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# **POP-UP PROPERTY: ENACTING OWNERSHIP FROM SAN FRANCISCO TO SYDNEY**

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## **Pop-up Property: Enacting ownership from San Francisco to Sydney**

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*Abstract.* Through a detailed examination of *PARK(ing) Day*, a loosely-organised international event to reclaim street space from cars, this paper reveals the intimate connection between property and its social and material context.

Private claims to public streets are not uncommon. In some cases, such claims are swiftly rejected. In others, they receive recognition and respect. Focusing on the particular set of proprietary claims within *PARK(ing) Day*, this paper examines the ways in which property on city streets is claimed and contested.

Drawing primarily on fieldwork in Sydney, Australia, the analysis emphasises the degree to which property depends on the networks in which it is situated.

*PARK(ing) Day* was based on a creative rereading of the property producible by paying a parking meter, and this link with legality plays a key role in the event. Yet the property at issue is based on much more than that simple transaction. A more emergent and socially constructed conception of ownership is central in understanding both the making of claims to city streets on *PARK(ing) Day* and the range of responses they generate.

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### **Introduction**

Private claims over public streets have long histories. Such claims are often rejected, with officials and/or members of the local community acting to enforce the public nature of the street. The parking of camper vans in kerbside spaces by backpackers in Sydney, Australia, for example, has drawn heated responses in recent years. Residents living near beaches and inner city parks have objected

strongly, prompting media reports of a “plague” and “grubby hippies setting up camp” (Daily Telegraph 2016). Local residents and businesses lobbied municipal authorities to prevent backpackers using streets in this way. While the use of parking spaces to stay overnight is often not illegal, complaints from locals have been successful in prompting the introduction of new regulatory restrictions that do in fact prohibit it (McKenny 2014).

Food trucks are another contentious example. In many cities around the world, food vendors operating out of vehicles parked on city streets have attracted hostile responses, largely from ‘brick and mortar’ restaurants (Lasserre 2013; Mukhija & Loukaitou-Sideris 2014). In Sydney, concerns raised by restaurants and others led to the inclusion of strict controls governing the introduction of food trucks in 2012 (Zegura 2014). Yet businesses and neighbouring residents continue to complain about noise, nuisance and unfair competition for established businesses (Di Lizia 2013).

In other cases, private uses of public streets attract far less opposition. As several scholars have noted, the digging out and claiming of parking spaces for the duration of a snowy North American winter by local residents is widely recognised as legitimate by others in the community (Epstein 2002; Rose 1985; Silbey 2010). A range of other private activities on public streets are similarly accepted in a number of cities: the use by cafes and restaurants of on-street parking spaces for outdoor seating; the use by homeowners and businesses of such spaces for the storage of refuse containers and other equipment during construction, or for commercial and private loading and unloading over shorter periods. Many of these activities are subject to permitting processes, and that legal status is important to their acceptance by the wider community.

Yet there is more at stake than permits and regulations. With respect to the well-documented claiming of snow-cleared parking spaces, the particular regulations in operation are often not determinative of how officials or others respond. In many cities, the placing of chairs and other objects to claim a parking space is illegal (either specifically proscribed or as part of a more general prohibition on the placement of private objects on public roads), yet officials often tolerate the practice (Silbey 2010). Efforts to enforce laws prohibiting the activity may even generate fervent resistance.

As many commentators have noted, the enforcement of the laws regulating streets and public spaces is replete with variation (Blomley 2011; Loukaitou-Sideris & Ehrenfeucht 2009; Valverde 2012). Official responses are influenced to a large degree by factors other than legal rules, and this is by no means a new occurrence. In her discussion of obstruction of the street, a body of law dating back to the Middle Ages, Rachel Vorspan notes the very clear influence of social

and political agendas on the way in which laws regulating public streets have been enforced (Vorspan 1997). In a more recent discussion of sidewalk vendors in New York, Ryan Devlin explains:

on the street formal law does not act like a blueprint structuring social action and spatial form; it exists mostly as a point of departure for spatial negotiations and maneuvers (Devlin 2011:54).

Variability is apparent in each of the examples described above. Not all camper vans are rejected (a van parked in my own street in inner Sydney went unchallenged for several months), not all claims to snow-cleared spaces are accepted (within popular discourse on the practice, Susan Silbey and Richard Epstein find multiple critiques (Epstein 2002; Silbey 2010)), not all food trucks are rejected (in Los Angeles, [saveourtacotrucks.org](http://saveourtacotrucks.org) details a range of activities undertaken by supporters of food trucks to campaign for less restrictive regulations). Patterns of acceptance cannot be explained simply by reference to legislative provisions or judicial determinations, that is, to formal law.

Within this variability and manoeuvrability, there are also consistencies. In trying to understand these, property is important. Property has long been associated with who and what belongs in a place, and who and what does not (Waldron 2009). Proprietary claims are central to each of the activities outlined above, and the ways in which these claims are expressed and received offer important insights well beyond the particular disputes in question.

In line with the growing body of scholarship emphasising the relationality, complexity and performativity of property (Blomley 2013; Cooper 2014; Davies 2007; Keenan 2014; Rose 1994), the property at issue on city streets should be understood as contingent and collectively constructed. My central claim in this paper is that proprietary claims on public streets are most likely to be successful when they are grounded in relationships of social and material connection to the site in question. I examine this general claim in the context of a particular set of activities: the construction of temporary parks around the world each year on *PARK(ing) Day*.

This focus on grounded empirical work is important. Property scholars are increasingly emphasising the importance of everyday and lay understandings to the workings of property, yet there is a lack of empirical work to guide the study of property practices (Blomley 2016:225). This paper helps to fill that gap.

*PARK(ing) Day* is an annual, global, open-source event in which participants appropriate parking spaces and temporarily transform them into spaces that are more sociable and sustainable. The event centres on the parking meter:

participants pay for the space, then use it for anything but the parking of cars. Examination of the claims and counter-claims involved in *PARK(ing) Day* demonstrate the extent to which formal and informal understandings of property are entangled, and how different understandings of property shape and are shaped by their social, spatial and temporal context. While the research is drawn from a larger project encompassing fieldwork in Montreal, Canada, and San Francisco, USA, I focus here on Sydney, Australia.

I begin with a few comments on property and method, highlighting calls from socio-legal scholars for greater attention to property as multiple and mutable, an institution dependent upon performances in need of greater empirical examination. I then introduce *PARK(ing) Day* as the site for such examination, tracing its origins as a brief installation in San Francisco in 2005 to its establishment as a global practice, followed by an overview of its specific trajectory in the city of Sydney. The next section examines the importance of property in *PARK(ing) Day*, as a core concept in the development of the first park and as an important factor in sustaining the event. While the proprietary claims made in *PARK(ing) Day* are largely accepted, this is not always the case. The following section describes examples where parks in Sydney have come into conflict with police. I then examine the connection between property and responses to *PARK(ing) Day*, finding that property claims made through parks are most successful when they draw on socially and materially connected forms of ownership.

## **Property and Performativity**

Property is a powerful institution, affecting social life and everyday human relations in multiple and ethically charged ways. However, property is not simply an abstraction, but materialized in the here-and-now. To understand its effects requires that we attend to its quotidian presence. (Blomley 2016:225)

Property is a complex and contested concept. There is a long-running debate between theorists who argue for a Hohfeldian understanding of property as a separable bundle of rights or 'sticks', its difference from other rights a mere matter of degree, and those who take a more essentialist stance. Efforts to defend the particularity of property are typically framed around the right to exclude, citing this as the definitive core or essence (Heller 1999; Merrill & Smith 2001; Penner 1997). Property as exclusion, however, has been subject to considerable challenge, with numerous scholars highlighting examples where the right to exclude is inferior to other rights or even absent altogether (Dagan 2011; Freyfogle 2007; Gray 1991; Singer 2000). Exclusion-focused theorists have responded by revising their theories, suggesting, for example, that exclusion is

supplemented by governance in a minority of cases (Smith 2002), or that exclusion centres on a more limited agenda-setting right (Katz 2008).

That debate continues because property matters. In Western liberal democracies like Australia, the ownership of property has long been associated with wealth and power, fundamental to issues of equality, democracy and citizenship, and heavily implicated in many forms of exclusion, inequality and injustice (Alexander & Peñalver 2012; Davies 2007). At a more personal level, property is intimately and intuitively connected to feelings of self-affirmation, autonomy and control over the way we constitute ourselves in the world (Davies 2007). Both deeply desired and fiercely contested, property is more than just another collection of rights.

Rather than focusing on the rights associated with ownership as self-contained, a growing number of scholars are instead emphasising the role that property plays in society, accepting it as socially constructed, contingent and contextual. Carol Rose has been particularly influential in her claim that property law is at heart a matter of persuasion, of various and variable ways in which people make up their minds about the scope of proprietary rights and, importantly, seek to persuade others to do the same (Rose 1994).

What constitutes property is rarely a matter of legal texts (what Hanoch Dagan calls “doctrine” or “privileged legal sources”) alone; the way in which laws are situated in the world play a crucial role in their shaping and reshaping (Dagan 2011). For some, the socially constructed nature of property is a normative conclusion: property institutions are inherently dynamic because they structure and channel social relationships, and must accordingly be subject to ongoing, normative and contextual re-evaluation and possible reconfiguration (Dagan 2011). In the US “progressive property” scholars have used similar arguments to challenge the strong influence of economic approaches to property law in the US, advocating instead a more explicitly political approach, one that pays greater attention to the “plural and incommensurable values” that property serves, and the social relationships it shapes and reflects (Alexander et al. 2008).

Socio-legal scholarship has been important in extending these normative claims, by examining the ways in which property is constructed and enacted in society. Robert Ellickson’s study of disputes between ranchers in Shasta County, California, provides an early demonstration of the complex connections between property and its place in the world: law operates in dialogue with social understandings about property (Ellickson 1991). Silbey’s examination of snow-cleared parking spaces highlights the degree to which understandings of property are invoked (often tacitly) in everyday life (Silbey 2010). On Silbey’s analysis, understandings of property are central in making sense of the practice,

enabling people to choose between alternative interpretations of the issues in question, and to shape their behaviour accordingly. Legal narratives provide grounding for the claims made by snow-diggers, and these are reinforced through their resonance with normative ideals about labour, desert and fairness. Kevin Gray makes a similar point in his reflection on cultural practices of queuing (Gray 2009).

Through a range of studies in the UK (encompassing an alternative residential school, a Jewish eruv, and fox hunting), Davina Cooper shows that property involves more than instrumental, hierarchical bundles of rights (Cooper 1998, 2007, 2014). Understanding property in this way is possible, Cooper argues, only by ignoring the entanglement between these and other forms of belonging. There is a need to look beyond private ownership to reveal the fine-grained and overlapping character of the rights, duties and norms through which property contributes to social life. A key insight from Cooper, as from other sociolegal scholars of property, is that the scope of proprietary rights depends on more than legal rules (Keenan 2010, 2014; Strang & Busse 2011; Strathern 1999, 2011).

A sustained empirical examination of the practices of property can be found in the work of Nicholas Blomley (Blomley 1994, 2004, 2005, 2007). With examples ranging from contemporary struggles over gentrification to historical practices of enclosure and colonial displacement, from urban gardening to early modern surveying, Blomley presents a rich and provocative picture of property as “definitionally, politically, and empirically heterogenous” (Blomley 2004:xvi). Particularly interesting is Blomley’s call for an understanding of property as performative, in the sense that claims about property help to constitute that which they describe (Blomley 2013).

Property claims do not always succeed in constituting their purported legality. In arguing that speech does not merely represent but helps to constitute that which it describes, John Austin noted the importance of conditions that are ‘felicitous’ (Austin 1962): supportive circumstances are necessary to enable a performance to bring about that which it pronounces. Participants in a wedding, for example, must comply with certain conditions (notice, witnesses) and fit into socially constructed roles (bride, groom) for those utterances to have effect. Saying “I do” at an engagement party will not bring about a marriage. Others have since emphasised the conditional nature of performative acts. For Judith Butler, this means that performances must be understood not in terms of particular acts, but as part of an ongoing process of repetition, citation and rearticulation (Butler 1993, 2010).

Claims about property build upon earlier claims, repeating and rearticulating the claims made in other places and at other times. One of Blomley's key insights is that the performances through which property is enacted extend beyond official actions (Blomley 2013). The relative infrequency of official actions such as passing legislation, deciding cases or registering titles means that the citational re-performance necessary to maintain property depends also on more humble and more diverse performances. Everyday activities like fence-building, hedge-trimming, instructing children not to cross someone else's lawn, installing security systems or waging struggles over gentrification are thus central in sustaining (and reshaping) property as an institution.

It is here, in respect to these mundane and material practices, that more work is needed:

Empirically speaking, we simply do not know enough about lay conceptions and practices of property. This is a curious omission. Property scholarship of various complexions makes strong claims concerning property's lived effects and ethical dispositions, yet spends little time documenting property's lived world (Blomley 2016:225)

## **Data and Methods**

To understand the ways in which people engage with property on city streets, the study used in-depth, face-to-face interviews. While the number of interviews is relatively small, as in most qualitative studies, the in-depth approach this enabled was crucial in gathering the detail and nuance necessary to understand how property is enacted in the lives of everyday people. My goal was to understand how participants themselves understand and engage with the theories and discourses of property and, in turn, how those understandings shape and are shaped by engagement with property in the world.

I interviewed 22 people involved directly or indirectly with *PARK(ing) Day* in Sydney, supplemented by background research, site visits and photo-ethnography on *PARK(ing) Day* in 2014 and 2017. As part of a larger project, further observations and approximately 60 interviews were undertaken in Montreal and San Francisco in 2015 and 2016. Individuals were identified through the parkingday.org website and the Sydney Parking Day Facebook page, as well as blogs, social media and online searches. Invitations were sent to participants from a range of different professions and organisations. Invitations were sent to people who had engaged at differing times also: some who had participated multiple times, some just once, some recently, some earlier. A



snowball referral method and ongoing investigation yielded additional potential participants.

Recognising the potential bias in this kind of recruitment, selections were made to maximise diversity. Interview participants included: built environment professionals, small business owners, school and university teachers, community workers, engagement professionals, officials, journalists, students and members of the public. Subjects were generally professionals, but included a range of ages (from tertiary students to adults approaching retirement) and of ethnic and socio-economic backgrounds.

Despite multiple efforts, I was unable to interview police, rangers or others responsible for the enforcement of laws on the street. This was largely a result of state level police policy. For these perspectives, the research relied on secondary sources – interviews with other officials (planners, sustainability and community development officers), media and social media (including photos and video footage of interactions with police), and participants' accounts of their interactions with officials.

The interview design was informed by previous studies of legal consciousness and legal geography (Blomley 2005; Ewick & Silbey 1998; Halliday & Schmidt 2009). Interviews were semi-structured. Participants were asked about how they came across PARK(ing) Day, what they thought about it, why they decided to get involved, what they did and how they thought it went. Open-ended questions were used to start, with participants asked to “tell the story” of what happened. Property and ownership were not targeted until late in the interviews, allowing themes to emerge from more open questions.

Interviews were intended to provide an insider perspective on PARK(ing) Day and its connection to law and legality. The research was open-ended and flexible, following the patterns and relationships revealed by participants. Data collection was refined through progressive focusing, with the interview questions adjusted to examine concepts or relationships that emerged through the research process (Crabtree & Miller 1999; Parlett & Hamilton 1977).

The interviews lasted between 45 minutes and two hours and were recorded with participant consent, then transcribed by professionals. Transcripts were checked by me, sent to interviewees for approval, then coded thematically using nVivo 11 software. Coding and analysis approximated the grounded theory approach set out by Kathy Charmaz (Charmaz 2014), but with attention given to the potential for the refinement of existing theories as well as theoretical discovery (Snow et al. 2003). The data and the field were revisited as certain theories emerged as particularly relevant, with the four year duration of

research enabling the tailoring of later interviews to evolving theoretical refinements.

Recognising my role as a producer – not merely an objective gatherer – of data, I sought to engage the subjects of my research through collaborative methods (Braverman 2014; Brettell 1996). I began and ended interviews by asking participants if they had any questions about me or the project. As a result, interviews were often followed by discussions about my findings and preliminary analysis; in a few cases the conversation continued, including sharing drafts of my research. This feedback was extremely helpful in increasing the accuracy, the subtlety and the depth of my findings.

Consistent with earlier studies of legal consciousness, I was struck by the richness of the data (Blomley 2005; Ewick & Silbey 1998). While there were some overarching concerns (for example, a widespread concern about the privatisation of public space and the complicity of private property in such processes), attitudes did not coincide with categories such as age, professional qualifications, institutional affiliation or level of involvement with *PARK(ing) Day* or related activities. The kinds of claims that people make about property cannot be explained simply by the kind of person making them. Participants understand property in diverse and even contradictory ways, reflecting the degree to which socio-cultural and legal understandings are always and already entangled.

The insights into understandings of property revealed through the study show that *PARK(ing) Day* – a playful, informal and in many ways everyday event – is richly informed by theories and discourses of property. Beyond procedural or rights-based theories, the ways in which participants discuss the event indicate that property draws strength by being embedded in social life and social action. Consistent with the claims made by Rose, Cooper, Blomley and others, the discourse of *PARK(ing) Day* reflects social understandings of property. Yet it also goes further: *PARK(ing) Day* works performatively to constitute and legitimate a certain idea of property as immanent in social relations. In doing so, it sustains the relevance of that language across a much wider range of property debates in contemporary cities.

### ***PARK(ing) Day***



Figure 1: *PARK(ing)*, San Francisco, 2005 source: Andrea Scher

*PARK(ing) Day* began with an event called “*PARK(ing)*”, a park installed for two hours on a San Francisco street in November 2005. Two landscape architecture students and a lawyer (comprising the newly-formed design collective, Rebar) paid a parking meter. Then, instead of parking a car in the space, the group laid out turf, a tree and a bench, “the constituent elements of a park” (2014). They also set up signs inviting passers-by to sit and relax in the space. When the meter expired, the group packed up and returned the space to its former condition.

Rebar and others also documented the park, posting images and video footage online after the event. Those images – particularly the one reproduced above – provoked a response far exceeding anything the group had imagined. Requests very quickly came from other people asking how to create their own parks; by December 2005, Rebar’s website was receiving millions of hits a day. In the months that followed, parks were built in cities as far afield as Glasgow, Scotland and Trapani, Italy (Passmore 2016).

*PARK(ing) Day* was established in response to that enthusiasm. Working with the non-profit conservation organisation Trust for Public Land, Rebar decided to coordinate an event that would enhance the impact of future parks. The first *PARK(ing) Day* was held in 2006, with 47 parks created in 13 cities in Europe and the USA (“*PARK(ing) Day* archive” n.d.) The event grew rapidly, expanding to more than 200 parks in 2007 and featuring in the Venice Architecture Biennale in 2008. By 2011, *PARK(ing) Day* included almost 1,000 parks across 35 countries. The event continues to take place each year, and continues to attract

new participants: many thousands of parks have been built around the world for *PARK(ing) Day*.

*PARK(ing) Day* is part of a broader questioning of the place of the car in the city in recent decades. Rebar installed their first park in 2005, a year after Donald Shoup published *The High Price of Free Parking*, itself just one of many examples of a wider questioning of planning policy (Shoup 2004).<sup>1</sup> Parking in San Francisco was, and remains, a highly political issue. In contrast to many other parts of California, there has been an active effort to promote walking, cycling and public transport over car use in the city, giving *PARK(ing) Day* a particular salience in San Francisco. *PARK(ing) Day* is not, however, an anti-car movement. Shifting transport patterns is an important objective for some participants (the San Francisco Bicycle Coalition, for example), but others are motivated by quite different concerns.

*PARK(ing) Day* has no overall purpose and no organisational structure – it is not a movement. Materials on the parkingday.org site ask that participants refrain from commercial activity in their parks, but the event is otherwise undirected (Rebar 2009). *PARK(ing) Day* is essentially self-sustaining, continuing by word of mouth and its online presence. Participants, like their aims and aspirations, are diverse and dynamic, and typically poorly connected. Rebar and the Trust for Public Land stepped back from organising the event after just a few years, and since 2014 Rebar has ceased to exist. The *PARK(ing) Day* manual explains,

Motivated by the desire to activate the metered parking space as a site for creative experimentation, political and cultural expression, and unscripted social interaction, Rebar offers *PARK(ing) Day* as a prototype for open-source urban design, accessible to all. (Rebar 2011:1)

The event reached Sydney in 2008, two years after the first *PARK(ing) Day*. Two groups participated in Sydney that year. One was led by James Patterson, then an environmental engineering student at UNSW. Patterson and his friends were immediately taken with the *PARK(ing) Day* idea when they saw a short film about it in 2007, and set about planning their own park for the next event in 2008. Located on King Street, a busy commercial street in the inner city suburb of Newtown, their park was very much in line with Rebar's original installation. It featured turf, trees, bollards and a bench, all transported to the site by bicycle.

The other park built in Sydney in 2008 was produced by a group of professional planners and engineers from the international consultancy firm ARUP, led by a young planner, Safiah Moore. Their park was installed not in a parking space on

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<sup>1</sup> In Australia, Newman and Kenworthy's *Sustainability and Cities* was a key text. (Newman & Kenworthy 1999)

the street but on the forecourt of Customs House, a prime position behind Circular Quay (at the foot of the central business district and steps from the harbour and Opera House). The park was also more elaborate, demonstrating ways in which the space could be more productive: from hay bales, plants, fruit giveaways and chickens borrowed from Moore's parents' backyard, to free WiFi and ARUP-branded electric cars.

Patterson and his friends did not participate again in future years, but Moore has since led the installation of parks for ARUP in seven of the nine years since 2008. ARUP's later contributions to *PARK(ing) Day* have been built in on-street parking spaces, generally located near their office (wherever the closest available parking spot could be found on the day). These have included a "sanctuary", created by screening a parking space on all four sides with bamboo and playing birdsongs inside; a "window into the future" where people were invited to write on glass doors and windows about what they would like to see in the city; a digital library with an Xbox motion detector; a soundscape, where people were invited to sit on milk crates and experiment with software developed by ARUP's acoustic team to remix everyday sounds, from bells to boiling kettles; and a cardboard "home" on which people were invited to write their views on the pressing issue of housing affordability in Sydney.

Many others have also participated in *PARK(ing) Day*, with over 30 parks created around the city. As in San Francisco, parking is highly contested in Sydney, and particularly in the inner city areas that tend to be most popular among *PARK(ing) Day* participants. In the City of Sydney, planning policy under the longstanding independent and left-leaning Lord Mayor Clover Moore has been directed increasingly toward reducing car use. As in San Francisco, these policies are widely supported, but not without opposition. In a notable example, in 2015 the conservative state government removed a \$5 million bike lane installed by the City just five years earlier.

Consistent with these debates, some parks have been strongly anti-car in their orientation. Patterson and his friends, for example, rented bike trailers so that they could bring all of their materials to the site without using cars (resulting in quite arduous rides across the city), and their discussions of the event on the day and afterwards focused on promoting the benefits of reducing car use. Others have taken quite different approaches. ARUP, for example, have been far less anti-car in their contributions to *PARK(ing) Day*.

Several parks have been installed by planning, architecture and urban design offices, often as collaborations with neighbouring offices in related fields. Built environment professionals have also participated outside of work, as part of local groups or community organisations. The Sydney chapter of the

international organisation Architecture for Humanity, for example, built parks on two occasions. Other participants include artists, informal community groups, a university and a public high school.

Contributions to *PARK(ing) Day* include several along the lines of Rebar's first intervention. Like the park built by Patterson and his friends in Newtown, turf, potted plants and seating are key features, often also with games or surveys to engage passers-by. Others have taken the idea in different directions, including: a lemonade stand; play spaces from ping pong to a giant snakes and ladders game; an organic sculpture created from used coffee cups filled with plants for passers-by to take; a balloon-filled parking space, providing a stark contrast with the office towers around it; chalkboard seating; a hanging garden; and a set of cardboard cars that travelled around various parking spaces through the course of the day. These raise a wide range of issues – from climate change and food security, to gentrification and indigenous land claims, to less overtly political discussions about play and the experience of life in the city. As in San Francisco, participants in Sydney do not engage in *PARK(ing) Day* as part of a movement; there is no overall message beyond rethinking the way in which public space is allocated.

### **Proprietary claims**

Property was an explicit focus of the initial *PARK(ing)* event. Paying the parking meter was seen as a way to access ownership in a city where the means to acquire legal title were beyond the reach of many residents. Paying the parking meter was described by Rebar as taking out a "lease" (Merker 2010:45). Since the parking meter was effectively offering the space for short-term rental, Rebar reasoned, then paying the meter was sufficient to legitimate use of the space for other activities.

In Sydney, as in San Francisco, it is difficult to argue that payment of a parking meter could create a lease. The *Road Rules* are narrow in their terms, providing:

"A driver must not park in a ticket parking area unless a current parking ticket is displayed"<sup>2</sup>

A lease gives exclusive use or occupation of the land for all purposes not prohibited by the terms of the lease (or by other laws), an interest that can be asserted against third parties. For payment of a parking fee to establish a lease, it

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<sup>2</sup> *Road Rules 2014*, Part 12, Division 7. Made under the *Road Transportation Act 2013 (NSW)*. The penalty is 20 penalty units.

would need to be shown that the owner of the street granted possession of the land to the purchaser of the ticket, rather than mere permission to use the space for a specified purpose. The silence of the *Road Rules* with respect to other activities works against this (particularly coupled with other rules prohibiting the granting of a lease of the roadway outside of specified circumstances<sup>3</sup>). Paying the meter appears to create a licence, a more modest permission making lawful an action that would otherwise be unlawful in that space. Unlike the expansive rights created in a lease (enabling anything not expressly prohibited), a licence authorises only those activities that *are* specified. It is a personal contractual right, not an interest in the land.

While questionable, the idea that paying a parking meter creates a property right has proved an important and enduring feature of *PARK(ing) Day*. The idea that *PARK(ing) Day* enables people to ‘own’ a parking space is emphasised on the Sydney *PARK(ing) Day* Facebook page, which proclaims:

Sick of concrete? So are we! Convert a parking space into a people park ... by paying the meter and ‘owning’ the space.



Figure 2: *PARK(ing)Day* Sydney Facebook page

The claim to property made in *PARK(ing) Day* is important – for participants and for those they engage with – in three key respects. First, it is empowering. In contrast to another form of permissibility (say, a licence to use the space in a particular way), a property right brings with it a vast range of possibilities. Property has long been associated with power, participation and citizenship (Cohen 1933; Gray & Gray 1998; Macpherson 1978; Marx 1978; Penner 1997; Reich 1964). The connection between property ownership and participation in urban development is well-established (Booth 2002; Fainstein 2001; McAuslan 1980; Sandercock 1975). Property owners are more likely to engage in planning processes, and more likely to be heard when they do. By taking out a ‘lease’, Rebar claimed not just property but a right to engage in decision-making about

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<sup>3</sup> A lease of the roadway cannot be granted by any authority other than the Department of Roads and Maritime Services, except with the approval of the Secretary of the Department of Planning (Roads Act 1993 (NSW), s 149). Since parking meters are managed by local councils in Sydney, no leases can be implied with payments for parking.

the space and the city beyond it. For participants, the 'property' that comes with paying a parking meter brings with it a right to participate in the creation of a vision of what could be. Significantly, the path to property 'rental' presented in *PARK(ing) Day* brings with it a right to engage in the material creation of that vision, for a few hours at least.

    this idea ... is something that I feel is very valuable because I can feel like we can buy into the real estate on our main street and, and have our culture and our, you know, our community represented in actual property on the street. (Kris, small business owner)

Second, property makes the idea persuasive to wide range of people. The legitimacy that comes with proprietary rights is crucial to the appeal and accessibility of *PARK(ing) Day*. In contrast to activities that seek to prompt change through protest and critique (from Critical Mass to the Occupy movement), the emphasis on legality in *PARK(ing) Day* makes it a safe way to challenge the processes through which the built environment is typically produced.<sup>4</sup>

In their discussion of the evolution of property law, Eduardo Peñalver and Sonia Katyal argue that litigation and lobbying for law reform are the tools of the 'haves', while illegal activities like squatting are the tools of the 'have nots' (Peñalver & Katyal 2010:14). *PARK(ing) Day* sits in between these two kinds of activities, and its constituency is similarly mixed. Participants are rarely in possession of the resources necessary for the litigation or significant lobbying activities undertaken by the 'haves'. Yet they do bring other forms of capital. Like Moore's participation within the ARUP office, many planners, engineers, landscape architects, urban designers and architects have participated with the approval of their employer, often with financial support from the office. Participants are people with more to lose from activities like squatting than the 'have nots', perhaps even the potential to become 'haves' in the future. *PARK(ing) Day* might be understood as a technique in between the legal and illegal binary described by Peñalver and Katyal: a means for law reform suitable to the 'could haves'. The legality of *PARK(ing) Day* itself is important to this. As participants explain:

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<sup>4</sup> While *PARK(ing) Day* is significant in engaging young professionals (in contrast to the more activist types who would normally engage in questioning established property rights), participants are invariably privileged. Not everyone can challenge property in this way. Matthew Passmore, one of the creators of *PARK(ing) Day*, acknowledges this: "obviously John and I, you know, are both imbued with an incredible amount of privilege to be able to do this, right? We're white, over-educated men, we have no fear of the police ... this is only dangerous in that we might end up in jail for the day or something, but even that's unlikely. We'll probably just have to give convincing arguments to the police and then they'll just chuckle and tell us to pack up and go."



I liked that it was a really different spirit to a protest. ... We're renting that space so we can use it for what we want. So it had a really nice happy vibe to it, you know we're going to have balloons and trees and there aren't going to be police horses coming to kick us off. (Eytan, student)

if you pay your meter, you're going by the law, you're paying for that spot. So what issues can there be? (Dieb, student)

we're not breaking any laws. We paid for our ticket. (Elise, planner)



Figure 3: parking ticket displayed prominently at a park installed by Architecture for Humanity in Glebe, 2014. Image: Amelia Thorpe.

Third, a lease is simple to describe. The idea that paying the meter created a lease fits well with lay understandings of the law and can be easily explained. Beyond its utility in attracting would-be participants to build parks, the lease idea is useful for participants explaining their installation to others. Parking, particularly in inner city Sydney, is often a highly contentious issue, yet explanations of *PARK(ing) Day* as a legal event are typically accepted. In interviews, participants emphasise how well their parks have been received.

It was really great. Heaps and heaps of people, people beeping, you know as they were going past and screaming out what are you doing and that's awesome. (Kylie, designer)

you get people stopping, reading the poster, asking questions and that then begins a conversation, and lots of people taking photographs and putting it on social media. ... it was fun, yeah. (Seb, sustainability coordinator)

Oh it was really lovely. We got absolutely, it was wild [laughs] we almost caused a traffic jam, not because of the fact that we had three cars missing, it's just that ... all the traffic was literally just stopped and watching ... I felt so good. I thought, keep going here! [laughs] they said are you going to be here tomorrow morning? ... all my friends that I had sent the photo to ... they said good on you! Well done, we would've been a part of it if we'd known (Suzanne, travel agent)

These explanations are accepted not only by passers-by, but also by officials. One park built on Crown Street, a popular commercial strip in the inner city suburb of Surry Hills, was asked by a parking inspector to move. Initially, the park was located in a parking space directly outside the building in which the participants worked. The parking inspector accepted the participants' claim that they could purchase a ticket and use the space for a purpose other than parking a car. The problem, however, was that the space they had chosen was one in which parking was time-limited but free, so no tickets were available. At the parking inspector's request, the group moved their park one block along the street, where they then purchased a ticket and continued without challenge.

In some cases, officials have been enthusiastic supporters of *PARK(ing) Day*. In the suburb of Crows Nest, where students and teachers from North Sydney Girls High School built a series of parks in a street next to the school, the mayor and local council staff came along and had several photos taken with participants on the day. As the teacher who led the project explained:

In fact the Council contacted me and asked me was I going to do it again this year ... Jilly the Mayor said oh this is fantastic, we want to make this an annual event (Karen, teacher)

Another park built by a group of residents and businesses in Australia Street, Newtown was also supported by the local authority, initially on an informal basis in 2013. After the success of that park, Marrickville Council encouraged and even provided funding to enable the group to participate again in 2014.

### **Counter-claims**

While most parks attract very positive responses, this is not always in the case. Some people have viewed *PARK(ing) Day* in more negative terms. In Sydney, this has led to parks being shut down by officials on at least three occasions.

The park built on King Street in 2008 was initially well-received. Patterson and his friends arrived early in the morning, found an empty parking space on King Street and set up with grass, trees and a perimeter fence. One of the participants recalls:

suddenly there was a little park there on the side of the road. So we sat down and people came and talked to us and there was generally a very good vibe for the first few hours, and it was really nice. People with kids came, there were strollers. Lots of people were talking to us. (Eytan, student)

Within a couple of hours, however, the park was spotted by a council ranger. Despite efforts to explain the *PARK(ing) Day* event, and even presenting extracts from legislation to support their argument, the police insisted that their installation was unsafe and must be removed. Patterson describes the shift:

we just laid it all out and just hung out and then a few other friends came along. And so it was really good. We had maybe like ten people hanging out there and then people were walking past and asking about and stuff so that was really fun. Then... this parking inspector came along and got really upset ... he was obviously just someone with a bee in his bonnet ... he called the police and then they came and I don't know. I think, I mean they were sort of very firm right from the start. They were like you guys have got to go, but they weren't aggressive or anything. It was just like, you've got to go. (James, student)

Six years later, the planning consultancy Place Partners had a similar experience with the park they built on Oxford St, Paddington. Place Partners had participated in *PARK(ing) Day* three years earlier, when they collaborated with a neighbouring landscape architecture practice to transform two parking spaces. One became a giant game of snakes and ladders, the other was a space provided for more passive relaxation, with turf and seating. Passers-by were invited to join them for play or simply to rest, and responses were positive (Place Partners 2012).

In 2014 Place Partners took a more low key approach, bringing desks and computers onto the street and setting up a temporary office in the parking space. This worked at first, but after a while police came and instructed the group to pack away. As one participant recalls:

[They said] it's just really dangerous and you're going to all die. And we were like, well actually we're slowing the cars down. Oh but it only takes one to duh-duh-duh! So we only got about halfway through that one. (Kylie, designer)

The third park to face problems with officials in Sydney was built not on *PARK(ing) Day*, but earlier in the year. It was installed as part of a masterclass in "tactical urbanism" - quick, temporary, small-scale community-focused approaches to urban design that have grown in popularity in recent years (Lydon & Garcia 2015) - run by visiting designers from Melbourne and the US. A local planning consultancy provided some support for the event, which

was located near their offices in Surry Hills. After a morning discussing ideas and approaches, participants designed and installed parks in the afternoon, using chalk and materials borrowed from local businesses.

The parks were located on Holt Street, a dense street lined mainly with office buildings, several with restaurants and cafes at street level. The organisers visited businesses along the street to tell them about their plans a few days before the event, and none raised any issues. On the day, however, an employee of one of the neighbouring businesses called police to complain about the parks and asked that they be moved on. The caller was a journalist working for *The Daily Telegraph*, a conservative tabloid owned by the NewsCorp group. The event was then reported (inaccurately) as a City of Sydney event, supporting the *Telegraph's* long running campaign against the Lord Mayor of Sydney (Carswell 2015).

Unlike those on King Street and Oxford Street, the Holt Street parks were not actually shut down: once the organisers explained to police what was going on they raised no opposition. One police officer even gave an organiser his contact details, saying that he would like to see events like this in an area where he worked with youth groups. As one workshop participant commented, “really the police have better things to do with their time. They didn’t care.” (Anonymous interviewee).

## **Ownership**

As with other activities on public streets, these very different responses cannot be explained simply by reference to the relevant legal texts. The laws regulating parking and the use of public streets in Sydney are state laws, applicable across the city (and well beyond). The King Street park that was shut down in 2008 was located within Marrickville Council, the same municipality that raised no opposition to *PARK(ing) Day* on Australia Street in 2013, and in 2014 went so far as to provide funding to encourage the group to participate a second time. Parking spaces may be very similar on paper, the relevant rules about time limits and parking rates may even be identical, but reactions to them can shift depending on understandings of the law at issue. In trying to understand why three parks attracted police attention when around thirty others did not, property is important. Particularly important is a recognition of the socially constructed nature of property, as an institution comprised of overlapping and intersecting understandings that are sustained (and shifted) through performance, an institution that *PARK(ing) Day* not only reflects but itself works to constitute.

While the question of whether paying a meter creates a lease is relatively straightforward, the legality of constructing parks is by no means clear. The *Road Rules* provide that paying a meter means that a person who parks a car in the corresponding space can avoid incurring a penalty for doing so. Yet the *Rules* are silent as to other uses, and there are many other laws that could also be applied to the event. The *Roads Act 1993 (NSW)*, for example, provides “a roads authority may direct ... any person who causes an obstruction or encroachment on a public road... to remove the obstruction or encroachment.”<sup>5</sup> The *Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)* provides “A police officer may give a direction to a person in a public place if the police officer believes on reasonable grounds that the person’s behaviour or presence in the place ... is obstructing another person or persons or traffic”.<sup>6</sup> The *Local Government Act 1993 (NSW)* provides “A council may abate a public nuisance or order a person responsible for a public nuisance to abate it” and the definition of nuisance includes “any wrongful or negligent act or omission in a public road that interferes with the full, safe and convenient use by the public of their right of passage”.<sup>7</sup> Other laws might also be relevant, depending on the nature of activities in the particular park – from rules regarding food service to signage, to public performances and assemblies. Significantly, however, all of these rules and regulations are discretionary. There is no apparent illegality in the installation of a park.

In thinking about the multiple and divergent legal interpretations that have been applied to *PARK(ing) Day*, Hendrik Hartog’s analysis of a much older conflict over the use of city streets is helpful (Hartog 1985). Despite a judicial finding of illegality in 1819, pigs roamed the streets of New York until at least the 1840s. In examining this disjunction, Hartog argues that the ongoing keeping of pigs was not a practice in defiance of the law, nor was it evidence of a failure of enforcement. Rather, it reveals the multiplicity of legal meaning: both pig-owners and the city council believed the practice to be lawful long after its judicial prohibition.

The legal right to create parks in parking spaces, like the right to keep pigs in the streets of New York, depends on its performance. What made pig keeping a right, despite a court ruling to the contrary, was the fact that a politically active and insistent group of people believed that they did indeed possess such a right, and that those holding different views were unwilling or unable to prevent the pig-keepers from making use of their purported right. In much the same way, *PARK(ing) Day* is constituted as legal through the success of its participants in exercising their claimed right, and through the relative passivity of their opponents.

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<sup>5</sup> Roads Act 1993 (NSW), s 107.

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<sup>7</sup> Local Government Act 1993 (NSW), s 125.

Here, property plays an important role. As for ranchers in California, snow-diggers in Chicago, the Summerhill school community and for many others, legal narratives inform everyday claims about rights on the street in *PARK(ing) Day*, and those claims are reinforced by their resonance with the normative ideals (labour, fairness, desert, autonomy) that underpin property and legality more broadly.

While the lease analysis is not particularly helpful, providing a gimmick rather than firm legal grounding, it operates alongside other forms of property to sustain the event. In line with Patricia Ewick and Susan Silbey's analysis of legality, participation in *PARK(ing) Day* involves complex and often contradictory invocations and enactments of the range of laws regulating property (Ewick & Silbey 1998). Participants don't simply reject conventional approaches to property. Instead, they exploit the logic of rights, subverting rather than opposing legal discourse. In the words of one participant:

it's slightly naughty and it's just, in a very middleclass safe kind of way, corrupting the system [laughs] and it's only for one day and you're kind of playing in the rules but you're not. (Kerryn, researcher)

For participants in *PARK(ing) Day*, the short term 'lease' is not the only property at stake. Beyond the property accessed by paying a parking meter, participants emphasise the importance of a more informal "sense of ownership" behind their confidence in claiming their purported rights, and in defending them against opposition. Ownership is often described by participants in terms of belonging, connection or recognition; a feeling that the space is in some way 'theirs' even before they paid the meter. This is *my* street, *my* neighbourhood, *my* city.

Ownership is more than a matter of personal feelings. While ownership is not the same as law, the two are connected in important ways. As I have argued elsewhere (Thorpe 2018), a sense of ownership can be understood as an expression of legal consciousness, useful in explaining the ways in which the law is experienced and interpreted (Ewick & Silbey 1998). Ownership is a type of social practice, one that both reflects and forms social structures. People feel ownership over places where they have established both social and material connections: places they have spent time being physically present and, importantly, engaging with others.

I absolutely think that ownership's always important otherwise why get involved, right? Like what other motivations will get people to get involved in things? I think if you don't feel part of a community or if you don't feel like you belong somewhere then there's not much motivation to get involved in

something... ownership is why we did this project anyway because we wanted to give something or be part of something in our own community. (Elise, planner)

I don't know about the legal aspects but without ownership people don't choose to make much of an effort I think. ... I have an internal pride for the ownership that I've taken over the projects and if I didn't have that ownership ... I would feel differently about how I participate in those activities. (Eytan, student)

With ownership an important prerequisite for participation, most participants choose locations with which they have a strong connection. While some urban interventions attract critiques for being the work of (relatively privileged) outsiders, and accordingly invasive and gentrifying forces (Deslandes 2013), *PARK(ing) Day* tends to follow from local connections. People typically build parks in spaces outside their office, business, home or institution.

interventions are most successful when you are invested. Just doing it for doing it's sake always feels a bit hollow. Whereas if you're, this is my street, my community, I'm going to make a change, I'm going to make a proposal which is going to improve the place... when you have a vested interest and the emotion is attached, the outcome is always better. ... That's why we literally did it in the parking spot outside our front door, because that's the one we all connect with. (Jonathan, urban designer)

In many cases, these are places for which participants have developed feelings of ownership over many years. The two parks on Australia Street, for example, were located outside a bakery and restaurant who were involved in its installation; a milliner a few doors down also contributed. The organisers of the event were regular customers of these businesses and regular users of the street, and further participants were found through networks associated with a school a few blocks away. Connection to the street was reinforced in planning meetings, which were held in a pub on the next corner.

In other cases, *PARK(ing) Day* is the product of more recent relationships. ARUP's 2008 park in front of Customs House followed from a project on libraries the office had been working on, which included collaboration with the city library located inside Customs House. Architecture for Humanity, an organisation without an office or regular meeting venue, relied on relationships with other groups in choosing a site for *PARK(ing) Day* in 2013. After building a working relationship with Leichardt Council and the Leichardt Chamber of Commerce, they located the park adjacent to the town hall and behind council offices.

However, *PARK(ing) Day* is not always based on feelings of ownership or strong local relationships. In each of the parks that faced problems with officials,

participants' connections were less clear. For the group who built a park on King Street in 2008, the area was one they liked, but to which they had little connection. The group were studying on the other side of the city, and lived even further beyond the campus. The group liked Newtown and thought *PARK(ing) Day* could make a positive contribution to it, but they did not have strong relationships with the area. There was no particular connection to the parking space they chose, their only outreach was a brief conversation with an adjacent shop as they were setting up. As Patterson explains:

I can't even remember why we chose that spot I think just because we liked Newton because it's vibrant and also because it's weird that it's such a vibrant place, such a cool place and so much openness and creativity and all these things going on and yet it's got one of the like most busy and unfriendly streets... right through the middle of it. (James, student)

The significance of this lack of connection for the success of the park was later acknowledged by participants:

It might've been different if we did it within our community, yeah. Absolutely. (Eytan, student)

The group on Oxford Street in Paddington had a stronger connection to the area. Place Partners' office is across the road from the parking space they chose, and had been there for several years. By the time they ran into problems with police in 2014, Place Partners had already participated successfully in one *PARK(ing) Day*. They had also established a community book share (or "little library", a bookshelf stocked with used books with a sign inviting people to take, share and contribute books) at the entrance to a vacant property near the office. Yet Place Partners remained relatively disconnected: the office is upstairs, with no presence on the street. The book share operates with little visible engagement from the office (people take and donate books anonymously). Oxford Street itself has been in decline for several years, a shift that is particularly acute on this block: shops come and go, there are many buildings with for lease signs, premises like the cinema that used to attract people to the area have long been vacant. The parks were thus built in front of empty shopfronts; there was no one in them to challenge or to support the proprietary claims made in *PARK(ing) Day*. While at least some of the members of the Place Partners team began the event with a sense of ownership, the networks on which that feeling could be built were difficult to find. As one of the organisers put it "it's contested territory".

The hostile responses to these three parks can be linked in this respect. Unlike the businesses, residents and institutions that participated successfully in *PARK(ing) Day* on streets that were in some sense already 'theirs', the parks that



ran into problems with officials were located in places where participants' connections were more tenuous. When participants have a stronger sense of ownership, and especially when this is recognised by others in the area, participation in *PARK(ing)* Day tends to be received positively: circumstances for the performance of property are more likely to be felicitous. In places where participants' networks are weaker, parks are more likely to be challenged.

An absence of supportive relationships will not necessarily lead to problems. On *PARK(ing)* Day in 2016, students from the University of Technology, Sydney created a park at Bondi Beach. The park was not challenged by officials, despite being several suburbs away from the university, and a long distance from the students' homes and other connections. It was chosen simply as a fun venue: in 2016 *PARK(ing)* Day fell during UTS' study break, so there would be few people around to see a park built on or near campus. Similarly, Architecture for Humanity's second park was located in an area with which the group had little connection and, in contrast to their 2013 park in Leichhardt, much less effort was made in 2014 to develop local networks. Yet it was also conducted without challenges from officials. Many other examples of parks built without either strong local connections or official challenges can be found also among the seven parks built by ARUP since 2009. The ARUP team try to find sites close to their office but, given their location in a dense part of the Sydney CBD, often the only available spaces are several blocks away.

An absence of a sense of ownership among participants is most likely to be problematic when creation of a park conflicts with other relationships to the space. King Street, the site of Sydney's first controversial park in 2008, was already the subject of competing claims. It is a street with a strong local identity. Located near the University of Sydney, King Street is widely known for its intellectual and bohemian character (late night books shops, vegetarian butcher) but also as a site of gentrification (house prices increased by more than forty percent over the past four years (realestate.com.au 2017)). King Street is also a state road, managed by the state roads department rather than the local council due to its particular importance to Sydney's transport network. It is also a very narrow road relative to its traffic volumes: space on both the footpaths and the roadway is tight and heavily congested. Residents, students and local businesses compete with buses and large numbers of passing cars for limited space. Building ownership in such a context is difficult.

The challenge to the park came from a ranger, who in turn called police. While Marrickville Council is generally progressive, this ranger had different views. As a council employee later explained, that ranger had a strong relationship to the street built from many years patrolling it, and strong views on the area in general.

[the] ranger went crazy, just lost it and told them to pack up and that they were endangering people's lives, their own lives and blah blah. ... he's not in the organisation [any more], and that's probably a good thing. I think he would stop lots of people doing things that they actually had a legal right to do.

On *PARK(ing) Day*, the participants' connection to King Street (a place they liked, but didn't visit regularly) and to the business next to their park (one brief conversation on the morning of the event) were insufficient to displace pre-existing relationships, especially the ranger's long-held views about what should (and shouldn't) be encouraged. Participants explained that the nearby business was supportive when the group first explained the idea, but not enough to challenge the rangers' claims:

he was funny because he was really supportive at the time. He was like, oh this is really cool! Yeah, yeah, yeah! Yeah of course you can do that, yeah no worries! And then he came out and he's just hanging out with us for a bit. But then as soon as the parking inspector and the police came then he got really, he was sort of like, oh you guys have got to go. You got to go! He kind of flipped. I think he just got nervous. (James, student)

The intervention by police in *PARK(ing) Day* on Oxford Street six years later was the result of similar conflicts. The challenge to the park can be explained not only by the limited relationships between Place Partners and others on the street, but also by the existence of competing claims to the space. Like King Street, Oxford Street is a state road, and one that is heavily congested: getting high volumes of traffic through at high speeds is prioritised over pedestrian amenity. The proprietary claim in *PARK(ing) Day* sat uncomfortably with other interests in the street, making it harder to understand the park as arising out of or responding to local connections.

The nature of activities may also be relevant. In their first, uncontroversial park, Place Partners provided games and a resting space for anyone to use. In their more controversial park, however, by setting up an office on the street they claimed the space for more private (and apparently commercial) use. One of my students passed the park on the day and commented afterwards that she did not feel welcome: Place Partners appeared to have made the space 'theirs' to the exclusion of others.

The issue on Holt Street was less to do with competing claims associated with traffic, and more about neighbours on the street. Like both King Street and Oxford Street, the density of users on Holt Street makes it difficult to identify any one person or group with a particular claim to the space. There are many users of the street, and the masterclass organisers' visits to surrounding businesses

were insufficient to create meaningful relationships, much less feelings of ownership or embeddedness in the area. Significantly, the organisers overlooked the fact that Holt Street is home to the head office of *The Daily Telegraph*, a company with a history of opposition to environmental and progressive causes.

The organisers' approach – for example, the idea promoted in advertising for the event that a neighbourhood could be reinvented in 90 minutes – gave little weight to existing social and material relationships with the street. A local designer invited to speak to the class in the morning session was highly critical of the organisers' lack of attention to social networks in the area:

I think that was a disaster. ... it was a terrible error of judgement on all of their behalves. ... it actually is part of someone's community as well and they're out there spraying shit and moving things. It was using someone else's space to make a point. (Kylie, designer)

Thinking about *PARK(ing) Day* participants' claims in contrast to other claims to the spaces in question is helpful also in understanding those parks that were built by people without strong connections to the site who avoided challenges from authorities. Property is far easier to perform in places where it does not clash with existing relationships. Bondi Beach, where UTS students built their park in 2016, is one of Sydney's most popular tourist destinations and an area that has long been understood as shared. While the activities in the park – drinking lemonade, relaxing on bean bags and playing guitars – are not normally undertaken in parking spaces, they are familiar and readily accepted activities for the beach adjacent to it. The small cul-de-sac where Architecture for Humanity built their second park hosted little activity other than parking for people visiting Glebe Point Road; at its other end was the back of a school, with no access from that street. The claim to one parking space by Architecture for Humanity thus attracted very little attention (to the point that organisers suggested the event was not very effective).

The various parking spaces where ARUP has participated in *PARK(ing) Day* over the years could be compared to those in Holt Street where the parks were controversial. Even more than Holt Street, the CBD spaces in which ARUP located their parks are areas with very high numbers of both regular and occasional visitors. They could also be compared to Bondi Beach. While Holt Street was perhaps small enough that certain users (particularly relatively larger users like the *Telegraph*) may have felt some sense of ownership, the very high density of development around these sites means that these are widely understood as shared spaces, available for diverse uses and users. Further, although ARUP was not connected to these spaces in particular, they could be understood as belonging in the city in a wider sense. While the Holt Street parks were installed

by visitors from other parts of the city, under the guidance of placemakers from other cities, ARUP are well-known in Sydney. Their park was staffed by professionals, and posed little challenge to the business activities around it.

The language of property sustains and transforms a claim of right on *PARK(ing) Day*. Consistent with understandings of property as socially constructed, plural and performative, the purported lease taken out through the parking meter builds on claims to the space with roots in more affective, cultural or political interests. The potential for these claims to succeed, however, depends on the existence of supportive circumstances. Performances of property on *PARK(ing) Day* are more powerful when embedded in continuing social relationships, when participants have a sense of ownership before engaging in the event, and when those claims respect existing patterns of ownership and belonging. These relationships in turn animate and empower the claims of right, making them both more persuasive and more broadly applicable. A park built by people without strong social and material connections to the space in question may be successful, but this is much less likely if the space is already 'owned' by others.

Beyond Sydney, similar patterns can be found in other cities. In both Montreal and San Francisco, the experience has been similar. Most participants in *PARK(ing) Day* engage in spaces in which they already belong, and most parks are accepted. In the few cases where parks are challenged, participants' connections are more tenuous, and conflict with established relations to and around the parking space in question.

## **Conclusion**

On *PARK(ing) Day*, as in other examples where public streets are the subject of proprietary claims, property is contested and highly context-specific. Yet it is not entirely unpredictable. Property, like other areas of law, relies on its social practice, and that practice gives it stability as well as strength. An examination of *PARK(ing) Day* in Sydney suggests that the degree to which proprietary claims are supported by a sense of ownership, a feeling of belonging or connection embedded in wider social and material relationships, is an important predictor of their success.

In *PARK(ing) Day*, a new explanation of law opened up the city to a new range of potential 'owners'. As one founder of Rebar explains:

With Rebar providing others with "permission" to act, new users rushed into this niche, challenging the existing value system encoded within this humble, everyday space. The parking space became a zone of potential, a surface onto

which the intentions of any number of political, social or cultural agendas could be projected. (Merker 2010:49)

However, a technical approach like this can extend the availability of property only so far. The act of 'renting' a parking space is not enough to ensure that parks built on public streets will be accepted. In navigating the plethora of rules that could potentially be applied to *PARK(ing) Day*, police, rangers and other officials must engage with deeply contingent local relationships. The three Sydney parks that attracted police attention can be distinguished not on the basis of legal doctrine, but social values and community ties. The potential for property to be claimed is limited by the networks and social practices in which it is situated. In the words of one participant:

the person who owns the street is the person we will let own the street. ... I think that I as a person decide that I'm going to own the street. ... [but] it's a shared decision ... a decision that every person that walks by makes. (Jeanne, community worker)

In revealing these limits, *PARK(ing) Day* helps to reveal the degree to which even conventional understandings of property are themselves dependent on wider social relations. While *PARK(ing) Day* and its associated proprietary claims are fleeting and often light-hearted, a reflection on reactions to the installation of parks on city streets is useful for thinking about property more generally. The idea that property is something that requires ongoing persuasion or performance to be sustained is increasingly accepted, yet there is less clarity regarding what is necessary for such persuasion or performance to succeed. *PARK(ing) Day* suggests that ownership, belonging and connection to wider social and material relationships are crucial in understanding the making of proprietary claims, and the responses these generate. Not everyone is entitled to be entitled.

*PARK(ing) Day* might be dismissed as a polite and inconsequential intervention. Participants appropriate parking spaces briefly, typically in an open and public-spirited way, and they invariably tidy up at the end of the event. Parks are often professional, presenting positive visions of conviviality and collaboration rather than more oppositional politics. For many participants, *PARK(ing) Day* is an opportunity to express and extend local community networks and relationships of belonging. Unlike campervans or, especially, food trucks, parks are not motivated by personal economic need, and they are more likely to benefit existing businesses by attracting customers to the area than creating competition. Unlike parking spaces cleared out from snow, they are not long-lasting and their proprietary claims are not exclusive. Yet the politeness of *PARK(ing) Day* does not deprive it of political significance.

*PARK(ing) Day* might be contrasted with Critical Mass, another loosely-organised appropriation of street space that began in San Francisco and has since spread internationally (Carlsson 2002a). Through monthly bike rides, participants in Critical Mass briefly exclude cars from city streets. Far from polite, Critical Mass is explicitly confrontational: its deliberate contravention of traffic rules has provoked angry and punitive responses. While Critical Mass is not explicitly concerned with property, there are proprietary claims at stake. The event questions who owns and uses the roads, and is commonly described as expressing a right to the city, a collective demand as citizens to have a say in the shape of the urban environment (Mitchell 2003:156; Norcliffe 2015:246; Stevens 2007:85). Like *PARK(ing) Day*, Critical Mass is not a coherent movement so care is needed in generalizing, but the event is understood by many as a challenge to the social consensus. Critical Mass has been described as presenting “utopian moments” (Carlsson 2002b:235), transient performances of alternative realities (Flynn 2016); even a “temporary, mobile occupying army” (Carlsson 2002c:76).

In its assertion of legality, *PARK(ing) Day* is potentially more provocative. *PARK(ing) Day* does not challenge the social consensus, it invokes it. With respect to property, *PARK(ing) Day* is particularly interesting. Unlike Critical Mass, participants do not merely pass through, they physically remake parts of the city. They do not make abstract claims about the city as a whole, but concrete demands about particular places. *PARK(ing) Day* draws power from this specificity, succeeding not as an “occupying army”, but as an expression of rights that are constructed locally and relationally.

*PARK(ing) Day* goes well beyond Rebar’s initial claims about the property rights obtainable by paying the parking meter. Through its performance over the years in cities far from San Francisco, *PARK(ing) Day* reveals a deeper contingency within property relations. As the varied reactions from police and other officials in Sydney suggest, formal laws are constrained by the networks in which they are embedded. Collective and connected enactments are integral to understandings of property, and important determinants of the strength of proprietary claims on city streets.

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