newspaper articles, both about urban trees in general and about the neighbourhood concern about the doomed trees.

The city's own experts spent a relatively small portion of their time defending the decision to cut down trees, preferring to talk instead in glowing terms about the new development as an embodiment of civic and architectural virtues. The tenants' association president was asked to address the tree issue, but she merely stated that trees were nice but not as important as good housing, a statement by which she sidelined herself from the tree battles altogether. (For her good public housing and trees were commensurable, but not for the

¹³ Other factors were mobilized too – from fears about the Don River flooding to the technicalities of moving fire department vehicles through the narrow streets. And parking worries certainly featured as well, such that the city felt obliged to bring in its own parking expert to demolish the neighbours' complaints. But trees took up the majority of the hearing time. Importantly, the only support that the Riverside group got beyond its own small numbers came from a campaign carried out by means of posters and leaflets that featured 'saving trees'.

environmentalists and the NIMBY neighbours).

However, clearly worried about its larger, extra-legal reputation, the public housing company conducted an extra-legal political campaign on the same level as the tree lovers' arguments. This campaign was partly conducted at the local city councillor's office, which was the site of some (nonpublic) negotiations about exactly which trees would be cut down and when. But it was also conducted through the media. A couple of months before the OMB hearing, three largish and attractive trees from Donmount were carefully removed and re-planted a block away, on the grounds of the local school. The re-planting ceremony was widely advertised, and, much to the public housing manager's relief, it featured very positively in the local newspaper with the largest circulation, The Toronto Star. This event seemed to work to assuage the public that neither the city councillor (who supported the redevelopment fully) nor the housing company would be tarred with the brush of being against trees. They had the pictures (those taken at the school and printed in the neighbourhood free weekly as well as in the newspaper) to prove that they too loved trees.

The amount of time and effort spent on the whole Donmount tree war seemed to me quite astounding, while I was in the middle of it¹⁴. However, in retrospect, it is evident that anyone opposing the new development (which probably included a significant number of those home owners who aligned their individual tastes and interests with gentrification) could put into the tree battle all the energy that could not very well be directed into open challenges to the city's decision to re-build the same number of units of public housing in a still seedy but gentrifying micro-neighbourhood. The city had successfully mobilized diversity discourse at all levels, when discussing architectural forms as well as when praising the new urbanist-approved mixing of public housing tenants and condo owners. The city, in other words, had God (diversity) on its side. The city's challengers therefore had to go beyond the human realm altogether. But, interestingly, they left the realm of social diversity only to appeal to – natural diversity. The defence of middle-class white homeownership uniformity takes circuitous routes in a city in which diversity is the ruling ethic.

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Battles about municipal ordering practices are more than conflicts among

¹⁴ As the local school parent council's representative on the Donmount Regeneration Committee, I was asked to do the (symbolic) planting. The councillor and the housing company had organized everything, from choosing the trees to calling the media; but 'the community' was officially the protagonist, not the city, so I was accordingly mobilized to my daughter's school.

substantive rationalities. They are also sites upon which competing forms of power-knowledge stake their ground. One cannot of course really separate the substantive from the formal, but substantive rationalities do operate at many levels and are borrowed by a variety of networks, so it is possible to analyze tensions and dynamics from other (less substantive) perspectives. One such tension, recurring throughout the urban disputes field, concerns the kind of authority that is invoked or presupposed by the contenders¹⁵. While sources of authority are quite diverse, the dualism of 'experience versus expertise' is probably the crucial binary.

Experience versus expertise is clearly a key dimension of contemporary epistemology in all manner of fields. By contrast, the second dualism that runs through urban disputes and that has to do more with perspective than with substantive rationality is more specific to the urban; and it is less concerned with credentials and more with scale. I am speaking of the dualism which opposes the scale of the neighbourhood to the scale of the city as a whole.

Let us see, in a few examples, how these dualisms relate to one another and to the uniformity-diversity, innovation-conservation quasi-binaries already discussed.

EXPERIENCE VERSUS EXPERTISE

Much has been said about the way in which legal and political battles have been increasingly waged by recourse to expertise, and 'evidence' more widely. My research corroborated Evelyn Ruppert's detailed account of the 'regeneration' of the Yonge-Dundas area of Toronto's downtown, in which she emphasized the crucial deployment by the city and by the interests favouring urban renewal of vast quantities of professionals as expert witnesses (Ruppert 2006). However, as she shows – but without sufficiently emphasizing this – what comes out of a professional's mouth in a hearing is not always 'expertise'. Impressions and opinions and value judgements based on extra-professional criteria form an important part of 'expert' testimony, especially at lengthy oral hearings in which there is cross examination. Similarly, nonexpert witnesses (for example, representatives of residents' groups) often go to a lot of trouble to mobilize expertise, not only by obtaining the services of sympathetic expert witnesses with professional credentials, but also by themselves learning appropriate discourses. Thus, while claims made on the basis of expertise are certainly distinguishable from and sometimes clearly opposed to claims whose

¹⁵ 'Contenders' include nonhumans: site plans and artist's drawings of proposed developments, for example, when presented in meetings and hearings, are more than tools in the hands of human actors, and become contenders themselves.

authority basis is one's nonprofessional life, the relation between the speaker and the discourse is not hard wired.

Lay participants in community meetings, in Committee of Adjustment hearings, and at the Ontario Municipal Board did not always manage to successfully convey 'expertise': but they regularly tried. Particularly when appearing at more formal and legalistic venues, neighbours making stakeholder claims frequently armed themselves with assorted scientific studies. And whether or not they were represented, they frequently also read up on law.

The efforts made by neighbours to mobilize objective knowledge often backfired, however, in ways that are reminiscent of the 'can of worms' effect described by the city official mentioned above. A good example comes from an Ontario Municipal Board hearing in which an older single lady, Ms K, attempted (with a small amount of support from other neighbours and an ill-prepared lawyer) to contest the city's decision to grant several variances to the zoning bylaw so that the Salvation Army could buy up a seedy hotel behind her house, a property abutting their existing halfway house for federal parolees. [OMB decision August 6, 2004, #1295].

Aware of the fact that personal stories about one's home and one's street are not always the best currency, especially in the legalistic context of the Ontario Municipal Board, Miss K procured a map of the city (an ordinary, foldable map, the kind one buys at gas stations) and proceeded to cover it with stick-on dots representing social agencies or institutional uses in her neighbourhood. She did this in an effort to prove, by recourse to objective fact and to a city-wide, abstract, bird's-eye-view, that there were already too many. In exemplary Charles Booth manner, she even colour-coded the residential facilities and social agencies according to function.

By the time she had the chance to introduce the map, however, several days of testimony had gone by. During that time she must have become sharply aware of the fact that the maps and architectural drawings brought by her opponents to the hearing were very large images containing minute details of both current and proposed future buildings and all provided with a hard backing so that they could be suspended by clips on a railing along the wall¹⁶. Miss K's map, by contrast, which she brought in her purse, could not easily be seen either by the adjudicator

¹⁶ The fact that such images (especially the landscape plans, which have pretty trees and fictional pedestrians) grace the walls of hearing rooms not only when they are being used but over the course of several days creates a kind of 'reality effect'. Even a cynical observer (the present author) ends up thinking that the street will inevitably end up looking like the (rather nice) image, thus putting a thumb on the scales of the planning adjudication.

or by the opposing party. And when questioned by the opposing lawyer about the dearth of yellow dots (which in Miss K's system represented addiction treatment facilities), she said, "oh, maybe they fell off" – which brought a suppressed giggle to the lawyers and professional witnesses.

Miss K's home-produced map of what she called "social agencies" (a category that does not exist in planning law) appears to have had the same kind of counterproductive effect as her (and her small group's) attempt to go professional and seek the services – pro bono, I suspect – of a lawyer. Their lawyer was ill prepared and did not seem to be familiar with OMB hearings. He thus took away from their credibility rather than adding to it.

The same boomerang effect was visible in hearings of the Toronto Licensing Tribunal, in which unrepresented clients fared better because the tribunal helped them present their case, while the small business people (mainly taxi drivers) who used the only (incompetent) lawyer who seemed to regularly appear at the tribunal received no mercy.

The experience-expertise dualism thus lends itself to interesting dynamics. Getting a lawyer sometimes backfires (in these low-level administrative law tribunals, I hasten to say, as distinct from criminal trials). And trying to look more objective and professional by doing extensive research into the location of various agencies and facilities so as to produce a Charles Booth-style map of one's street can also backfire.

The same kind of epistemological 'can of worms' effect occurred when the Riverside neighbours opposing the Donmount redevelopment (discussed above) turned on their tree-centred Powerpoint presentation. The slide show ran automatically for some time while the city's witnesses were presenting their case – but rather than undermine the city's argument, the slide show backfired, because the adjudicator became angry at the fact that the neighbours were showing their images as the other side was presenting their evidence. "Turn that off", he said curtly.

Later, when the Powerpoint show was duly presented as part of the neighbours' evidence, the adjudicator once more lost his patience. "Do you have that as a written document?" "What is the source of that image?" "Where did you get that article from?" The neighbours had not realized that visual images of anonymous provenance are, in a quasi-judicial context, worse than nothing. The persistence of old-fashioned knowledge formats, specifically paper inscribed with writing that correctly cites all sources and authorities, had escaped them. For them Powerpoint was clearly the height of professionalism. It was very clear from their

puzzled faces that they did not understand why their slide show was such a failure.

Expertise does not fail only when it is (badly) borrowed, however. Many expert witnesses I saw testifying lost the adjudicator(s) by overdoing their attacks on the experience-based claims of neighbours and other lay witnesses. At the higher, more legal level – that of the Ontario Municipal Board– it would be true to say that on the whole parties with a large array of expensive experts and professionally made exhibits did prevail. But this is not a universal truth. Expertise does not always trump experience, and experts do not always come across as better witnesses than lay people.

Lay people, on their part, cannot safely rely wholly on experience. The consistent respect and courtesy shown to neighbours testifying about their experiences at OMB hearings, in most cases, ended up having no relation at all to the legal outcome¹⁷. But borrowing experts or expert knowledge formats has its risks too, as we have seen.

In general, then, instead of regarding experience and expertise as locked in a zero-sum evolutionist logic by which expertise necessarily eclipses experience over time (as many simplistic uses of Foucault suggest), it would be more useful to regard the dualism of experience and expertise as an umbrella term covering a series of related knowledge games. Each venue has its own variation on the game. For each venue (a citizen phoning city hall to ask about the rules; a meeting of the Committee of Adjustment; a meeting at the city councillor's office; an OMB planning hearing) the rules of the site-specific game can be discerned through systematic observation. The outcome of particular matches cannot be predicted with any real certainty, however, in part because of the instability of the binary itself and in part because the expertise-experience game is cross-cut with other equally open-ended games.

THE NEIGHBOURHOOD VERSUS THE CITY

Claims about urban order issues that combine ownership and citizenship functions typically choose one of two scales as their standpoint: either the city as

¹⁷ At many committee of Adjustment hearings neighbours as well as property owners seeking variances were treated with marked lack of respect bordering on arbitrary abuse of authority. However, the neighbour perspective was not trumped by expertise, in routine cases at any rate; it was trumped by equally 'lay' claims made either by other neighbours or by the committee members themselves.

a whole, or the neighbourhood. Again, this opposition is not a true binary. In particular, in many contexts ‘the street’ appears as distinct from the neighbourhood. But ‘the street’ will here be lumped in with ‘the neighbourhood’, since for present purposes what is important is to show that ‘the city’ is not only a pole of citizenship practice counterposed to the nation state, as numerous writers on ‘global cities’ have argued (Engin Isin, Saskia Sassen), but is also a sort of ‘state’, in relation to the more intimate scale of ‘the neighbourhood’. Cities, in other words, can on occasion ‘see like states’, in James Scott’s famous phrase: the kind of gaze that Scott sees as intrinsic to modernizing states is in fact highly mobile, and is not hard wired to any level of government (or any institution).

In general, my research suggests that the standpoint of the neighbourhood is typically utilized to wage battles that are at least in form defensive. Protection and conservation are key in the rhetoric of neighbourhood mobilization. Or in other words, citizens are mobilized **qua neighbours** when a threat becomes visible. And threats are always construed as threats to the status quo, even when the most threatened are the newest inhabitants¹⁸.

In my own neighbourhood, the most successful mobilization of recent years that was locally specific was a fight against a new power plant. The provincial government overrode local objections quickly, and after a few short months a large part of the physical structure is already visible on the site: and yet, the forest of yellow lawn signs persists. These signs, featuring a smokestack and the phrase, “Breathe much? No to the Portlands power plant” are more visibly numerous than any other political statement in recent memory. More significantly, the power plant mobilization of Riverdale residents was cited as a factor in the victory of both the sitting city councillor and a new provincial member of Parliament (who had previously been a city councillor, but representing a slightly different neighbourhood).

City-wide environmental organizations had also opposed the development, as did the provincial New Democratic Party. At these ‘seeing like a state’ levels, however, organizations did not speak about neighbours unable to breathe. Taking a much more modernist and command-control perspective, all manner of alternative energy strategies, complete with expert-produced sets of numbers, were bandied about. The modernist seeing-like-an-environmental-state campaign, however, left no visible trail either on the lawns or on the political

¹⁸ The best Toronto example of this appeal to an invented status quo is the East Downtown Residents’s Association (TEDRA), which has long waged a campaign against hookers and other downtown street people in the name of defending the neighbourhood, even though middle class people are the immigrants, in this particular context.

landscape.

The second example of neighbourhood-level claims comes from my 'participant observation' research on community consultations about affordable housing developments. At relevant community meetings and quasi-judicial hearings, several residents' organizations have actively participated. One of these claims to speak in the name of South Riverdale, and seems to have arisen specifically to oppose a new, quite small supportive housing development. Another (previously mentioned) group emerged to oppose the city's plan to redevelop the Donmount public housing project, and spoke in the name of a micro-neighbourhood within Riverdale, Riverside. And a third one, "Welcome Home Riverdale" (whose sole function is to wage battle against the other, NIMBY-style organizations) takes a somewhat larger perspective, but still features the neighbourhood as the field of battle, not the city. All three of these speak the language of tradition, history, and defence. The anti-NIMBY group, for example, defines itself as wanting to preserve the traditional inclusiveness and diversity of South Riverdale, whereas the other two groups use a narrative in which the big powerful city apparatus is forcing a lot of (new) affordable housing and non-family housing developments down the throat of a vulnerable community. All groups claim to speak in the name of history and tradition.

City-wide discourses, by contrast, are much more likely to mention innovation, competitiveness, new cultural attractions, regeneration, global cities, environmental improvement, and other future-oriented images¹⁹. Interestingly, the same people who at a meeting officially designated as a neighbourhood matter speak passionately about defending homes and streets can, when put in a public meeting concerned with a less local matter, turn into modernist interlocutors for the architects and planners and developers who are putting forward plans. To see whether current plans to develop the waterfront had community consultations that were at all similar to the ones going on in my micro-neighbourhood, I attended several meetings concerning a large-scale development planned for the portlands, an area which currently has very few inhabitants and so is not 'owned' by the sort of resident of longstanding who tends to show up at the more local consultations about small developments. The information formats and the discussion formats used at the portlands meetings were both strikingly different from those used, say, at neighbourhood meetings about affordable housing. The speakers were on platforms and used microphones as well as a large screen on which elaborate slide shows were shown to an audience that had few opportunities for impromptu interruptions. Feedback was then solicited, but in a highly orchestrated fashion. Professional facilitators had been hired to organize

¹⁹ Toronto Tourism; TO Economic development; [websites]

the audience into groups of about ten, sitting at round tables and provided with pieces of paper and glasses of water. Being broken up into groups and being given a small issue to discuss²⁰, classroom-exercise style, the 'neighbours' behaved differently than they did at smaller-scale meetings. The differences between the meetings about the portlands and the meetings about this or that highly local development were the result of the coming together of a large number of factors: the presence of professional facilitators in one and not the other, the avalanche of professionally produced visual images, the physical layout of the room, the demographics of the crowd... etc.

On the whole, city-level discussions do tend to use expertise rather than experience, and appeal to innovation rather than tradition: but the city-neighbourhood dialectic does not map fully onto the innovation-conservation dualism or the expertise-experience dualism. A few community consultations about projects seen in the local press as of city-wide importance proceeded very differently from the polite organized discussions of the portlands meetings, with much passionate discourse about defending tradition in evidence. Whether the crucial factor was the absence of professional facilitation (in both cases the meetings were chaired by the local city councillor) or by more contingent and site-specific factors, it is difficult to ascertain. Again, the rules of the game can indeed be discerned if one watches enough matches, but the outcomes of specific matches are never a foregone conclusion.

Concluding thoughts

We have seen that in the rich array of knowledge games that are played by city officials and by neighbours as they engage in the daily work of ordering and disputing, strictly economic individual-property claims are scarce indeed. The byzantine system of municipal police powers has managed to persist remarkably well in an age of enterprising citizens making informed choices.

One reason for the persistence of preliberal police powers is that changes in

²⁰ One the meetings, whose organization must have cost thousands of dollars, was mainly devoted to presenting a plan for a large park containing playing fields. After having sat quietly for a long time, the audience, broken up into small round-table groups, was asked only to provide ideas and information about the shape of the fields and the park. Whether a park was a good use of the land or not was simply not on the table. At a neighbourhood meeting someone would have surely critiqued the narrow scope of the consultation.

private preferences that could potentially upset the zoning bylaw (for instance, the preference for live-work units and some kinds of mixed use) have been accommodated – not by overturning outdated rules but by adding exemptions and highly restrictive amendments. ‘Naturalized’ gardens, for example, are now allowed as a narrow exception to the ‘grass and weeds’ bylaw: but in the long and involved campaign to change this bylaw, nobody thought of asking why the municipality has the power to compel people to keep their real estate and front yard in good repair. Campaigns are occasionally – very occasionally – mounted about a specific bit of content that now seems outdated, but once the exemption or exception has been enshrined as one more clause in a bylaw of Gargantuan dimensions, activists go home and feel satisfied.

The ‘father’ of that crucial legal technology of municipal order, zoning variances, Edward Bassett, anticipated this process. A brief look at Manhattan in 1916 is necessary here. The pioneering zoning bylaw governing New York City, which prohibited most commercial uses in residential areas, would have made the Astor family’s dry goods warehouse illegal. None other than J.P. Morgan himself tried to use the zoning machinery to move the Astor’s warehouse out of prime Manhattan real estate. However, the Astors were able to obtain a variance that allowed their warehouse to remain where it was – while preserving the pristine purity of the zoning map (Revell 2003, Building Gotham, 208-212)²¹. In this case, the potential challenge to the whole idea of local police powers that might have arisen from individual bourgeois property rights claims was deflected into a site-specific exemption that, like many other exceptions, proved essential in preserving the general rule – in this case, the rule of municipal sovereign authority over privately owned buildings.

Legal structures are not all-powerful, however, and they do not necessarily retain legitimacy over time. Thus, the invention of ‘legal nonconforming use’ cannot be invoked as the one and only explanation for the way in which private property claims end up being accommodated as exceptions, while being firmly marginalized from larger legal and political networks. To fully understand the persistent legitimacy of the illiberal authority of ‘city fathers’ one would also have to explore, historically and/or ethnographically, how citizens and neighbours feel about their place in the city and in the neighbourhood, outside of legal venues and of neighbourhood disputes that have been marked as political. Nick Blomley’s recent study of how people of different classes and races living in his

²¹ Progressive urban studies scholars repeatedly state that the first zoning ordinance (designed for Manhattan) had as its purpose forcing garment workers off the sidewalks of midtown Manhattan (Mele; Peter Hall). The Astor-Morgan fight, however, which was crucial to the eventual appeal-court-proofing of the ordinance, remains unmentioned.

Vancouver neighbourhood feel about their front yards, and about public enjoyment of their and other people's front yards, is a useful step in that direction (Blomley LSI 2005). "Reading Blomley's evocative article (entitled "The borrowed view: privacy, propriety, and the entanglements of property"), it is clear that much more needs to be done to document the complicated ways in which ownership claims and citizenship claims mix, merge, separate, conflict, or reinforce each other, at the municipal level as in other sites.

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