

Parizeau, K. & Lepawsky, J. (2015). "Legal orderings of waste in built spaces." *International Journal of Law in the Built Environment*, 7(1).
<http://dx.doi.org/10.1108/ijlbe-01-2014-0005>

Legal orderings of waste in built spaces

Structured Abstract

Purpose

This paper investigates by what means and to what ends waste, its materiality and its symbolic meanings are legally regulated within built environments.

Design / methodology / approach

We investigate the entanglement of law and the built environment through an analysis of waste-related legal case studies in the Canadian context. We investigate a notable Supreme Court case and three examples of Canadian cities' by-laws and municipal regulations (particularly regarding informal recycling practices). We mobilize what Valverde calls the "work of jurisdiction" in our analysis.

Findings

We argue that the regulation of waste and wasting behaviours is meant to discipline relationships between citizens and governments in the built environment (e.g. mitigating nuisance, facilitating service provision and public health, making individuals more visible and legible in the eyes of the law, and controlling and capturing material flows). We find that jurisdiction is used as a flexible and malleable legal medium in the interactions between law and the built environment. Thus, the material treatment of waste may invoke notions of constraint, freedom, citizenship, governance, and cognate concepts and practices as they are performed in and through built environments. Waste storage containers appear to operate as black holes in that they evacuate property rights from the spaces that waste regularly occupies.

Originality / value

There is scant scholarly attention paid to legal orderings of waste in built environments. This analysis reveals the particular ways that legal interventions serve to construct notions of the public good and the public sphere through orderings of waste (an inherently indeterminate object).

Keywords: Waste; Legal geography; Jurisdiction; Property relations; Informal recycling; Public good

Introduction: The indeterminacy of waste

Waste is a material and semiotic thing. It presents diverse affordances and risks, ranging from the mundane daily tasks of tidying up household grime to entombing spent nuclear fuel for millenia (Krupar, 2013), and it meaningfully represents our past selves, our relationship with the state, and the mutable boundary between individual consumption and collective responsibilities for environmental management. Waste is, to use Moore's term, a parallax object: something that interrupts the "smooth running of

things” (Moore, 2012, p. 780, citing Zizek). In the following analysis, our concern is principally with the interpretation of waste and acts of wasting in disputatious legal scenarios, especially ones in which waste storage devices such as bins and bags are of key importance. Such scenarios, we claim, illuminate important relationships between waste, wasting, the performance of law, and the built environment. The odd character of these relationships demonstrates how waste is a medium for legal relationships, and its management is a reflection of shared social values.

Using close readings of Canadian court cases and municipal by-laws in select cities, we argue that an analysis of the legal treatment and regulation of waste and wasting can provide insight to on-going social constructions of:

- 1) the public good;
- 2) the public sphere; and
- 3) jurisdiction (usually understood as the spatially-bound authority of the law).

Therefore, waste can be understood as a central element in “[...] the continuous interplay of presence and absence, appearance and disappearance, concreteness and abstraction that delineate the topology of law and the city” (FitzGerald and Philippopoulos-Mihalopoulos, 2008, p.435).

Cultural factors support the strangely absent-presence of waste in our lives, including the predominance of a consumeristic “throwaway society” (Evans, 2012), resistance to such practices through careful ridding (Gregson et al, 2007a and b), and the pervasive “out of sight, out of mind” attitude toward waste (de Coverly et al, 2008) that are common in North American society. Such framings are not universal, and myriad other geographies of waste and wasting have also been observed (Lepawsky and Mather, 2011; Drackner, 2005; Gille, 2007).

Waste is therefore a relational concept: it is a collection of items that are no longer seen to hold value or use for the disposing individual in their particular social context. Because of the indeterminacy of these characterizations, different actors can simultaneously view “waste” items differently. For example, informal recyclers and freegans (ideologically motivated people who subsist on the cast-offs of consumer society) routinely reclaim items for reuse or resale from waste streams, such as recyclable materials that are eligible for deposit refunds, used clothing, repairable electronics and household goods, and food (in some cases). That these potentially usable/salable goods were initially placed in the trash stream is an indicator of divergent perceptions of value for a given item.

The uncertain nature of waste is apparent in the multiple positions it holds in the urban sphere in any given moment: it is a negative good whose removal costs money, and whose absence is economically valued (Thompson, 1998); it is a potential economic resource, and thereby subject to contestable property rights; it is a source of symbolic meaning (as an indicator of anti-social behaviour, as a material linkage between citizen and service provider, etc.). In this way, it can be said that waste has liminal status in society (Gille, 2007): it is both valued and worthless, legitimate yet unrecognized, absent and present.

Consistent with its liminal status, waste is placed at the physical and social borderlands of our communities. It is placed out of sight within hidden spaces and opaque bins in the private spaces of the home, and then moved to the curbside where it is

entrusted to the public sphere and the responsibility of municipal authorities. Waste therefore represents a symbolic boundary between the public and private spheres, and it embodies the relationship between individuals and the collective (Chappells and Shove, 1999). Bulkeley and Askins (2009) argue that there is insufficient academic attention to the boundaries between public and private aspects of the waste management system, and that the discursive propagation of such boundaries allows individuals to absolve themselves of responsibility and concern for waste matters, implying a systemic ambiguity of moral responsibility for waste and its impacts.

We understand waste as a palimpsest upon which economic and social values are continually inscribed and overwritten. We argue that this inherent indeterminacy of waste provides an ideal medium for the continual expression, enactment, and reframing of social relations and social values by means of legal regulations and interventions. In particular, waste storage devices act as black holes in that they evacuate property rights from certain spaces: property rights that are, if not everywhere, most-where in the rest of contemporary society.

We seek to investigate the black hole of waste and its social context by asking the following questions: Are the police allowed to sort through residential trash bins stored on private property? As the guardians of public health in cities, what rights do municipal authorities have to access and manage waste products? Are freegans and informal recyclers thieves? Thinking through such rhetorical questions, this paper presents an analysis of the legal regulation of waste in the Canadian context. We consider the ways that federal judgements, provincial regulations, and municipal by-laws both regulate social relations in the public sphere, and are constitutive of social space.

Theoretical approach

Law as performance

Space is not simply a physical container for human activity, but can be understood as a social medium that is constantly constructed and enacted through our actions and intentions. Legal geographers have established the mutually constitutive nature of law and space in multiple contexts, and have highlighted relationships between place, power, and property (both common and private). For example, Blomley's (2011) investigation of the regulation of sidewalks and "public flow" demonstrates how the ordering and regulation of public spaces can privilege particular definitions of the ideal usage of the public sphere. Similarly, Mitchell (1997) investigates the legal disciplining of homeless people and their behaviours through the regulation of the spaces they frequent, finding that legal interventions can enable the usurpation of public space to serve the aesthetics and interests of urban elites (see also Berti and Sommers, 2010), and thereby create exclusive forms of urban citizenship.

Legal geographic analyses also reveal how access to property can mediate access to the public sphere (Staeheli and Mitchell, 2006), as well as influence and constrain the types of politics performed in public spaces (Staeheli, 2008). However, geographic analyses of law and space pay scant attention to the legal orderings of trash cans, recycling bins, and property-cum-waste in built environments. We argue that such spaces and objects allow for a novel perspective on the ways that social relations are imbricated in the urban fabric of cities, and that the indeterminate "black hole" quality of waste matter allows for particular jurisdictional practices and outcomes.

Central to our analysis is the premise that legal regulatory activities are not simply codified interventions set down once and for all, but rather are continual re-enactments, renewals, and performances of the public good and the public sphere. The law compels repetitions in order to be intelligible, but acts of repetition and renewal can also open up possibilities for revision, thus enabling “alternative or even transgressive practices and performances” (Campbell and Harbord, 1999, p.231). Geographers have argued that, in addition to understanding identities and subjectivities as socially constructed and continually enacted, space too can be understood as a performance that reflects social relations of power (Gregson and Rose, 2000). Legal interventions are one of the means through which urban social space is constructed and performed. As Howe (2008) argues, “As a performative medium, law naturalizes ties between place and identity not only by policing expression [...] but also by providing a moral and political footing from which to read the cultural landscape” (p.436-7). Jurisdiction is one of the modes of legal reasoning that inform social constructions of space, and thus can provide insight to such processes.

The work of jurisdiction

Motivations behind waste laws and regulations vary from mitigating nuisance (e.g. litter by-laws) and the preservation of privacy (e.g. identity theft prevention; these motivations are discussed further below), to protecting public health (e.g. contamination and disease prevention; see Gostin, 2000 and Maantay, 2002) and addressing environmental concerns (see Boyd, 2011 and Ministry of the Environment, 2008 for Canadian examples). Considering the breadth of contexts for waste law, it is apparent that a variety of social relations are mediated/disciplined through such regulatory processes. Less understood are the geographic implications of waste-related legal interventions for public spaces and the sociospatial dialectic more broadly.

Possibly because of the nebulous nature of waste, its legal definitions vary widely from place to place. Rather than attempt to catalogue and categorize the huge variety of such definitions, it is more helpful to examine what Valverde (2009) calls the “work of jurisdiction” (p.141). Jurisdiction is typically understood in territorial terms. Valverde, however, shows that by focusing on the action of legal governance and its effects, territory is only one of several operations of jurisdiction and may be a secondary effect, rather than a primary foundation for that action. The work of jurisdiction goes beyond the traditional understanding of establishing territory (“where”) and authorities (“who”) associated with the rule of law. In practice, this concept also establishes the objects (“what”) and the capacities / rationalities (“how”) of legal governance. Each of these elements (“where, who, what, and how”) are connected in a chain reaction whereby the designation of one or two aspects of governance lead seemingly automatically to the determination of the rest. In the case of waste, the “what” and “where” of legal governance have clear implications for the “who” and “how.”

In the following case studies, we analyze the development and enforcement of legal regulations regarding waste in order to assess the ways that the indeterminate nature of waste influences the mutable work of jurisdiction.

Methods

We use a close reading of federal and provincial court cases and of municipal by-laws in selected Canadian cities in this analysis. We highlight a particularly important federal Supreme Court case that illuminates legal interpretations of waste and wasting in relation to the boundaries between public and private spheres in a liberal democracy. In so doing, the case demonstrates how waste, wasting and the location of storage devices for waste in built space play a central role in adjudicating the possibilities and limits of shared social values of privacy, freedom from arbitrary search and seizure, and private property: values that are at the heart of what it means to live in a liberal democratic state. Crucially, the federal case was triggered by a police investigation of trash bins placed for municipal collection. From the federal case, we then turn to a selection of municipal by-laws governing waste, wasting, and attendant storage devices.

These case studies were selected as notable examples from the Canadian field sites where we engage with the social context of waste and its management more broadly. In particular, the examples of Vancouver, Toronto, and Kitchener-Waterloo are communities where informal recycling is widespread, and where it has become a focus of discursive debates surrounding public space and the public good in the media and in municipal policy- and law-making. We analyzed the content of the municipal by-laws and waste-related policy documents for each of the three case studies, and also conducted media searches for discussions of informal recycling (using place-relevant terms for the practice). Funding for the Vancouver portion of this study was provided by the Social Sciences and Humanities Research Council of Canada; however, this agency did not provide input on study design or analysis. We proceed with an analysis of federal and provincial legal examples, and then transition to a discussion of the municipal case studies.

The Supreme Court of Canada

The Canadian Supreme Court case of *R. v. Patrick* [1] represented a landmark judicial statement on the legal context of waste in city spaces. In a unanimous decision, the court determined that police were legally justified in crossing Patrick's property line without a warrant in order to collect evidence from his trash. Patrick was suspected of running an ecstasy lab in Calgary, Alberta, and he had placed incriminating materials (including a torn-up drug recipe, gloves, and packaging materials from a small scale) into his garbage. He then placed the bags along a fence in his backyard adjacent to a public alleyway. The justices determined that Patrick had abandoned his trash as a function of both its location and his intention:

Objectively speaking, P abandoned his privacy interest in the information when he placed the garbage bags for collection at the back of his property adjacent to the lot line. He had done everything required of him to commit the bags to the municipal collection system. The bags were unprotected and within easy reach of anyone walking by in the public alleyway, including street people, bottle pickers, urban foragers, nosey neighbours and mischievous children, not to mention dogs and assorted wildlife, as

[1] [2009] SCC 17, [2009] 1 SCR 579

well as the garbage collectors and the police [...] Abandonment in this case is a function both of location and P's intention.[2]

For Valverde (2009), the work of jurisdiction is the governance of legal governance. The latter is activated as legal practitioners (e.g., lawyers and judges) implicitly or explicitly ask ordering questions about who, what, and where a given law governs. The ordering of the questions is not fixed; practitioners might begin with "what" in one instance or "who" in another. However, the question with which practitioners start then determines the "how" of legal governance (Valverde, 2009).

The jurisdictional work of law in the Supreme Court case serves to redefine the importance of "where" with respect to waste, since its location on private property was not the sole determining factor in this ruling. It was sufficient that the garbage bags were placed near the property line and in a location usually associated with waste collection in order for the bags to be considered a legitimate target for confiscation. On this point, the Canadian ruling is in contrast with the US Supreme Court's decision on a similar case of evidence-gathering from the trash on private property. In the US Supreme Court case (which also involved narcotics charges), it was determined that the location of the waste outside the curtilage of the home (where it was left for collection) was the key factor in determining the jurisdictional authority of the police over the contents of the garbage bags. In this case, location ("where") therefore trumped the intentions of the defendant, as well as his expectations of privacy [3]. These parallel cases under different legal authorities speak to the mutability of the work of jurisdiction.

In the case of *R. v. Patrick*, the justices' contextualization of the "where" of Patrick's waste bears commentary. The ruling notes that any number of passers-by could have easily accessed Patrick's waste for illicit or irresponsible use (e.g. street people, nosy neighbours, animals, etc.). These types of morally questionable (or at least bothersome) access are then contrasted with the seemingly altruistic and responsible actions of police officers searching for evidence of illegal activity, further justifying the predominance of intention (of both the defendant and the police) over location. The differential role of "where" in activating the work of jurisdiction is further highlighted when considering that had myriad other objects (i.e. different "whats") been seized by police across a property line - even when near the edge of said property line - the legality of its seizure would be circumspect; indeed, it would be called theft if done by someone other than the police. It is because of where Patrick placed his trash that the court could impute his intentions (abandonment) and, from those surmised intentions, rule that other legalities governing private property and privacy could be lawfully superseded by the police without violating legal guarantees under the Canadian Charter of Rights (specifically Section 8, which provides freedom from unreasonable search and seizure).

The mutable work of "where" in the Patrick case is further instructive for legal geographic thought by paying attention to a notably absent-presence (Hetherington, 2004) silently at play in the court's decision. By starting with the question of "where", the court avoided any question of "what" materials Patrick set out in garbage bags - what is that stuff in black plastic bags? Are they belongings of Patrick's and therefore his property (as Patrick's defence claimed)? Had the judges in Patrick's case begun with "what", a different decision about the lawful jurisdiction of the police may have come to

[2] Ibid

[3] *California v. Greenwood*, 486 U.S. 35 (1988)

pass. More significantly for legal geographic thought, the Patrick case alerts us to a highly intriguing moment: an instance we might describe as a black hole in property relations in which all determinacy about property seems to be in abeyance.

Other instances in the study of law-space relations rarely find questions of property relations – private, public, common, or otherwise – gone so completely dark. The question of where Patrick put the bags enabled their migration across the border between the private and public realms into the hands of police. In so doing, however, a question of the social contract that is implied between citizen and state (in this case, the municipality as a waste management provider) comes into stark view. A householder might reasonably assume that when “abandoning” their trash to the municipal government, there is a chain of control that protects the privacy of the contents of their waste, which prevents all forms of government from prying into a bag of previously personal material that one has chosen to enclose and purposely hide from view. However, the ruling of *R. v. Patrick* draws upon an earlier ruling (*Hunter v. Southam Inc.*) to discuss the need for balance between expected privacy and rule of law: “[...] an assessment must be made as to whether in a particular situation the public’s interest in being left alone by government must give way to the government’s interest in intruding on the individual’s privacy in order to advance its goals, notably those of law enforcement” (p. 159-60)[4]. In this instance, the “what” of trash (as private and enclosed materials) is trumped again by intention of government actors to protect the public good, as represented in the goals of law enforcement.

In a case before the Ontario Labour Relations board, a similar jurisdictional outcome was reached, although the actors were quite different. In *Unite Here v. Five Brothers Hospitality Partnership Limited (Holiday Inn St. Catharines)*, a housekeeping worker and union activist represented by the Unite Here union was fired for sharing wage information from an executive’s paystub, found in the trash can, in order to express frustration with disparities in pay within the organization [5]. The housekeeping worker was fired for breaking confidentiality, although it was also suggested that her unionizing activities had put her in a precarious position with her employers. The court found that the housekeeping worker’s actions were not grounds for dismissal, even if she did access private information found in a trash bin in a seemingly private office space (especially because there was no indication that she shared the paystub with others). The onus for protecting confidential material was placed on the employer, implying that materials left in a waste can were considered legitimately accessible by this worker who had routine access to waste bins in her work.

In this case, we again see the interpretation of the “where” of the waste ultimately as a function of the owner’s intention to abandon it (i.e. its location in a garbage bin - unprotected and whole - trumps that bin’s placement in a private space). There is something transformative about the waste bin that allows for the reinterpretation and redefinition of “where” the object of jurisdictional concern is located. While the issue in this case was similar to that in *R. v. Patrick*, the outcomes were different: the principle of abandonment served to protect the labour rights of an individual, rather than contribute to one’s prosecution by the police. At the same time, the black hole nature of the trashcan is

[4] [1984] 2 SCR 145

[5] [2008] 56551 ON LRB

again highlighted: in *Unite Here v. Five Brothers* an eminently private space (a corporate office) contains a strange bubble within it where property relations go dark, held in abeyance at the edge of the trashcan as if its rim were an event horizon beyond which a void in the usually pervasive web of property relations exists.

At the very least, *R. v. Patrick* and *Unite Here v. Five Brothers* tell us that waste is “good to think with and through” (Gregson et al, 2005, p. 2) for legal geography. As discussed above, much of the field’s empirical work and theory-building is premised on studies of property. Trash, waste, garbage and the like offer legal geography scholars new directions from which to critically investigate the legal construction of property relations, as well as proving to be fecund topics in their own right. But more fundamental lessons are also apparent: legal questions or controversies over mundane discards of ordinary life arbitrate some of the most fundamental values enshrined in documents specifying what it is to live in a society that understands itself as free and democratic. These distinct interpretations of jurisdiction (i.e. the centrality of “where” vs. “who” and “what”) demonstrate the on-going enactment of concepts such as freedom, the public good, and privacy in court rooms and judicial rulings. In turn, these performances that define our social relations are both mediated by the materiality of trash, as well as constitutive of the boundaries between public and private spaces. In *R. v. Patrick* and *Unite Here v. Five Brothers*, we observe the performance of what it is to be a free citizen governed by a democratic state. The performances we highlight here are, of course, partial representations of “citizenship” and “state” rather than in toto determinations. Their partiality demonstrates that the “citizen”, the “state”, and “jurisdiction” are not necessarily clearly bounded containers, but can be instead patchy, distributed, incoherent things.

Waste by-laws in Vancouver, Toronto, and Kitchener-Waterloo

Canadian municipal by-laws regarding waste management address a range of issues that tightly entwine with built space and its designs. Some of the more commonly set-out notions in such by-laws include definitions (of waste, of titles pertaining to particular actors in the waste management sector, and of services provided by the municipality); responsibilities and obligations of different parties involved in local waste management (including government actors, contractors, and householders); logistic specifications for waste management (such as the types of containers that can be used, where they should be placed, and prohibited materials in different waste streams); prohibited acts and penalties for infractions; as well as any rates and fees associated with municipal waste services. These by-laws are meant to protect public health, mitigate nuisance, facilitate municipal service provision, and to control and capture material flows (in the case of municipal recycling and organics collection programs). In essence, these bylaws establish the civic responsibilities of both residents and municipal authorities (“who”), while determining the places and times that are appropriate for waste (“where”), as well as the consequences for infractions (“how”: usually fines that provide funding for the municipal system).

Certain behaviours are commonly overseen by waste by-laws, and similar regulations can be found in different municipalities. For example, many local by-laws contain prohibitions on littering, requirements to divert waste into its component streams (such as recyclables and organic waste), and restrictions on picking or removing items

from the curbside waste stream. Informal recycling (also known as waste picking) presents an interesting case because of the differential enforcement surrounding such by-laws, and because of the various social framings of this practice. Similar language prohibiting this practice can be found in the by-laws from three case studies in Vancouver, Toronto, and Waterloo Region:

“9.3 (2) Where recyclable material has been deposited in a blue box recycling container or recycling cart by the owner or occupier, no person is permitted to remove (a) any recyclable material from the premises of that owner or occupier, or (b) any recyclable material from the blue box recycling container or recycling cart, except the City Engineer or a person previously authorized in writing by the City Engineer [...]” (City of Vancouver, 2011)

“844-23. Prohibited acts. No person shall: [...] C. Pick over, interfere with, disturb, remove or scatter any waste set out for collection unless authorized to do so by the General Manager.” (City of Toronto, 2010)

“15. No person shall disturb, remove or scatter collectable waste or recyclable waste after it has been placed for waste collection, except as permitted in this By-law.” (The Regional Municipality of Waterloo, 2002)

The wording of the above by-laws implies some of the rationale behind anti-waste picking regulations. In the cases of Toronto and Waterloo Region, terms such as “disturb” and “scatter” suggest nuisance and public disorder, and each of these statements are followed by prohibitions on allowing a person’s animal to similarly interfere with the waste stream. References to city authorities in these by-laws also suggest that municipal waste collection is based in a service model that is proprietary, contained, and exclusive. Only those actors authorized by the city may access waste and its potential value in these cases. In some instances, this practice is prohibited by by-law in order to ensure that the municipal body can fully capture and benefit from the value remaining in the waste stream (i.e. resalable recyclable materials). Ostensibly, such regulations are also meant to protect the privacy of residents whose waste could be illicitly opened and sorted through by informal recyclers.

We argue that the central jurisdictional concept at play in the municipal sphere is “what”: the objects of governance that city authorities seek to regulate through their actions. In the cases that follow, the “what” of jurisdictional attention is in part the waste itself (although the materiality of this waste remains largely unarticulated and abstracted through a focus on containers and bins rather than their contents). However, this “what” also extends to the people who are the users of this waste and who seek to redefine its definition as such through their reclamation activities [6]. In particular, the following case studies reveal the jurisdictional means that are used to achieve the ends of disciplining

[6] We consciously characterize users of waste / informal recyclers as “what” and not “who” in the context of our jurisdictional analysis because the latter term refers to the authorities who institute law, regulation, and enforcement, while the former references the object of regulation over which/whom authority is sought (see Valverde, 2009).

and controlling public spaces through the regulation (“how”) of informal recyclers and practices (“what”) in particular places in cities (“where”). There is again a notably absent presence in the construal of the “what” that the by-laws regulate: the jumble of things in the blue box or waste container are severed from property relations as if such relations come to a halt at the rim of the black hole of the container.

In addition to analyzing the content of by-laws themselves, municipal policy discussions and media coverage of the growing practice of informal recycling / waste picking provides further insight to the social relations that rationalize, enable, re-inscribe, and sometimes challenge waste-related by-laws. For example, the above three Canadian case studies of Vancouver, Toronto, and Kitchener (a municipality within the Waterloo Region) demonstrate a diversity of interpretations and performances of by-laws that prohibit informal recycling.

Vancouver: Waste as public disorder

In 2006, then-Mayor of Vancouver Sam Sullivan introduced Project Civil Society (see City of Vancouver, 2006a): a vision for the transformation of Vancouver’s public spaces in preparation for hosting the 2010 Winter Olympics. The focus of this suite of initiatives and proposed regulations was a crack-down on homelessness, aggressive panhandling, and the drug trade. Sullivan introduced Project Civil Society at a press conference by stating, “It’s clear that our citizens want us to act on the growing issue of public disorder” (Vancouver Sun, 2006). Informal recycling was identified as one such visible form of “public disorder,” and a report released the same month from the City’s General Manager of Engineering Services recommended that Council consider the introduction of a by-law requiring that commercial waste containers be locked, thus preventing informal reclamation of deposit-return and salable materials found in the waste and recyclable streams. The recommendation was framed in a context of maintaining cleanliness and order, as well as “improve[ing] the liveability and quality of life for citizens and visitors of Vancouver” (City of Vancouver, 2006b, p. 4).

The General Manager’s report makes explicit reference to the Downtown Eastside neighbourhood as the target of this proposed initiative, noting that this is a low-income and high drug-use area. The report states: “Enforcement of locked commercial garbage containers may result in a loss of revenue to those who collect deposit beverage containers and other waste commodities from privately owned and operated waste containers” (City of Vancouver 2006b, p.14), but notes that income-generating alternatives could be found via alternative waste collection programs or other initiatives. Ken Lyotier (then-director of the United We Can bottle-depot – a social enterprise in the Downtown Eastside created by and for informal recyclers) commented that the proposed by-law was simplistic and did not deal with the root issues of poverty and homelessness. He also noted that this was the third attempt to introduce a by-law to require waste bin locking (CBC, 2006). In this instance, City Council voted to bring forward the necessary by-law amendments in December 2006.

As debate on the implementation of bin-locking continued in the city, Chris Underwood (a solid-waste management engineer for the City and one of the co-authors of the report recommending the by-law) commented, “The intention is to focus the enforcement efforts on the problem bins [...] It’s not realistic to enforce such a bylaw citywide.” (The Georgia Straight, 2007). The creation of a city-wide by-law that is

differentially enforced creates uneven urban environments in Vancouver. The rationale for the by-law was explicit about its focus on the Downtown Eastside neighbourhood, and the above public statement by a city staff person further supports this agenda of partial enforcement. A follow-up report recommended an increase in commercial waste container fees to enable the City to maintain its differential enforcement of waste-related by-laws in the Downtown Eastside. Short-term funding from senior government had allowed for the hire of an extra municipal Street Use Inspector: “Over the last 2½ years the addition of the third temporary inspector has allowed the City to assign a staff person to focus on Downtown Eastside (DTES) street cleanliness issues” (City of Vancouver, 2010, p.2). The raised fees were justified in order to allow for increased waste-related surveillance and enforcement in this neighbourhood, including compelling private haulers to remove graffiti tags from waste containers (the report notes an increase of 247% in graffiti enforcement removal between 2007 and 2008 due to the additional attention of the DTES inspector), as well as increased enforcement of bin locks (for example, increased inspector attention was credited with an increase from 50% to 98% of locked bins in Yaletown, an affluent neighbourhood in close proximity to the DTES).

The act of locking bins and excluding informal recyclers from the waste stream constitutes the repeated disciplining of public space in specific areas of the city. This performance created a strong municipal presence in a high profile “problem” neighbourhood that is close to affluent areas of shopping, tourism, and condominium living. The executive director of the Downtown Eastside Residents Association told local media that locking waste bins could be considered an act of gentrification in her neighbourhood (The Georgia Straight, 2007). Butler (2009) suggests a Lefebvrian perspective that “provides a way of conceptualising the tools of municipal governance simultaneously as codifications of dominant representations of space, and as technical mechanisms for inscribing dominant uses in space” (p.436). In this vein, Vancouver’s bin-locking by-law enacts certain kinds of social and physical spaces, provides the means for disciplining particular uses of targeted spaces, and reinforces the changing nature of these spaces to sites of increasingly affluent consumption.

Toronto: Waste as a municipal resource

The Ontario Deposit Return Program was introduced as provincial regulation under the Liquor Control Act in 2007, mandating a deposit-refund system on most alcohol bottles. Although a partial deposit-return system for beer bottles and cans predated this regulation, the mandated expansion of the program increased the potential value of materials commonly found in the recyclable stream (including wine bottles, wine tetrapaks, and PET plastic liquor bottles), and therefore increased the practice and the visibility of informal recycling activities, particularly in dense urban areas.

A Toronto Star newspaper article reported that municipal actors anticipated the new regulation would cost the City millions of dollars, with prospective losses due to both lost recycling revenue (i.e. the diversion from the waste stream of material previously reclaimed and then sold via municipal recycling programs), as well as “scavengers.” Then-mayor David Miller suggested that informal recyclers collecting deposit-refund bottles from the municipal recycling stream amounted to hundreds of thousands of dollars in lost revenue each year (Rennie, 2007).

The introduction of new residential waste carts in 2008 was used as an opportunity to strengthen restrictions against informal recycling, partly in light of an increase in the practice after the introduction of the Ontario Deposit Return Program. Previously, municipal authorities had the capacity to issue a \$360 ticket to people taking garbage or recyclables from the curbside; the current by-law wording allows for a fine of up to \$10,000 for a first offence and up to \$25,000 for a second offence for those who commit any prohibited act, including waste picking. However, according to a staff member with the City's Solid Waste department, "We're not going after the single person going down the street going through the Blue Box [...] We're going after the professional recyclers, the guy who is running a truck or multiple trucks" (CityNews, 2008). Again, this promise of differential enforcement is used to justify the introduction of broad-sweeping municipal enforcement and fining powers. The codification of these powers allows for potentially extensive application of the by-laws, although the reality of the practice is more constrained, and seems to allow for compassionate rule-bending in the case of low-income informal recyclers.

A 2012 newspaper report in the National Post confirms the increased presence of informal recyclers at The Beer Store locations (the only authorized deposit-refund operators in the province) since 2007. One employee at The Beer store noted, "[bottle collectors] are literally outside the store all day [...] They never buy beer. You know all that money is going into savings and probably paying their rent" (Edmiston, 2012). The article also confirmed that city staff rarely enforced the anti-informal recycling provisions of the waste collection by-laws. In this instance, it would appear that the differential enforcement of the relevant by-law benefits informal recyclers, and allows municipal actors to create a performance of compassion (despite a context of fiscal constraint) in their reluctance to fully apply the fines enabled by recent changes to the by-law. However, it is important to note that the codified legal context actually expands the potential for enforcement, and essentially constructs the curbside as a space of legal indeterminacy for those who earn a living from its contents.

Kitchener-Waterloo: Waste as a common resource?

Kitchener is a municipality under the governance structure of the Region of Waterloo in Ontario. Although the Region's waste by-laws do prohibit removal of items from the waste stream (as noted above), a markedly different public perception of the issue has taken root in the local media. As part of a video exposé on "scrapping" (as informal recycling is locally known), the CTV television network published an online story entitled, "Scrapers scouring curbside garbage [is] lucrative and legal." The story quoted a municipal staff person on the topic: "Kathleen Barsoum of Waterloo Region's waste management division says there's nothing illegal about scrapping. 'As long as the stuff is getting recycled, that is the goal,' she says" (CTV News Kitchener, 2013). This municipal staff performance of ultimate concern with successful recycling (rather than a focus on municipal revenue loss or potential perceptions of public disorder) resonates with local pride in recycling achievements as represented in city documents. According to the Region's website (Region of Waterloo, 2010), the world's first residential blue box system was developed for the City of Kitchener in 1983, and a recent report also boasts that the Region had a 2010 diversion rate of 51%, which was one of the highest in the province (Region of Waterloo, 2011).

However, this friendly pro-scraping municipal moment in the media does not accord with either the current by-law, or an explicit discussion of “scavenging” in a municipal Recycling Handbook that was produced for property owners, property managers and superintendents:

Scavenging of recyclables is not allowed [...] Recyclables are like any commodity that is bought and sold and has a monetary value [...] Scavenging costs the recycling program money by reducing the revenue it receives. Report scavenging to the Region. Try to identify the scavengers by recording the date and time, a description of what they look like, their actions and their license plate (Region of Waterloo, 2009, p.14).

Far from applauding scrappers for their recycling successes, this document encourages city residents to participate in the surveillance and reporting of illicit informal recycling activities. Rather than presenting a united front, these municipal actors have enabled distinct and conflicting contextualizations of the legality of informal recycling in Kitchener-Waterloo. The impact of these mixed messages is to create illegible cityscapes and tense social spaces, where property owners and superintendents believe they have a right to deter and report informal recyclers, and scrappers themselves believe they have a right to earn money while simultaneously supporting shared municipal recycling goals.

Jurisdiction and performance in municipal waste law

These three examples of municipal regulation of informal recycling demonstrate the flexibility of constellations of jurisdictional elements. The different approaches described in each case study reveal distinct applications of jurisdiction, with resultant variations in the role of municipal governments as enablers, restrictors, or regulators of certain people and activities, as well as differential notions of the public good.

In Vancouver, the jurisdictional means of spatially-focused by-law enforcement and policy creation supported the municipal framing of informal recycling as “public disorder.” In this case, the ends of such interventions included the development of uneven social and spatial urban environments that privileged legitimized uses of the public sphere, while disciplining “disorderly” users and practices. In Toronto, the means of increased fines and selective by-law enforcement partially enabled the ends of protecting municipal revenue streams, and also allowed municipal actors to engage in a public performance of compassion for low-income city residents. It is worth noting that Toronto’s regulation of informal recycling was influenced by an overarching provincial jurisdictional process that sought to achieve the ends of increased waste diversion through the means of an enhanced deposit-return system. In Kitchener-Waterloo, we see conflicting public framings of informal recycling practice from distinct municipal actors. These discursive means enabled different municipal representatives to alternately perform both environmental responsibility and civic responsibility (by empowering property owners and protecting municipal revenue streams). The confusing mixed messages used in Kitchener-Waterloo also potentially create a regulatory grey-zone that enables differential and changing enforcement strategies around informal recycling.

In sum, municipal means of differential regulation and enforcement serve the ends of 1) redefining the public sphere in order to promote “public order,” privilege the concerns of property owners, and provide flexibility for differential and changing

enforcement strategies that promote multiple versions of the public good, and 2) representing the municipality as a servant of such visions of the public good (which is alternately described as fiscal responsibility, social responsibility, and environmental responsibility).

Why are legal means used to police and control waste and its symbolic meanings in city spaces? Mitchell (1997) suggests the “annihilation of space by law” represents an attempt to discipline occupants and uses of public space through regulation in order to make cities more attractive to “footloose capital and to the footloose middle classes” (p.305). Furthermore, Sylvestre (2010) notes that in attempts to control “disorder” in Montreal, regulatory practices depend on more than just the law; they also require the expression of state power through policies, policing practices, architectural decisions, and so on. This argument could be extended to describe the grooming of public urban spaces through legal and extra-legal policy tools (i.e. waste management practices), as seen in Vancouver. However, Blomley (2001) notes that while property regimes do enshrine the potentially oppressive rights of certain empowered actors to access, use, and change space, these regimes do not go uncontested. The recognition of legal stances as performances allows for disruption of the repetitions and re-enactments that performances inherently require, as can be seen in the ambivalence of public messaging in the case of Kitchener-Waterloo, and the selectivity of by-law enforcement in all three municipalities.

The ambivalence of enforcement surrounding informal recycling harkens back to nebulous interpretations of waste: is it a social burden, or does it bear potential value? Is it a potential source of nuisance, ill health, and stigmatization, or a source of potential income? The indeterminate nature of waste enables this interpretive uncertainty of its role in society, and thus necessitates performances of its legal status. Since there is no static definition of waste and its treatment in practice, the official stance of government actors vis-à-vis waste in the public sphere must be continually reconstructed and enacted. The indeterminacy of waste is thus key to its centrality in the chain of jurisdiction for its legal regulation; waste and wasting must be indeterminate “whats” in order to legitimize wide-reaching by-laws and enforcement mandates that allow for the performance of various definitions of the public sphere and the public good that depend on shifting priorities and goals of legal authorities.

Conclusion

Our analysis of the legal regulation of waste at the federal, provincial, and municipal levels in Canada has revealed the entanglement of multiple social relations with the disciplining of waste (which is indeterminate matter), including the following:

- mitigating nuisance;
- facilitating service provision and environmental management functions; and
- controlling and capturing potentially lucrative material flows.

Yet, far from being mere ephemera or epiphenomena, waste, wasting, and the work of jurisdiction over them are fundamental to making individuals as citizens more visible and legible in the eyes of the law (i.e. evidence); protecting their privacy and identities in relation to the state and other citizens; and ensuring individual freedoms and the existence of a collective public good (a balance of the public good with private interests).

Our analysis has enabled a dynamic approach to understanding the concept of jurisdiction by destabilizing the notion of a static and location-bound realm of authority. In demonstrating the constantly shifting basis for jurisdiction, it is our claim that the findings from this place-based analysis can be extended and compared in other locales where law also behaves as a constantly re-enacted performance, rather than a codified set of unchanging rules.

Empirically, we have documented what we might risk describing as a class of strange localities in built space: the bins and bags for aggregating trash and recyclables from private citizens for collection by public authorities. Into these bins and bags, property relations seem to disappear, marking these containers as odd black holes that interrupt the usually smooth co-extensiveness of property (in its various private, public, and common forms) and built-space. Their strangeness has alerted us to how waste and wasting are centrally entangled with the generation of rights and values fundamental to the production of liberal democracy.

Furthermore, we have shown that both the bounds of the public sphere (as represented by the notion of jurisdiction) and definitions of the public good are not static. Instead, they are iterative results of enactment, construction, and performance in courtrooms, in city halls, on the streets, and in the trash and containers under the purview of police, by-law officers, and municipal staff involved in policy-making. Our analysis demonstrates that the legalities of waste are changing, shifting, and overlapping landscapes, and that jurisdiction can be “multiple, distributed, and patchy” (Lepawsky, 2012, p.1195), with attendant implications for the legal relationships between state authorities and their citizenry. Waste and wasting are key sites for understanding the co-production of built space and the law. Their co-productions are generative of the spaces of constraint, freedom, citizenship, and governance that constitute lived lives in built-space.

References:

Berti, M. and Sommers J.(2010), “‘The streets belong to the people that pay for them’: The spatial regulation of street poverty in Vancouver, British Columbia”, in Crocker, D. and V.M Johnson (Eds.), *Poverty, Regulations, and Social Justice: Readings on the Criminalization of Poverty*, Fernwood Publishing, Blackpoint NS, pp. 60-74.

Blomley, N. (2001), “Landscapes of property”, in Blomley, N., Delaney, D., and Ford, R.T. (Eds.), *The Legal Geography Reader: Law, Power and Space*, Blackwell Publishers, Malden MA, pp. 118-128.

Blomley, N. (2011), *Rights of passage: Sidewalks and the regulation of public flow*, Routledge, New York NY.

Boyd, D. (2011), *Unnatural law: Rethinking Canadian environmental law and policy*, UBC Press, Vancouver BC.

Bulkeley, H. and Askins, K. (2009), “Waste interfaces: biodegradable waste, municipal policy and everyday practice”, *The Geographical Journal*, Vol. 175 No. 4, pp.251-260.

Butler, C. (2009), “Critical Legal Studies and the politics of space”, *Social & Legal Studies*, Vol.18, pp.313-335.

Campbell, J. and J. Harbord. (1999), “Playing it again: Citation, reiteration or circularity?”, *Theory, Culture & Society*, Vol.16, pp.229-239.

CBC (2006), “Vancouver bidders face possible lockout”, 11 December, available at: <http://www.cbc.ca/news/canada/british-columbia/vancouver-bidders-face-possible-lockout-1.585517> (accessed 11 January 2014).

Chappells, H. and Shove, E. (1999), “The dustbin: A study of domestic waste, household practices and utility services”, *International Planning Studies*, Vol.4 No.2, pp.267-280.

City of Toronto (2010), “Chapter 844: Waste Collection, Residential Properties”, available at: http://www.toronto.ca/legdocs/municode/1184_844.pdf (accessed 21 Aug 2012).

City of Vancouver (2006a), “Project Civil Society: Office of the Mayor”, available at: <http://www.samsullivan.ca/pdf/project-civil-city.pdf> (accessed 7 January 2012).

City of Vancouver (2006b), “Administrative Report: Street Cleaning Initiatives”, available at: <https://downtownvancouver.net/dvbia/pdf/AppendixEStreetCleaningInitiativesDec1406ReporttoStandingCommitteeofCouncilonCityServicesandBudgets.pdf> (accessed 11 January 2014).

City of Vancouver (2010), “Administrative report: Garbage Container Licence Program – 2011 License Agreement Fee”, available at: <http://www.bctrucking.com/Bulletin%20Uploads/2010%20Uploads/csbu4.pdf> (accessed 11 January 2014).

City of Vancouver (2011), “Solid Waste By-law No. 8417”, available at <http://www.downtownvancouver.net/files/AppendixGCitySolidWasteBylawNo8417.pdf> (accessed 21 August 2012).

CityNews (2008), “City to crack down on blue box scavengers,” August 7, available at <http://www.citynews.ca/2008/08/07/city-to-crack-down-on-blue-box-scavengers/> (accessed 11 January 2014).

CTV News Kitchener (2013), “‘Scrappers’ scouring curbside garbage lucrative and legal”, June 4, available at: <http://kitchener.ctvnews.ca/scrappers-scouring-curbside-garbage-lucrative-and-legal-1.1310885#ixzz2qCrz2PeN> (accessed 11 January 2014).

de Coverly, E., McDonagh, P., O'Malley, L., and Patterson, M. (2008), “Hidden mountain: The social avoidance of waste”, *Journal of Macromarketing*, Vol.28 No.3, pp.289-303.

Drackner, M. (2005), “What is waste? To whom? An anthropological perspective on garbage.” *Waste Management and Research*, Vol.23 No.3, pp.175-181.

Edmiston, J. (2012), “Living on empties: City’s bottle-collectors say their hard work pays off — in cash”, *National Post*, June 30, available at <http://news.nationalpost.com/2012/06/30/living-on-empties-citys-bottle-collectors-say-their-hard-work-pays-off-in-cash/> (accessed 11 January 2014).

Evans, D. (2012), “Beyond the throwaway society: Ordinary domestic practice and a sociological approach to household food waste”, *Sociology*, Vol.46 No.1, pp.41-56.

FitzGerald, S. and Philippopoulos-Mihalopoulos, A. (2008), “Invisible laws, visible cities”, *Griffith Law Review*, Vol.17 No.2, pp.435-437.

Georgia Straight (2007), “Dumpster issue divides city”, February 28, available at <http://www.straight.com/news/dumpster-issue-divides-city> (accessed 11 January 2014).

Gille, Z. (2007), *From the Cult of Waste to the Trash Heap of History: The Politics of Waste in Socialist and Postsocialist Hungary*, Indiana University Press, Bloomington IN.

Gostin, L.O. (2000), “Public health law in a New Century part II: Public health powers and limits”, *Journal of the American Medical Association*, Vol.283 No.22, pp.2979-2984.

Gregson, N. and Rose, G. (2000), “Taking Butler elsewhere: performativities, spatialities and subjectivities”, *Environment and Planning D: Society and Space*, Vol.18, pp.433-452.

Gregson, N., Crewe, L., and Metcalfe, A. (2005), *Disposal, devaluation and consumerism: or how and why things come not to matter*, Report to the Economic and Social Research Council., University of Sheffield, Sheffield.

Gregson, N., Metcalfe, A., and Crewe, L. (2007a), “Moving things along: the conduits and practices of divestment in consumption”, *Transactions of the Institute of British Geographers*, Vol.32 No.2, pp. 187-200.

Gregson, N., Metcalfe, A., and Crewe, L. (2007b), “Identity, mobility, and the throwaway society”, *Environment and Planning D: Society and Space*, Vol.25, pp.682-700.

Hetherington, K. (2004), “Secondhandedness: consumption, disposal, and absent presence”, *Environment and Planning D: Society & Space*, Vol.22, pp.157–173.

Howe, N. (2008), “Thou shalt not misinterpret: Landscape as legal performance”, *Annals of the Association of American Geographers*, Vol.98 No.2, pp.435-460.

Lepawsky, J. and Mather, C. (2011), “From beginnings and endings to boundaries and edges: rethinking circulation and exchange through electronic waste”, *Area*, Vol.43 No.3, p. 242-249.

Lepawsky, J. (2012), “Legal geographies of e-waste legislation in Canada and the US: Jurisdiction, responsibility and the taboo of production”, *Geoforum*, Vol.43 No.6, pp.1194-1206.

Maantay, J. (2002), “Zoning law, health, and environmental justice: What’s the connection?”, *Journal of Law, Medicine & Ethics*, Vol.30, pp.572-592.

Ministry of the Environment (Province of Ontario). (2008), “Toward a zero waste future: Review of Ontario’s *Waste Diversion Act*, 2002”, available at: www.downloads.ene.gov.on.ca/envision/env_reg/er/documents/2008/010-4676.pdf (accessed June 25, 2014).

Mitchell, D. (1997), “The annihilation of space by law: The roots and implications of anti-homeless laws in the United States”, *Antipode*, Vol.29 No.3, pp.303-335.

Regional Municipality of Waterloo (2002), By-law number 02-011 of The Regional Municipality of Waterloo: By-law to Prohibit and Regulate the Collection of Waste, available at: <http://www.regionofwaterloo.ca/en/regionalgovernment/bylaws.asp> (accessed 11 January 2014).

Region of Waterloo (2009), *Recycling Handbook for owners, property managers and superintendents*, available at <http://www.regionofwaterloo.ca/en/aboutTheEnvironment/resources/Multi-resBookWEBDEC2013.pdf> (accessed 11 January 2011).

Region of Waterloo (2010), *Blue Box & Cart Recycling Programs*, available at http://www.regionofwaterloo.ca/en/aboutTheEnvironment/Blue_Box_Recycling.asp (accessed 11 January 2014).

Region of Waterloo (2011), *Waste Management Master Plan Update*, available at http://www.regionofwaterloo.ca/en/aboutTheEnvironment/resources/DOCS_ADMIN-974845-v1-WMMP_UPDATE_2011__REPORT__CONTENT__PDF.pdf (accessed 11 January 2014).

Rennie, S. (2007), "Bottle returns to cost Toronto millions", *The Toronto Star*, April 16, available at: http://www.thestar.com/news/2007/04/16/bottle_returns_to_cost_toronto_millions.html (accessed 11 January 2014).

Staeheli, L. (2008), "Political geography: difference, recognition, and the contested terrains of political claims-making", *Progress in Human Geography*, Vol.32 No.4, pp. 561-570.

Staeheli, L. and Mitchell, D. (2006), "USA's Destiny? Regulating space and creating community in American shopping malls", *Urban Studies*, Vol.43 No.5/6, pp. 977-992.

Sylvestre, M. (2010), "Disorder and public spaces in Montreal: Repression (and resistance) through law, politics, and police discretion", *Urban Geography*, Vol.31 No.6, pp. 803-824.

Thompson, M. (1998), "Waste and fairness", *Social Research*, Vol.65 No.1, pp.55-73.

Valverde, M. (2009), "Jurisdiction and scale: legal 'technicalities' as resources for theory", *Social and Legal Studies*, Vol.18 No.2, pp. 139-157.

Vancouver Sun (2006), "Mayor Sullivan pledges to 'clean up city'", *Vancouver Sun*, November 28, available at <http://www.canada.com/vancouversun/news/westcoastnews/story.html?id=f1654922-4701-4f69-bfb0-afd55b85e2ee> (accessed 11 January 2014).