Civil Rights Meet Civil Engineering:
Urban Public Space and Traffic Logic

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Introduction

Public disorder takes many forms, and ranges from the unusual to the mundane. Union or anti-abortion picketing, street vending, busking, begging, street protests and marches, street prostitution, and the activities of homeless people, such as sleeping or public urination, are phenomena that concern urban governments. To the extent that such activities are deemed a problem, they may become subject to forms of regulation. Thus, street vendors may be required to obtain a licence, and operate only in designated areas, and at specified times. Solicitation for the purposes of prostitution in public areas may be entirely criminalized. Protestors may be required to obtain a permit from the authorities, and agree to abide by certain rules. As has been noted,¹ the authorities frequently engage in “spatial tactics” when they regulate such activities, confining protests, for example, to designated spaces.

The regulation of public space has spawned a large literature. Some observers advocate tight restrictions on use and activity, arguing that certain behaviours compromise the essential function of public space as a shared resource. So, for example, Robert Ellickson² suggests that certain activities of the homeless, such as bench squatting, should be prevented in order to stem the abandonment of such spaces by the non-homeless. Progressives counter that this undermines the publicness of public space to the extent that it excludes and marginalizes.³ Public space, they argue, is valuable in that it allows certain people and voices to enter into the public sphere. Excess regulation and control, they insist, negates this function, and must be opposed. They worry that cities have been too eager to purify public space, such that the indigent, oppositional or merely different are increasingly excluded, leading to a narrowing of the public.

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Yet despite their differences, both converge in embracing a form of “ethical humanism.” First, both regard public space as serving certain valued political and ethical ends. On the right of the political spectrum, a scholar such as Ellickson regards public space as “precious” because of its democratic potential, allowing for political “gatherings and mixings.” Further, a diverse society such as the United States, he argues, “requires venues where people of all backgrounds can rub elbows.” Similarly, a Leftist like Mitchell insists on the value of public space in allowing formally marginalized groups to enter into the public realm. For the Right, the full potential of public space can only be realized through regulation. For the Left, such regulation militates against this potential. Yet both regard the purpose of public space as broadly political. Secondly, both treat public space as a space full of people. It is the encounters among these people that is at the centre of the story. Again, they differ in the way they treat such encounters. So, a meeting with a beggar is potentially bad, for the Right, to the extent that it drives non-beggars away. Yet for the Left, such an encounter has the potential to produce a form of democratic sociality and empathy. Public protest is valuable for the Right as it advances social utility. For Leftists, such protests allow for an expansion of citizenship and public inclusion. Yet in all cases, it is the encounters between people that are central.

It is easy to find ethical humanism at work within municipal governments when it comes to debates around public order. Local politicians, for example, will call for increases in the regulation (less often, deregulation) of public order, using ethical and humanist logics. Letters to the editor or to the mayor are replete with similar language. Lorne Mayencourt, a provincial MLA from Vancouver who first proposed British Columbia’s Safe Streets Act, which sets place and manner restrictions on panhandling, as a private bill, justified regulation in the following ways:

Q: So would it be fair to say that questions of safety were at the centre?
A: Safety was a fairly significant issue … Safety is kind of a subjective thing in that a person’s perception of safety is their reality. And so for a number of seniors, for example, seeing a panhandler with a Rottweiler was intimidating to them. So those are the kinds of things. So certainly safety was a big issue. It wasn’t that people were being beaten up. It was that people were feeling uncomfortable walking on the street on which they lived.

Q: Okay. Encountering homeless people or people on the street engaged in street activities…

4 Ellickson, supra note 2.
5 Ibid. at 1168.
6 Ibid. at 1173.
7 Ibid.
8 Mitchell, supra note 3.
9 S.B.C. 2004, c.75 [Safe Streets Act].
Civil Rights Meet Civil Engineering: Urban Public Space and Traffic Logic

A: Yeah. Not in, not in having homeless people be around and whatnot and whatever, but that the way in which they were approaching those individuals, and what subtle kind of things that were happening that made them feel uncomfortable…. You see I believe that sidewalks and plazas and streets and parks and schools, I consider them to be public spaces, spaces in which anybody can go. And what has happened is that folks that would ordinarily make use of the public spaces felt that they couldn’t because they felt intimidated by either the drug scene, the panhandling, the urban campers, those sorts of things. So they were saying, “I can’t go to a public space now.” So public space is important in any community, but I think it’s even more important in a densely populated area. I mean, this is—you know, the West End itself is the most densely populated area in the world, I’m told, which is pretty incredible. So public space becomes even more important, you know. And so those folks that were coming to me were, you know, were talking about that. And I had to admit that they had a right to feel safe in public spaces. All public spaces should be safe, should be—well, they should just be safe.10

Critics of Mayencourt predictably condemned his advocacy as a form of exclusion that targets the poor, creating a sharply divided public sphere.11 Yet when one talks to city bureaucrats about similar forms of legislation, one finds a very different set of arguments. The city’s restrictions on panhandling, embedded within the Streets and Traffic By-law,12 had nothing to do with “civil rights”, argued a city representative. They had everything to do, however, with what he termed “civil engineering”.13 This is a very different claim to Mayencourt’s, who uses a language of people and their encounters, imbued with an ethical language of rights and fear. The city representative, however, makes clear that rights (and by extension, people) are not really at issue. Rather, “street traffic” is a priority.

This civil engineering view of public space, which produces what I will call “traffic logic”, rarely seems acknowledged, particularly in scholarly debates on contemporary public space.14 My aim in this paper is to demonstrate the pervasiveness of this perspective, and reflect briefly on its implications. Unlike the ethical humanism noted above, this perspective is at least facially apolitical. It also could be treated as posthumanist, given its emphasis less on people than on the entanglements of people, space and things. While a powerful form of governance, it tends to be hidden from

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10 Interview with author (21 September 2006) [Interview A].
12 City of Vancouver, By-law No. 2849 (2 October 2007) [Streets and Traffic By-law].
13 Interview with author (19 October 2006) [Interview B].
view, easily obscured by grander, “higher” and more visible forms of urban regulation.

Seeing Like an Engineer: Traffic Logic at Work

I take as my focus the city of Vancouver, which like most cities, has a wide and overlapping array of permits, policies, and by-laws that govern public space. Thus, the City Land Regulation By-Law makes it an offence to “construct, erect, place, deposit, maintain, occupy, or cause to be constructed … any structure, tent, shelter, object, substance, or thing on city land.” The Street Tree By-Law designates all trees in any boulevard of the city as the property of the city. The Street Distribution of Publications By-Law requires a permit to place a news box on a city street, prevents clusters in excess of four boxes and stipulates seventeen locational requirements. The Street Vending By-Law places clear restrictions on “street occupancy” by adjacent businesses. The Parks Control By-Law states that park-users are enjoined from sitting upon any wall or fence, and disturbing any bird, animal or fish. Games are forbidden except in areas allocated for such purpose (and then under such rules and regulations and at such times as prescribed by the Parks Board). Public addresses, gatherings, ceremony require prior approval, as is any thing likely to “cause a public gathering or attract public attention.” “Disorderly” or “offensive” behaviour is forbidden, as is overnight camping or the erection of any tent.

But it is the Streets and Traffic By-law that seems particularly important to the mindset through which public space is represented by many city staff. The By-law is strikingly broad in its reach. Part I of the By-law regulates street traffic, whether motorized or pedestrian. Pedestrians must not jaywalk. Drivers must not stop within five meters of a fire hydrant but must halt at stop signs. It is forbidden to drive between the vehicles comprising a funeral procession while it is in motion. Bicyclists must have a bell. A second section governs “the use of streets.” It is forbidden to post signs on any street furniture; parades require a written permit; beggars may not sit or lie so as to block pedestrian traffic; loitering (in such a

15 City of Vancouver, By-law No. 8735, s. 3 (d) [City Land Regulation By-Law].
16 City of Vancouver, By-law No. 5985, (1 September 1992) [Street Tree By-Law].
17 City of Vancouver, By-law No. 9350, Street Distribution of Publications By-Law.
18 City of Vancouver, By-law No. 4781, Street Vending By-Law (1 January 2007).
19 City of Vancouver, Parks Control By-law (28 April 2003), s. 3(a).
20 Ibid., s. 6.
21 Ibid., s.16.
22 Ibid., s. 8(b).
23 Ibid., s.10.
24 Streets and Traffic By-Law, supra note 12, s. 12 (2).
25 Ibid., s. 17.2(c).
26 Ibid., s. 32.
27 Ibid., s. 35(1).
28 Ibid., s. 60(b).
29 Ibid., s. 85(a).
30 Ibid., s. 88(2)(b).
31 Ibid., s. 70(a)(1)(a).
manner as to impede traffic) is forbidden; people are not allowed to form a group on a street in such a manner as to obstruct the free passage of pedestrians or vehicles except with written permission, or engage in any "sport, amusement, exercise or occupation on a street that obstructs, impedes, or interferes with the passage of vehicles or pedestrians." Part III of the By-law then moves, without catching breath, to the regulation of the size and weight of vehicles. The result is a promiscuous mash-up of stop signs, fighting, pedestrian cross-walks, pamphleting, parking, begging, spillage, parading, reversing, axles and loitering. In all cases, streets appear as sites of conflict between competing, opposing interests (both people, such as those engaged in fighting, and things, such as the “structures etc.” that must not be placed on any street without prior permission). These conflicts appear to turn on the collision between circulation and obstruction. The good street is one that resolves itself in favour of flow.

Municipalities do not have Departments of Public Space. Rather, issues and topics that relate to public space tend to be allocated to several divisions, depending on bureaucratic rules of turf. In Vancouver, the crucial branch is the Streets Administration division of the Engineering Department. It is empowered to regulate city street usage for sidewalk patios, produce and flower displays, street vending and street entertainment, street encroachments, private signs on street allowances, poster cylinder locations, benches on street allowances, religious street meetings, mobile food vendors and mobile special event vending information, news-boxes, horse-drawn and pedicab carriages.

In Vancouver, the Planning department may also play an incidental role (although its purview tends to be private property, rather than public space). The civil engineer in charge of Streets Administration characterized the planners as slightly more “blue sky,” charged with design, while the engineers tend to be more pragmatic and down-to-earth. Priorities such as the placement of street furniture, or tree roots heaving sidewalks are their bailiwick, he notes, as is a particular view of space:

Well, in Engineering, we think more, I guess, in terms of function, you know. We need to ensure that there is enough space, enough room on the sidewalk to allow pedestrians to freely navigate without obstructions. And that, you know, we have guidelines as far as how much room there should be on a sidewalk and that determines how much room might be available for other uses like some of this, the permits that we issue for patios and produce and that sort of thing.

Yes, he continues, other concerns such as the creation of a “vibrant streetscape” are at work. But traffic-based concerns of flow and obstruction appear central. Safety was cited by the Engineer as the number one priority
when it came to the regulation of streets, although this was characterized as requiring that

... there are no obstructions that create an unsafe situation. For example, like the situation where you have a display out too far on the sidewalk. People shopping and blocking the sidewalk and then pedestrians getting around having to go out into...a moving lane of traffic. So that, safety is always our prime consideration. Then the second one would be maintaining that adequate flow on the sidewalk for pedestrians to get through.37

This view of the street is not often articulated (perhaps because it does not appear to require justification). However, in an affidavit submitted by a Streets Administration Engineer in a constitutional challenge to the section of Vancouver’s Streets and Traffic By-law governing panhandling,38 we get a clearer sense of what it means to see like an Engineer. The central object, the Engineer argues, is “the maintenance of a safe passage and a smooth and unobstructed pedestrian traffic flow on the city’s sidewalks.” Smooth flow, however, is not a given: Streets and sidewalks, he argues, are a “finite public resource that is shared by a number of competing interests” which can be divided into “moving and static elements.” He offers a list that begins with people (pedestrians “going from point A to point B,” panhandlers, pedestrians waiting for the bus) and then moves, seamlessly, into objects (newspaper boxes, bus stops and so on). Static elements are “to be positioned away from the flow of pedestrian traffic.” People and things that may obstruct that flow are tolerated, but only as long as they do not impede. A bus stop is as much a subject of legal scrutiny as the person at the bus stop. Law provides the Robert’s Rules of Order through which this resource can be shared. But like Robert’s Rules, public space by-laws are not open-ended, but aimed at facilitating flow and movement. Municipal law can provide the essential order that will regulate the arrangement of things and people on the sidewalk, such that “smooth flow” is realized.

Where does this view come from? Engineers I spoke to were hard-pressed to explain the derivation of this view of the street: it simply appeared to be the way things had always been done. Some emphasized a pragmatic process of “learning together with the stakeholders,” as one put it. As new objects or people appeared on the sidewalk, they become the subject of administrative scrutiny. Policy was proposed, laws were passed, and the novel became the normal. Reflecting on the appearance of café patios, one Engineer noted:

When the first [patio appeared]… it was quite a revolutionary concept. Like, Oh, my goodness, somebody wants to use some of the city’s sidewalk for their own business?...Everyone had to have their—it’s own report to council...And then after experience was gained...we were able to kind of generalize our experience and to

37 Ibid.
generalize some rules in terms of access rights and widths and sidewalks could be maintained. Well, then we were able to generalize some guidelines and council said, “make it a permanent program” then we don’t even have to hear about every one. And I think that that’s generally, when new street uses come along, that’s generally kind of what happens is, that the first one generates a lot of interest and a lot of debate, and then ultimately it becomes an administrative [thing] that happens on an ongoing basis.39

But this does not explain the logic by which such objects are assessed. Other city Engineers emphasized an engineering sensibility that has historically emphasized “providing corridors for people to move about in the cities”:

A: You know, the sidewalk, it’s pretty straightforward really. You provide a certain amount of space for pedestrians and that’s about it. You can vary that but—

Q: So is a sidewalk like a street then in that sense? It’s just different forms of transportation?

A: Yeah. Yeah.40

Another Engineer, while acknowledging the importance of a traffic engineering logic, argued that sidewalks are also distinct in that more competing uses vie for them. Engineers did acknowledge that criteria other than flow may be at play, although somewhat ambivalently. Reflecting on the affidavit submitted in the Federated case in Vancouver, an Engineer noted:

A: … you’re trying to manage or allocate use of space and [streets] and uh, yeah, social issues or economic issues um, ah, are, are um, well, how do I—I guess I’m searching for the right way to put this. It’s not that they’re not completely relevant in some situations but it certainly was not the primary focus of what we were trying to achieve in that position.

Q: Okay. So what is—what are you trying to achieve? What is the primary goal?

A: … you are trying to make sure that the streets get sort of used in a way which is of maximum benefit… to the public. …. You’re looking at how to balance the various competing uses … without unnecessarily impinging or restricting other uses, legitimate use of that space.41

That said, traffic logic has a history.42 Brown,43 for example, describes the emergence of transportation planning in the United States as a response to

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39 Interview by author (24 January 2006) [Interview D].
40 Interview C, supra note 36 [emphasis added].
41 Interview D, supra note 39.
anxieties with congestion. Streets were increasingly seen as unordered and chaotic, with machines and people anarchically mixed. Order could be achieved, an emergent group of planning professionals argued, if functions and uses were separated (compare with the contemporary field of “pedestrian flow theory.”) Yet while traffic logic does appear to apply criteria used in transportation engineering (particularly in relation to the automobile) to sidewalks, a preoccupation with ordering sidewalks predates the arrival of mass motorized transportation. Amato reveals the long-standing attempt by municipal authorities to better govern the space of the sidewalk. People used streets and sidewalks in ways that became perceived as undisciplined and unruly. Through law, culture and self-government, street users were to become pedestrians, and encouraged “not to loiter and block streets and sidewalks, to stay on the correct side….”

Ehrenfeucht and Loukaitou-Sideris document the growing municipal regulation of the sidewalk in Los Angeles in the late nineteenth century, such that by the time automobile use became widespread, a prior pattern of regulation of flow and movement was in place. Rooted in middle-class ideals, the politics of Progressivism and the rising importance of public works professionals, the goal was to transform streets and sidewalks into “smooth systems of movement.” Prior to such regulation, the Los Angeles street had multiple functions: “residents used the streets to elect council members, decide on local improvements, exchange information, work, play, and express discontent about drafts or economic conditions.” The turn of the century, however, saw a wave of ordinances and initiatives regulating obstructions, speech, maintenance and vending on the sidewalk. From 1880 to 1910, almost twenty ordinances pertaining to sidewalk obstructions were passed by council. They point out that while these restrictions were initially defined with reference to “sidewalk use,” they became increasingly justified according to “public use.” The “public” that public space was to serve, they argue, was defined exclusively as the pedestrian – the traveling public: “On the sidewalks, the pedestrian became equated with the public, and the formal articulation of the public was not an expansive but rather a limiting process. Pedestrian circulation defined and justified prohibitions of other ‘disruptive’ activities.”

47 Ibid. at 183.
49 Ibid. at 110.
50 Ibid. at 108.
51 Ibid. at 124. See also Peter C. Baldwin, Domesticating the Street: the Reform of Public Space in Hartford, 1850-1930 (Columbus: Ohio State University Press, 1999); Brown, supra note 43; John D. Fairfield, “The Scientific Management of Urban Space:
A persistent thread of court decisions also appears to embrace traffic logic. Historical English case-law concerning highways often concerned dedications of rights-of-way over private land. Motion was central to allocation: the public was empowered by custom to “pass and repass” along a dedicated or allotted right of way. Judges were reluctant to cede any additional rights to road-users, given the ownership rights of the private landowner. In *Harrison v. Duke of Rutland*, Lopes LJ held that the right of the public on the highway was exclusively that of passing and repassing: “the interest of the public in a highway consists solely in the right of passage.” Any other use constitutes a trespass. What, then, when roads are owned by the state? In *Director of Public Prosecutions v. Jones and Another*, Lord Irvine could find no basis for distinguishing highways on publicly owned and privately owned land insofar as the public’s right of use of the highway was concerned. He did, however, think that other uses of the highway were valid, but only so long as they do not “amount to an obstruction of the highway unreasonably impeding the primary right of the general public to pass and repass.” Other opinions in the case confirm the considerable qualifications placed upon any activity other than passage. Similar representations can be found in early Vancouver decisions. In *Vancouver v. Burchill*, Rinfret, J., assessing Vancouver driver’s licencing powers, noted that municipalities are owners of the street but only insofar as they are trustees for the public: “The streets remain subject to the right of the public to “pass and repass” and that character, of course, is the very essence of the street.” U.S. courts have also characterized the primary function of streets and sidewalks as transportation. While other activities are welcome, within limits, law that regulates such activities has often been upheld to the extent that it facilitates flow and circulation. So, for example, in *Cox v. Louisiana*, the US Supreme Court noted that rights to free speech and assembly in public places:

...implies the existence of an organized society maintaining public order, without which liberty itself would be lost in the excesses of anarchy. The control of travel on the streets is a clear example of governmental responsibility to insure this necessary order. A restriction in that relation, designed to promote the public convenience in the interest of all, and not susceptible to abuses of discriminatory application, cannot be disregarded by the attempted exercise of some civil right which, in other circumstances, would be entitled to protection. One would not be justified in ignoring the

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53 Ibid. at 153.
55 Ibid. at 352
57 Ibid. at 206.
familiar red light because this was thought to be a means of social protest. Nor could one, contrary to traffic regulations, insist upon a street meeting in the middle of Times Square at the rush hour as a form of freedom of speech or assembly. Governmental authorities have the duty and responsibility to keep their streets open and available for movement. A group of demonstrators could not insist upon the right to cordon off a street, or entrance to a public or private building, and allow no one to pass who did not agree to listen to their exhortations.59

This, quite clearly, is not the public space of Ellickson or Mitchell. Public space is not for democratic dialogue and encounters with alterity. Rather, it is for transport and flow. Asked to consider the argument that public space is valuable insofar as it facilitates democracy, citizenship and dialogue, a Vancouver Engineer responded by treating it as an administrative problem that could be solved through locating protests through the permitting process in order to ensure continued flow: “…you’d have to look at the location that you’re talking about….And you know, [permits] are worked out in terms of where it’s safe to hold assemblies in public areas, so that again, you know, pedestrians aren’t pushed out into the middle of the road.”60

Rights to public expression morph, through this logic, into questions of placement: for example, of newspaper boxes. People and things are promiscuously mixed. Ethical questions are seemingly sidelined by functional, apolitical priorities.

What Does Traffic Logic Do?
To a non-engineer, traffic logic appears, if you’ll excuse the pun, rather pedestrian. It is not surprising that ethical humanists concerned with public space tend to get rather more exercised about more visible and exciting types of law, such as British Columbia’s Safe Streets Act, governing public begging, the arrival of which generated considerable political controversy. Similarly, it is the actions of higher profile legal agents, such as the police or private security, that tends to attract the attention of ethical humanists, rather than the Engineer. Yet I hope that I have begun to hint at the ways in which traffic logic should perhaps receive similar attention. In particular, traffic logic serves to reconstitute public space in important ways. Public space is not a site for citizenship, but a transport corridor. Legal battles, often reliant upon claims to rights, are reframed as collisions between forms of traffic. Speech and expression, for example, become reconstituted as blockage and flow. Collective actions are suspect: individual movement is valorized.61 Two examples from Vancouver should demonstrate this point. Note that in both cases, traffic logic successfully deactivates rights-based legal

60 Interview D, supra note 39.
61 Cf. Sennett, supra note 45 at 255-376.
arguments, reliant on ethical humanism. Note also the sharp difference between traffic logic and other characterizations of public space.

“Woodsquat”

In 2002, activists occupied the site of the former Woodward’s department store, in the centre of Vancouver’s Downtown Eastside, in a protest over gentrification and homelessness. Forced from the building, they established a protest encampment on the surrounding streets that grew in size, attracting many other activists and homeless people. “Woodsquat”, as it was inevitably dubbed, became many things: a visible expression of radical anger, a deliberate attempt at embarrassing the province and city in the run-up to the bid for the 2010 Winter Olympics, a symbolic space of opposition to private property and an affirmation of the commons, a space of carnival and celebration, and a resource centre and safe refuge for many homeless people. Tents, sleeping bags, posters, couches, dogs, and people intermingled.

For city Engineers, however, Woodsquat was an obstacle. As such, the city sought an injunction empowering the authorities to remove it.\textsuperscript{62} The people were not targeted, rather their tents, mattresses and personal effects (described in a Notice of Motion as “structures”) were deemed a contravention of section 71(1) of the Streets and Traffic By-law which forbids any person from placing “any structure, object, substance or thing which is an obstruction to the free use” of the street or sidewalk. The city characterized the sidewalks as “very busy pedestrian thoroughfares. The city regulates the placing of structures and objects on its sidewalks with the primary purpose of ensuring safe, efficient and unobstructed pedestrian access.”\textsuperscript{63}

For the protestors, however, the “structures” were not only their homes, but also integral to the protest itself. This, at least, was the argument of the British Columbia Civil Liberties Association (BCCLA) who intervened on their behalf in the injunction hearing. They argued that the city should exercise its authority in a manner consistent with Charter values, notably the rights of the protestors to freedom of expression. The BCCLA also argued that the city had erred in its definition of the public interest underlying the regulation of public space (the city’s view of the public interest being “exhaustively defined as involving unimpeded access through the streets.”)\textsuperscript{64} Public space, argued the BCCLA, should be seen as a site of expression and speech, not just a transport corridor. The “structures” in question, they continued, were not just obstacles, but media of expression themselves:

The BCCLA submits that one cannot separate these physical structures, and these physical chattels, from a person’s freedom of expression, anymore than one can separate the sign from the person in \textit{Guignard}, the poster from the person in \textit{Ramsden}, or the leaflet...

\textsuperscript{62} \textit{City of Vancouver v. Maurice et al}, (2002) BCSC 1421 \textit{[City of Vancouver]}.
\textsuperscript{63} \textit{Ibid}. (Written argument of the plaintiff). Thanks to Tom Zworski and Noah Quastel for this.
\textsuperscript{64} \textit{Ibid}. (Memorandum of argument of the intervenor).
Nicholas Blomley

from the person in Kmart. If you remove these chattels in the case before Your Lordship, you remove the content of their expression. The content of their expression is precisely the household items.

The message these items deliver, the content of the expression that these ordinary household items carry, is: “I have no home. That is why the objects you have in your bedroom, or that you have in your kitchen in my case, are here on the public sidewalk. Please do something; please assist me in doing something about this.”

The application for an injunction was not, argued the city, “about homelessness and poverty. It is about the right of the city...to have a valid bylaw which is presumed to reflect public policy and to balance the competing interests of all citizens....” The BC Supreme Court agreed with the city. Arguments that the poverty of the defendants was sufficiently exceptional to justify their unlawful conduct were dismissed. Arguments based on freedom of expression were also rejected. Commonwealth was cited to argue that individuals are only entitled to express themselves in a public place if that expression is compatible with the principal function or intended purpose of the place. The structures in question were, it appears, a violation of the function of the place which, it seems, was obviously traffic flow. Could it be said, asks the Court rhetorically, that “despite the city’s responsibility to enforce the by-laws enacted for the public’s orderly use of the streets and sidewalks in the city, the court ought to refuse to grant a statutory injunction the city seeks to bring an end to an obstruction of sidewalks in a busy part of the city that has persisted for two months and that is attributable to the unlawful conduct of large numbers of people? To ask that question must be to answer it.”

Begging

As noted, begging (or “solicitation”) is governed by a section of the Streets and Traffic By-law (despite the creation of the provincial Safe Streets Act, the Vancouver Police Department is, according to a spokesperson, much more likely to use the by-law in dealing with panhandlers). In Federated, this was challenged as a violation of the Charter (sections 2, 7 and 15). As I

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66 City of Vancouver, supra note 62 at para. 6.
67 The court deemed these to be “social and political issues,” not “legal issues,” ibid. at para. 22).
69 Anyone who knows the Downtown Eastside will note the irony in characterizing this stretch of Hastings Street as a zone of purposeful pedestrianism given prevailing representations that centre on the disordered and anomic patterns of walking and street use.
70 Commonwealth, supra note 68 at 23.
have argued elsewhere,71 the court adopted traffic logic, and upheld the constitutionality of these controls. Similar logics infuse many other similar judicial decisions concerned with law governing activities occurring on streets and sidewalks (such as solicitation, pamphleting, picketing and so on). In Federated, the judge appeared persuaded by the argument of the city. It is these arguments that I focus on here.

The Streets and Traffic By-Law forbids begging which causes an obstruction.72 In its written argument, the city was at pains to situate these regulations as falling within a pre-existent mandate: the proper administration of streets and sidewalks, “reflected in the comprehensive codes and policies adopted throughout the years which regulate the use of city streets.”73 The begging regulation, the city notes, must be situated in Part II of the By-law, with its multiple controls over sports, loitering, structures, animals, parades and advertising devices in public space. This argument, in part, is intended to forestall the claim that the regulations were criminal in nature and scope (and thus not within the jurisdiction of a city). Obviously, the city argues, the regulation of streets and sidewalks is a matter of municipal jurisdiction.74 The Vancouver Charter75 expressly empowers the city to make “by-laws for regulating pedestrian, vehicular, and other traffic […] upon any street or part thereof.” The regulation of beggars is also in conformity with the Vancouver Transportation Plan76 which “establishes pedestrians as Vancouver’s top transportation priority.”

The city’s argument is resolutely matter of fact. The By-law simply regulates the impact of obstructive panhandling on pedestrian and vehicular traffic in the same way that it governs other street activities that may impede flow. But of course, one could characterize panhandling in many other ways. Thus, proponents of zero-tolerance policing may represent the beggar as a “broken window,”77 a semiotic marker who signals social breakdown. Sam Sullivan, the mayor of Vancouver, has recently proposed a “Civil City” initiative that, inter alia, targets cyclists without helmets and jaywalkers for similar reason.78 Merchants may characterize the beggar as simply scary, driving away tourists and consumers. Advocates for the poor may wish to portray the beggar as a citizen: our acceptance of the beggar is thus a marker of our collective tolerance and inclusivity. Lawyers may portray the beggar as a constitutional marker. The beggar is not begging, so much as engaged in

72 Defined as sitting or lying in the street so as to impede pedestrian traffic, continuing to solicit from a person after a refusal, soliciting in groups of more than three, soliciting within 10 meters of a bank or ATM, and soliciting from a driver so as to obstruct vehicular traffic. See Streets and Traffic By-law, supra note 12, s. 60(a).
73 Federated, supra note 38 (Written argument of the respondent City of Vancouver, at 2) [Federated, Written Argument].
74 Ibid.
75 S.B.C. 1953, c. 55 [Vancouver Charter].
76 Federated, Written Argument, supra note 73 at 2.
78 See online: Project Civil City <http://www.city.vancouver.bc.ca/projectcivility>.
expressive conduct, protected under section 2(b). Regulation is seen as a violation of section 7 rights to liberty and section 15 rights to equality.

Such grandiose forms of ethical humanism, however, are conspicuous by the absence from traffic logic. But traffic itself is also defined in a particular way. As noted, the street is presented as a finite resource, within which competing interests encounter each other. Panhandling, insists the city, is no more or less legitimate than any other street activity in itself. It should become a matter for regulation (like any other activity) however, if it obstructs: “Panhandling being a street activity, the By-law provisions simply regulate the impact of obstructive panhandling on pedestrian and vehicular traffic.”\(^79\) Those who argue that the purpose of the By-law is to prohibit expression are mistaken: “The focus of the By-law is street use,” the city insists, “and the balancing of competing interests of all users of the street and sidewalk, in much the same way the city regulates other street activities, such as street vending and sidewalk cafes...it is the...obstructive component of panhandling which animates the By-law and brings it under the ambit of the city’s power to regulate the use of its streets, not any other perceived characteristic or stereotype attributed to people who panhandle.”\(^80\) Far from discriminating against panhandlers, the By-law simply regulates begging “…in much the same way countless other human activities are subject to regulations, especially when such activities take place in the public forum and can have an impact on others.”\(^81\) All activities involving some transactional component with the public, like street vending, are subject to regulation: “Far from constituting a violation of human dignity, the city submits that the By-law provisions confirm the status of panhandling as a legitimate street activity, subject to regulations, in the same way other legitimate street activities are subject to regulations, and foster a climate of mutual respect on the city’s streets and sidewalks.”\(^82\)

Again, this is a quite particular definition of traffic, as can be seen when contrasted with more expansive definitions. The “Shared Space” concept of street design, for example, offers a very different model, based as it is on a criticism of the application of a traffic-centered logic to public spaces. A clear divide is made between “public behaviour” (slow, unfocused and relational) and “highway behaviour” (fast and predictable). Distinctions must be drawn between the two, it is argued: for too long, modernist traffic experts have subordinated the former to the latter. Space, consequently, “has become a system of rules, prohibitions and orders and human beings are required to adapt to the system, rather than the other way around. Social norms and values become subsidiary to traffic rules and man, as the user of the space, is reduced to a traffic participant.”\(^83\) Rather than mixing people

\(^{79}\) Federated, Written Argument, supra note 73 at 2.

\(^{80}\) Ibid at 7.

\(^{81}\) Ibid. at 72.

\(^{82}\) Ibid. at 82.

and things, as with traffic logic, it is clear that public space is “people space”. Objects are designed and placed so as to serve humanist functions.84

Conclusion

It is tempting to characterize the traffic logic as a convenient shield, obscuring a class logic of control. There is no doubt that city councilors are often keen to rid public space of certain people: one could imagine them looking for a bullet-proof legal justification, such as obstruction, in order to remove protest encampments. It is also clearly the case that questions of street design and layout are often politicized. So, for example, civil libertarians recently accused the authorities of malicious intent in their design for Vancouver’s transit benches, which were seen as deliberately designed so as to prevent people from sleeping on them. Merchants (and advocates for situational crime prevention) also lobby for the creation of desirable “streetscapes” that will facilitate trade, and drive away the unwanted. Traffic logic has also certainly had the effect of deflecting rights-based arguments on behalf of the public poor in Vancouver and elsewhere.85

Yet when one talks to city bureaucrats, one is hard-pressed to find evidence of any such hidden agendas. Traffic logic, like the engineering culture from which it comes, is obvious and hence uncontroversial. A city representative justified characterizing the panhandling regulations as a matter of civil engineering, embedded as they are within the Streets and Traffic By-Law:

A: I mean the by-law is very clear.
Q: Right?
A: I mean it doesn’t criminalize panhandling–number one, because it couldn’t. And, I mean obviously it’s a By-law which deals with the use of streets, right?
Q: Right….
A: And then you equate it with the powers that the city has, and the city has the power to regulate its street traffic, and you know, one plus one equals two.
Q: Okay….
A: It’s pretty simple.86

Panhandling restrictions (which were originally a free-standing by-law) belong within the Streets and Traffic By-law, he argued. Panhandling regulations “deal with streets. It deals with street traffic.” Placing them here, he insisted, was not an attempt to make the panhandling controls more

84 Ibid.
85 Blomley, supra note 71, though cf. Johnson v. The King (1947) 89 CCC 305, a case involving union activists collecting money on the street who successfully appealed a conviction under the Streets and Traffic By-Law for obstructing traffic on the basis that they were not, in fact, physically obstructing traffic.
86 Interview B, supra note 13 [emphasis added].
secure from constitutional challenge: rather, “it was just sort of a logical place to put it.”

Traffic logic, by definition, is suspicious of objects that are static and potential obstacles to flow. It does not distinguish between bus stops, news boxes and beggars. While, as noted above, the public poor may be caught up in its workings, it is not, facially at least, overtly inequitable. Indeed, one can find examples of elites whose interests have also been compromised by traffic logic. One telling example is that of newspaper publishers who distribute their publications through news boxes. As yet another potential obstacle to flow, news boxes are also governed by law.87 This requires publishers to obtain a permit to site a news box on city owned streets, and places multiple restrictions on their size, composition, design, number and placement (including a requirement that they not be placed so as to “require pedestrians to adjust their line of travel to pass the news box.”) Limits are also placed on news box “clusters,” with a maximum of three per block face. On occasion, such regulation has caused conflict. In 2005, Vancouver’s Engineering Department impounded over 500 news boxes belonging to 24 Hours, a free daily newspaper, given concerns that they were impeding access for transit passengers. Urban authorities in several North American cities have also begun adopting “superboxes” capable of handling several publications in one large vending machine in an effort to clean up street clutter. Several major publications unsuccessfully challenged a San Francisco ordinance in 2002 that sought to replace 12,000 news boxes with around 1000 larger boxes, as a violation of freedom of speech.88

In this sense, traffic logic is not expressly discriminatory. However, whatever the intentions of those who administer it, the growing numbers of the public poor are likely to be a target, to the extent that they are static, rather than in ordered motion. In that sense, traffic logic has political consequences. There is also a worrisome post-humanist politics at work, in which people and things are placed on the same ethical plane. There is surely more at stake in the placement of people (particularly poor people) than the location of lamp-stands. Moreover, traffic logic does not simply equate people to things: it may, on occasion, actively produce some people as things. So, for example, a panhandler in Vancouver’s West End described how he governed his behaviour according to its logic. When compelled to sleep on the sidewalk, he sought to make himself non-obstructive.

A: Because I usually put myself in a position where I’m using up as much space as a mailbox or something like that. And I sleep close to something that people walk around anyways.

Q: Right. Right.

87 Street Distribution of Publications By-law, supra note 17.
A: So that way I'm not getting in anybody’s way…So I feel like having somebody sleep, like, right up against the wall and stuff like that, it’s not getting in anybody’s personal space or anything like that. Because when I sit up, I take up more room than I do when I lie down.89

Interestingly, he had not heard of the Safe Streets Act. However, in his attempt to use “as much space as a mailbox” as he slept on the street one hears eerie echoes of traffic logic. Such a logic, I have argued here, may have as much, or more significance to the regulation of public space than higher-profile forms of exclusion and containment that have tended to be the focus of much of the literature on public space. It’s easy to see why: engineering is hardly a sexy field; traffic and flow appear rather tedious and unimportant. By-laws, if noticed at all, tend to be the subject of jokes, with observers dredging up bizarre and antediluvian restrictions, such as bans on the beating of carpets, or the playing of the trumpet at the beach.90 Traffic logic is clearly not a form of visible or high-profile governance, but rather represents a form of “governance from below,” circulating within the State. Located within bureaucracies, rather than more high profile political arenas and mobilized within cities, rather than national settings, traffic logic is easily overlooked. Moreover, traffic logic speaks a language that departs from the ethical humanism that is the dominant register for debates around public space. It is not the ethical or political dimensions of the street that are its focus: rather, the street is viewed in broadly functional terms as a conduit of circulation and flow. Further, traffic logic departs from the humanist view of the street as a space of people: rather, bodies are only one object circulating within a site in which the animate and inanimate are viewed as broadly interchangeable. For all these reasons, scholars of public space have tended to overlook traffic logic. I would argue that this is mistaken. Traffic logic, for both ethical and analytical reasons, needs to be examined more carefully. Its very lack of sexiness, and its apparent obviousness (such that law regulating traffic was “a logical place to put” begging controls) makes it deserving of more careful scrutiny.

89 Interview by research assistant (12 July 2006).
Résumé
En dépit de divergences idéologiques, les travaux savants sur l’espace public entendu comme site de rencontre entre les gens ont eu tendance à se centrer sur ses aspects éthiques et politiques. Cela s’est fait au détriment de ce que l’auteur nomme « la logique de circulation », une perspective envahissante de l’espace public qui fait valoir le mouvement et le flux des piétons et ne discrimine guère entre des corps et des choses. L’article illustre la fréquence et les conséquences de la logique de circulation en référant aux règlements municipaux de Vancouver. L’auteur relève ses importantes conséquences grâce à de brèves discussions de cas impliquant la mendicité et des manifestations publiques. L’étendue de la logique de circulation et l’évidence bureaucratique, bien qu’importantes, permettent mal de discerner ses effets comme sa portée. Forme influente bien que courante de la gouvernance urbaine, elle exige un examen plus minutieux.

Abstract
The scholarly analysis of public space, despite ideological differences, has tended to focus on the political and ethical dimensions of public space, construed as a site for encounters between people. This has been at the expense of what the author terms the “traffic logic,” a pervasive administrative view of public space that emphasizes pedestrian flow and motion, and tends not to discriminate between things and bodies. The paper illustrates the prevalence and effects of traffic logic with reference to By-Laws in the city of Vancouver. The author notes its important consequences through brief discussions of cases involving public protests and begging. While important, traffic logic’s pervasiveness and bureaucratic commonsensicality render its reach and effects harder to discern. As a powerful yet mundane form of urban governance, it demands closer scrutiny.

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