

THE RIGHT TO THE CITY

SOCIAL JUSTICE AND THE FIGHT FOR PUBLIC SPACE

Don Mitchell

"In this wide-ranging tour de force, Don Mitchell offers us a rich and geographically grounded exploration of struggles over urban public space. This is scholarship in the best sense of the word: politically engaged, theoretically informed, and powerfully argued. Urban public space emerges not only as a site of brutal and often violent control, but also as a space of liberation and hope. Mitchell shows us that public spaces—the streets and parks of the everyday—matter, and are worth fighting for."

—Nicholas K. Blomley, *Simon Fraser University, Canada*

"Complex yet comprehensible, the book balances the ideas of legal scholars, cultural theorists, and social scientists with Mitchell's singular voice based on his extensive thinking and research in the area. Mitchell thoughtfully argues that the struggle for rights actually produces public space and thus insists that rights be taken seriously, especially by leftist scholars, as they are central to countering exclusionary practices and the pervasive power of the state. This book is especially appropriate for advanced undergraduate and graduate courses on the city."

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"Polemical, stirring, and angry, this book is required reading for anyone who cares about the fate of our cities and our fragile democracy."

—Andy Merrifield, *Clark University*

In the wake of recent terrorist attacks, efforts to secure the American city have life-or-death implications. Yet demands for heightened surveillance and security throw into sharp relief timeless questions about the nature of public space, how it is to be used, and under what conditions. Blending historical and geographical analysis, this book examines the vital relationship between struggles over public space and movements for social justice in the United States. Presented are a series of linked cases that explore the judicial response to public demonstrations by early twentieth-century workers, and comparable legal issues surrounding anti-abortion protests today; the Free Speech Movement and the history of People's Park in Berkeley; and the plight of homeless people facing new laws against their presence in urban streets. The central focus is how political dissent gains meaning and momentum—and is regulated and policed—in the real, physical spaces of the city.

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Introduction

The Fight for Public Space What Has Changed?

On the Sunday following the horrific terrorist plane crash attacks of Tuesday, September 11, 2001, the *New York Times* ran a full-page feature story asking what it would take to make New York's "public spaces safe from attack" (Barstow 2001, 1:16). The *Times* interviewed "nine security and terrorism experts" to "envision a New York City of maximum security where money was no object in the pursuit of safety." The discussion was compelling. "Security options once dismissed as unpalatable, impractical or too expensive would be embraced," the *Times* wrote. "There would be long lines and intrusive and random searches, new identification systems and a strange new vocabulary of terms like biometrics, bollards, bomb mitigation containers and smart doors." One of the experts said, plainly, that "You would have to develop a fortress mind-set" (quoted in Barstow 2001, 1:16).

To some extent, New Yorkers have been preparing for that mind-set for quite some time. Well before September 11, public space had already been significantly fortified—or at least radically transformed—in the name of security over the past generation. Parks had been reconstructed and fenced, and special enclosed areas for children and their guardians had been established. The policing of public spaces ranging in size from small squares to fairly large urban parks and train stations had been turned over to private police forces paid for by, and under the direction of, Business Improvement Districts. New structures on behavior had become not only commonplace but also expected (and always indicated

by prominent signs) in the city's streets. Surveillance cameras had become an everyday part of the landscape. Whole public spaces had been closed off for much of the day, locked tight against unwanted users.

The context for these transformations in New York, as in most American cities, of course, was not the threat of terrorist attack but rather the fear of inappropriate users: the homeless, drug dealers, loitering youth—and, not inconsequentially, political activists protesting in front of city hall, marching in the streets, or rallying in parks and squares. The solution to the perceived ills of urban public spaces over the past generation has been a combination of environmental change, behavior modification, and stringent policing. The putative reason is to assure that public spaces remain "public" rather than hijacked by undesirable users.

The experts the *Times* interviewed in the wake of the terrorist attacks all agreed that further environmental modification was now necessary, including the closing off of the steps to churches, cathedrals, and synagogues, the installation of hundreds of surveillance cameras around important public spaces and along "vulnerable" streets, the installation of more "bomb-proof" windows, trash cans, and so forth. Policing too, they agreed, should be stepped up. Some argued for the deployment of armies of bomb-sniffing dogs and their handlers, even the authority to engage in random stop-and-searches. Others, such as New York City's former police commissioner Howard Safir, urged the integration of facial imaging software into a system of video street surveillance so that pedestrians could be "compared with photographs of known terrorists" (Barstow 2001, 1:16), a technology already used in Britain (Rosen 2001) and at the 2001 Super Bowl, where petty thieves were picked out of the crowd of fans entering the stadium (*Los Angeles Times* 2001).

A graphic covering much of the page indicates in detail just what might be in store for New York's public space (and by extension those of other American cities): face-recognition cameras on lamp poles; police or security officers on every corner; dogs and their handlers roaming the squares and parks; reinforced, more bunker-like buildings; traffic restrictions sensitive to changing conditions (through the use of automatic barriers that can rise up through the pavement and close off streets nearly instantly); the elimination of "all above- and below-ground parking" near key public spaces and important buildings; continual broadcasts of public-service announcements throughout public squares (much like the messages that are broadcast in airports telling

citizens to be on the lookout); and the installation of numerous planters, bollards, and blast-resistant trash cans. But interestingly, at the same time all of this is being proposed, Safir (one of the key architects of New York's "quality of life" policing campaign of the 1990s that sought to stringently police public spaces in the presumed interest of the safety of middle- and upper-class residents and visitors) argued against adopting a "bunker, bomb-camp mind-set" (quoted in Barstow 2001, 1:16).

This sentiment was echoed in the *Times* a week later by the Cooper Union's acting dean of architecture, Anthony Vidler (2001), but his reflection was decidedly different. Briefly reviewing the history of 20th century urban development and its relationship to ongoing fear of attacks (ranging from concerns over Zeppelin bombardments to IRA bombings),¹ a history that has brought with it a strong impulse toward metropolitan deconcentration, Vidler suggests that in the wake of the terrorist attacks "there will be an understandable impulse to flee" the city (Vidler 2001, 4:6).² But, Vidler argues, other cities' experiences with terrorism suggest that, in fact, "terrorism alone will not decrease the importance of city centers for the public life of societies," because "real community, as evident over the last week [of spontaneous public gatherings and memorials], is bred in cities more strongly than suburbs" (Vidler 2001, 4:6).

Vidler (2001 4:6) paints a decidedly different picture of public space than those "security experts" who see it as a threat: "The street as a site of interaction, encounter and the support of strangers for each other; the square as a place of gathering and vigil; the corner store as a communicator of information and interchange. These spaces, without romanticism or nostalgia, still define an urban culture, one that resists all effort to 'secure' it out of existence." Rather than wonder how public spaces can be made secure and how much it might cost (the experts in the earlier *Times* article estimated that "you could do a hell of a job with less than a billion dollars" [quoted in Barstow 2001, 1:16]), Vidler argues that "true security—or at least an urban life worth living—consists in publicness itself. The sorts of proposals put forth by the panel of security experts, Vidler insists, would create "a world hardly worth living in and would inhibit the very contact through density that cities encourage" (Vidler 2001, 4:6). He goes on to argue that "urban public space has suffered major onslaughts in the last 20 years, from the increasing privatization encouraged by reliance on Internet services to the expansion of the mall-effect—whereby only the largest consumer out-

lets survive. In the current crisis, it is all the more important that the idea of public space, and its relations to urban community be sustained" (Vidler 2001, 4:6).

This book is about that "idea"—and, even more importantly, the practice—of public space in American cities. The terrorist attacks on September 11, 2001, did not so much launch a new debate about public space as serve to intensify one that already exists—and has existed for as long as there has been the "democratic" city. It is a debate—or more accurately an ongoing social struggle—that flares up, in varying forms, throughout the course of the 20th century (and in fact earlier too): as antiwar activists take to the streets; as labor activists seek to make the space necessary to press their claims; as free speech activists occupy ground meant for official pronouncements; as women make a space for themselves as part of "the public"; and as city after city tries to decide what to do about the homeless, about teenagers, and about other "undesirables." The question that drives this book is the question of who has the right to the city and its public spaces. How is that right determined—both in law and on the streets themselves? How is it policed, legitimized, or undermined? And how does that right—limited as it usually is, contested as it must be—give form to social justice (or its absence) in the city?

Much early commentary in the aftermath of the terrorist attacks suggested that Americans (and perhaps especially foreigners living in America) had better prepare themselves for the inevitable elimination of certain civil liberties. As the Times noted, even the American Civil Liberties Union was refraining from its usually automatic denunciations of such talk (Barstow, 2001). But what frequently gets lost in such discussions is the degree to which those liberties are always contested, always only proven in practice, never that is, guaranteed in the abstract. Rights, as we will see in Chapter 1, do not work that way. For homeless people civil liberties and the right to public space have already been all but eliminated in the interests of enhancing the quality of urban life—and the "security"—for housed residents and visitors. For various movements of free speech—in the 1910s no less than the 1960s—the right to speak has often been undermined by spatial restrictions on where one can speak. For workers—and in recent years for anti-abortion picketers—the very act of picketing has frequently been declared by no less than the Supreme Court of the United States to be a violent act. If, as Anthony Vidler suggests, the idea of public space and its role

the practice of public space

no case to be made on this point

in urban life needs to be preserved, then we also need to be aware that that idea has never been guaranteed. It has only been won through concerted struggle, and then, after the fact, guaranteed (to some extent) in law.

If Vidler's (2001, 4:6) vision of the city—especially his call to "search for design alternatives that retain the dense and vital mix of uses critical to urban life, rethinking the exclusions stemming from outdated zoning, real estate values and private ownership"—is attractive (and I think it is), then the need to continue to struggle over and for public space is now greater than ever. The automatic impulse during the current sense of emergency is to defer to the security experts and their vision of the orderly and safe city. The alternative implicit in Vidler's vision seems, by comparison, highly unpalatable. The sort of city he promotes must necessarily retain some tolerance for risk and danger. It must take for granted that at least some level of "fear" will always be present in urban life. There is no way around that, as unattractive as such a vision had become even before September 11. Struggle—which is the only way that the right to public space can be maintained and the only way that social justice can be advanced—is never without danger of violence. How that potential for violence is policed, encapsulated in law, sublimated in design, or turned toward either regressive or progressive ends makes all the difference in the world.

My goal in this book is to examine some of the contours of that struggle over the past hundred years in American cities. Much of what follows has been previously published, though all is rewritten and updated, sometimes extensively, sometimes only a bit. My reason for bringing this work together in a single volume is to make an argument about the tenuous nature of what the French Marxist and social theorist Henri Lefebvre called "the right to the city." That right, as I hope becomes clear in the course of this book, is dependent upon public space. But just what public space is—and who has the right to it—is rarely clear and certainly cannot be established in the abstract. I present in rough historical order, therefore, a series of linked case studies that explore the relationship between social exclusion, social rights, and social justice in American public space. The links between these studies are many, but include a concern with the relationship between social activism and changes in public space law; the role of marginalized actors (migrant workers, the homeless) as a focus of social exclusion; the need not just to produce public space (as so much work in geography

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has studied) but to actively take it, if a claim of right is to be made; and a set of questions about the dialectic of order and disorder as it is worked out in specific places at critical times—the streets of San Diego in 1912 as the Industrial Workers of the World were on the march, Peoples Park in Berkeley, California, in 1969 as an imagined alternative to alienated bureaucratic society, the Civic Center of Santa Ana in the 1990s when the homeless were seen as only so many broken windows marring a landscape poised for economic revitalization, or New York City in those booming years immediately before September 11 when the “quality of life” was up for grabs.

Chapter 1 lays out a theory of social justice as it relates to urban public space. Working through a striking argument by Raymond Williams about Matthew Arnolds’ reactions to the Hyde Park riots of 1866 I examine some recent statements by commentators that Williams would have called “little Arnolds”—those who see order as properly trumping rights in urban space in nearly all instances—to show how debates and struggles over who has access to public space, and who is excluded, define the “right to the city”—and why a right to the city must be at the heart of any vision of a progressive, democratic, and just world. Part of my argument is that, in fact, rights matter (a position with which some on the left disagree)—and so does law. I suggest that “rights talk”—and even more the practical assertion of rights—remains a critical exercise if social justice is to be advanced rather than constricted. Such a claim demands at least a brief indication of how social justice should be theorized, and so the chapter concludes with a discussion of the relationship between rights, social justice, and urban space.

Social justice, rights, and their relationship to urban space, as I have indicated, are not determined in the abstract, but rather in practice. So, in Chapter 2 I turn to these practices. In particular, I try to show how specific social struggles over public space (and the assertion of rights therein) lead to transformations of public space law as courts seek to either adjudicate or eliminate conflict.⁴ Sometimes the most important practices are not ones that we like. The most significant recent U.S. Supreme Court cases about protests in public space have concerned anti-abortion protesters outside clinics and the homes of abortion providers. These cases draw on a long history of case law that in fact has more to do with controlling (and sometimes eliminating) labor dissent than it does with the sorts of political dissent exercised by anti-abortion protesters. I trace this history from its origins in struggles over

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the right to speak on the streets by the Industrial Workers of the World around 1910, through a series of celebrated, and rather reactionary, cases concerning “subversive” protesters during World War I and labor picketers in the 1920s and 1930s, and to the eventual codification of what came to be known as “public forum doctrine” in the 1950s and 1960s. These struggles and court cases all involved the right to speak—or what we so often carelessly call free speech—in public spaces, and they involved a rather torturous, but still exceedingly important, distinction the Supreme Court has made between “pure speech,” “expressive conduct,” and behavior. This distinction is important because it helps limit rather than open up what can be said and done in public space and thereby helps to protect the interests of capital and the state.

By 1939, the U.S. Supreme Court had codified, and presumably vouchsafed, the right to speak in public spaces. But that did not stop (and has not stopped) innumerable jurisdictions from hemming in that right, and often eliminating it altogether. Sometimes the means of elimination is expressly geographical. Jurisdictions often try to “protect” the right to speech in public space by assuring that it occurs in such out-of-the-way places that it has little chance of being heard. Such was the case at the University of California at Berkeley in the early 1960s. Conflict over the right to speak became a conflict over who controlled specific spaces (and indeed over the content of that control). Chapter 3 examines this episode and some of its consequences.⁵ The Berkeley Free Speech Movement did not inaugurate campus activism in the 1960s (its roots lie more in the civil rights movement), but it did solidify certain aspects of it, including the implementation of a critique not only of politics and justice in America (and beyond), but a critique of modern alienation—a critique that blossomed most fully, perhaps, in the streets of Paris and Prague during the spring of 1968 (and which Lefebvre was anticipating with his polemic on the right to the city). In Berkeley, this critique eventually coalesced into the Peoples Park movement, and so the chapter ends by exploring the roots of and early struggles over Peoples Park.

Activists established Peoples Park (and baptized it in riot) as what they hoped would be a small unalienated space within a city as a whole defined by alienation. As such, it became a refuge for many of the outcasts of society, including the homeless. By the 1980s, according to many (including some nearby residents, merchants, and the university), the sheer number of homeless people in the park had allowed it to