

Book Review

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Owning the Street: The Everyday Life of Property

Amelia Thorpe*

If property theory and the ‘right to the city’ had a baby, it would be Amelia Thorpe’s *Owning the Street: The Everyday Life of Property*. In this riveting book, Amelia Thorpe deftly examines the complexities of property law and ‘pop-up’ urban spaces—in this case, PARK(ing), an international movement where locals take over metered parking spots for a prescribed time (the length of the meter) to create parkettes. While PARK(ing) Day itself is now waning, the movement is lauded for having given rise to parklets in San Francisco and other cities, and in helping to prompt movement away from car-dominated streets to walkable, bikeable spaces (Chapter 7).

The subject matter is surprisingly simple for what becomes a detailed analysis of property theory’s sharp edges when it tries to make sense of urban spaces. Thorpe’s book begins with the chronology of the movement itself (Chapter 1). In 2005, a clever group of San Francisco planners, lawyers, and activists who were part of an art collective called Rebar decided they could ‘own’ a parking spot and, in so doing, call attention to the nexus between urban planning and climate change. While the Mayor at the time endorsed the practice, the legal basis of the action was more nuanced. Each parkette was different—including plants, lawn chairs, volleyball nets, and activities—and called attention to the privileged role of vehicles in cities. The movement slowly spread around the world, with parkettes taking different forms and becoming more or less elaborate. Depending on local legal and political realities, there were altercations or pushback with certain officials, but in general PARK(ing) Days were joyous community events, sometimes made official, as detailed and photographed in Thorpe’s book.

From the beginning of the book, Thorpe illustrates the many tensions that form part of PARK(ing) Day, combining thorough analysis with verbatim transcripts of her many interviews with PARK(ing) Day participants. These tensions have broad application to many disciplines within and outside of law. For example, the action began as definitively ‘local’, with actors highly attuned to San Francisco’s unique political and legal realities (Chapter 1). The practice soon became global, yet highly fragmented, with no centralizing body or organizers. The local-global complexities and what they mean for the right to the city are

*Amelia Thorpe, *Owning the Street: The Everyday Life of Property* (MIT Press, 2020) pp 344 [ISBN 9780262539784]. All in-text parenthetical references are to this book.

reminiscent of the work of Luis Eslava, who details how international law plays out in local sites.¹ Eslava's work examines how global ideas of human, economic, and environmental development are reflected in local areas, including illegal neighbourhoods, creating "objects and projects" of local spaces.² In contrast, Thorpe highlights how the jurisdictional and political realities of localities create vastly different models of PARK(ing) Day across the world, including how municipal authorities institutionalized PARK(ing) Day in some jurisdictions (Singapore, Adelaide, and Iowa), where the movement remained student-run (Sydney), or where the event was absorbed into the mandates of other civic organizations (Montreal). (48-49)

Thorpe is clearly in her element in interrogating the basis of property rights. In Chapter 2, she explains Rebar's invocation of the law to justify the take-over of metered parking spots, summarizing, "Paying the parking meter, Rebar argued, meant that the space could legitimately be used for activities other than the parking of cars. This claim to legality, and its explanation through the trope of the lease, exploits and perturbs the very conservatism and formalism of the law." (94) In Chapter 5, bridging hundreds of years of theory into a succinct and convincing argument that belonging is at the root of property theory, Thorpe quickly displaces labour as justification for rights, by reminding readers of "personhood property": that the desire to own a thing is rooted in human need, including belonging. (163) Rooted in socio-legal scholarship, Thorpe understands property as inherently relational and based in a particular space and time. When applied to PARK(ing) Day, fun is the glue that holds it together: "Joy, delight and playfulness are not simply a sideline of PARK(ing) Day, but an important part of the event's power in building a sense of ownership." (190)

It is the deep-dive into the regulation of city streets that makes this book so unique in property law scholarship (Chapter 3). Thorpe brings together divergent theorists, including Boaventura de Sousa Santos,³ Patricia Ewick and Susan S. Silbey,⁴ and Robert Cover,⁵ to explore the tensions underpinning PARK(ing) Day with an in-depth exploration of the notion of the lease, observing that the power of the lease is not in its legal robustness, but in its performance. She writes,

PARK(ing) Day succeeds in its invocation of legality not because payment of a meter creates a lease, nor because there is a gap in the rules regulating parking. PARK(ing) Day is effective because of the multiplicity of interpretive possibilities and the crucial role of social practice in choosing among these. PARK(ing) Day dramatizes, and depends on, the ongoing interplay between law and society. (97)

1. See Luis Eslava, *Local Space, Global Life: The Everyday Operation of International Law and Development* (Cambridge University Press, 2015).

2. *Ibid* at 12.

3. See Boaventura de Sousa Santos, "Law: A Map of Misreading. Toward a Postmodern Conception of Law" (1987) 14:3 *JL & Soc'y* 279.

4. See Patricia Ewick & Susan S Silbey, *The Common Place of Law: Stories from Everyday Life* (University of Chicago Press, 1998).

5. See Robert M Cover, "The Supreme Court, 1982 Term" (1983) 97:1 *Harv L Rev* Foreword at 4.

Thorpe undertakes a careful reading of the common law of road use—and specifically of traffic laws—to explain the many ways that officials interpret laws and bylaws to adduce that it isn't just participants that read into the law, it is the nature of law itself. She writes, "In these divergent responses, the law looks less like a gap or niche, and more like a matter requiring careful, comprehensive, and perhaps also creative interpretation." (101) Thorpe animates the work of Hendrik Hartog⁶ to explain the law's strength in its performance, in particular that rights may exist, even where a court or a law says otherwise, if a group of people believe they possess them and are not stopped from enforcing their purported rights. (111) With this backdrop, Thorpe uses empirical evidence through the form of semi-structured interviews to examine how the so-called PARK(ing) Day lease was legally performed, concluding that repetition of acts, discourse, materiality, and participants were each necessary, with the parking meter itself a critical part of the performance in that it printed tickets and gave the appearance of legality. (123)

The lease, which forms the basis of claims of property rights, is interrogated by Thorpe, who examines the claims of ownership of PARK(ing) Day participants (Chapter 4). As she notes, "Ownership can be understood as more than property, but also less," acknowledging that the term is "slippery" as it is not a legal concept in and of itself, but is often linked with property rights. (134) To participants, the use of the parking meter was the acquisition of a property interest through a lease (even though this is not legally correct), which allowed users to "own" the street. (134-36) At the same time, PARK(ing) Day bestowed a right to the city, to help plan and shape city space in a direct way regardless of what was formally permitted through the city's public participation efforts. (149) Thorpe explains that belonging is what gives rise to the claims of ownership, that participants recognize themselves and feel invested, as they would, say, in a favourite coffee shop or park, even though they do not have formal rights. (137) Deep-diving into property theory, Thorpe links the work of Carol Rose⁷ and Davina Cooper⁸ to explain how relationships are at the very core of property law with the respectful inclusion of participants' experiences. Thorpe writes with warmth towards those she interviews,

Just as property and ownership are often treated as synonymous, ownership and a sense of ownership overlap to a significant extent. In interviews, participants used the terms interchangeably. Many spoke simply of ownership without the "sense of," and I often found myself tempted to do the same. (143)

In her chapter entitled "Performing Property," Thorpe explains that participants' claims of ownership are largely uncontested (Chapter 6). However, a necessary

6. See Hendrik Hartog, "Pigs and Positivism" (1985) *Wis L Rev* 925.

7. See Carol Rose, *Property and Persuasion: Essays on the History, Theory, and Rhetoric of Ownership* (Westview Press, 1994).

8. See Davina Cooper, *Everyday Utopias: The Conceptual Life of Promising Spaces* (Duke University Press, 2013).

precondition to the weight of claims was a PARK(ing) Day participant's prior sense of belonging in the space in question. Without this pre-existing sense of ownership, "claims about the legality of PARK(ing) Day" are "less likely to stick." (199) To Thorpe, one of the important impacts of PARK(ing) Day was its capacity to animate a form of commoning, a sometimes subversive practice of creating claims of more inclusive, open ownership with qualities different from private property, including who may make decisions in relation to spaces (Chapter 7). Like community gardens and other spaces that may be taken over without express permission, the action of creating a park, even temporarily, results in "a feeling of belonging connected to identity, community, agency, and power." (242) Time serves as a crucial element by making and re-making this sense of belonging, which in turn is recognized by others.

The centrality of belonging gives rise to the key tension in PARK(ing) Day, both in the book and the practice: the inclusivity of a full range of urban citizens. As Thorpe notes, the movement attracts more privileged members of society, especially in terms of income and professional status, and the geographic areas where PARK(ing) Day takes place tend to be more affluent. (210) Thorpe found no evidence of participation by Indigenous Peoples, a concern to some PARK(ing) Day participants, who raise the issue as an important one requiring attention. (211) As a reader, I felt that more attention could have been placed on inclusivity and PARK(ing) Day, as well as pop-up or do-it-yourself (DIY) urbanism more generally. Understanding who is drawn to these and other activities seems crucial in considering the right to the city, the commons, and progressive property. This is especially relevant in countries like Canada, where fifty percent of Indigenous Peoples live in urban centres and have ongoing claims to municipal lands.

It is also relevant in considering how Indigenous Peoples and equity-deserving communities can use DIY urbanism to advance their interests.⁹ As a thought experiment, I wondered how Thorpe's theory of ownership in the PARK(ing) Day context juxtaposed with Stephen Wexler's statement that "poor people are always bumping into sharp legal things."¹⁰ AJ Van der Walt argued that we can learn more by studying the experience of those who are made the least secure by a prevailing set of property relations, and pop-ups and DIY urbanism would benefit from the same analysis.¹¹ Most precariously housed people do not have any form of land tenure, but do have a strong sense of belonging where they

9. See e.g. Ari Shapiro, "Street Signs Connect Modern Day Toronto To Indigenous History," NPR (27 September 2016) at 16h:34m:00s, online (podcast): <https://www.npr.org/2016/09/27/495671329/street-signs-connect-modern-day-toronto-to-indigenous-history> (in 2016, two Indigenous scholars and activists put up official-looking street signs on major streets in Anishnaabemowin to showcase Toronto's Indigenous history); Doug Anderson & Alexandra Flynn, "Rethinking 'Duty': The City of Toronto, A Stretch of the Humber River and Indigenous-Municipal Relationships" (2020) 58:1 *Alta L Rev* 107 (includes a case study of a park area used by Indigenous Peoples to plant traditional foods and medicines, and to conduct ceremonies along Toronto's Humber River).

10. Stephen Wexler, "Practicing Law for Poor People" (1970) 79:5 *Yale LJ* 1049 at 1050.

11. See AJ Van Der Walt, *Property in the Margins* (Hart, 2009).

live, which may include a tent located in a public or private space, such as a park. It appears, at least on the surface, that some of the necessary components of a claim of ownership may be satisfied in relation to a poor person's belongings (like their tent) in a particular location, sense of ownership and belonging, and ongoing performance of the purported right, for example by staying night after night in the same location. Even though a poor person's things may belong to them, as they move between multiple legal spaces, their possessions become subject to the will of others, including police officers, private landlords, transit authorities, business improvement districts, and bylaw officers.¹² Unlike the participants involved in PARK(ing) Day, poor people face a hostile legal environment in relation to their possessions, without privacy in the private and public spaces they occupy and navigate.¹³ How can Thorpe's book make sense of this?

I suggest two important elements of PARK(ing) Day that are made vivid by the comparison with a poor person's claim to their things: temporality and relative use. Many things can be tolerated if they exist for a short time: a time-limited protest, say, or a 2-hour park. Likewise, if a space isn't being used by others, it may warrant little intervention where an abandoned parking lot becomes a community garden, or a grassy space in the front of a home becomes a little library, even if these stretches of land don't 'belong' to the users. These features of time and use were briefly noted by Thorpe in her exciting book, but more focus on inclusivity in DIY urbanism would lend further insight into property theory and what is meant by a 'right to the city', especially given the linkages to race, power, and property.

Owning the Street: The Everyday Life of Property is both a meaningful contribution to property law and socio-legal scholarship, and an important advancement of pop-up and DIY urbanism. It would be an especially strong inclusion in seminar courses concerned with property and urban law, and advanced urban studies or geography classes.

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12. See Randall Amster, *Lost in Space: The Criminalization, Globalization, and Urban Ecology of Homelessness* (LFB Scholarly, 2008).

13. See Sarah Ferencz et al, "Are Tents a 'Home'? Extending Section 8 Privacy Rights for the Precariously Housed" McGill LJ [forthcoming in 2022].