

“They Gotta Deal With It”: Individual Rights, Public Welfare, and the Regulation of Deviance in Public Spaces

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“They gotta deal with it!”

–Mudrick, a subject in Mitchell Dunnier’s ethnography *Sidewalk*, on his practice of shouting flirtations at unfamiliar women on the streets. (Dunnier 1990: 193)

Introduction

What happens when citizens act in ways that are seen as disruptive to their communities? When can the state regulate citizens’ behavior? One of the key concerns of any state is how to balance citizens’ individual right to do as they please with communal desires to maintain certain standards by which communities can foster general well being. It is hardly contested that the state should be able to intervene in cases where citizens are engaging in acts theft and violence. But what about deviant acts that fail to clearly harm anyone?

In order to address some of these questions, I will engage in a close analysis of two contestations over citizens’ rights to use public space in ways perceived by some members of their community to be deviant. First, I will summarize the findings of a previous paper in which I examined the Occupy Wall Street (OWS) protests in New York City’s Zuccotti Park during the fall of 2011, focusing closely on the controversy surrounding protesters’ eviction from the space. I will explain how arguments made by protesters, businesses, and city officials leaned on either liberal or communitarian models of governance. I will then move to an analysis of Mitchell Dunnier’s 1999 ethnography *Sidewalk* about Greenwich Village street vendors, using this text both to show how the same debates that surrounded contemporary Occupy Wall Street protesters are part of a

long-term problem for the state, and to demonstrate how preexisting social marginalization complicates the act of defining deviance and disorder.

By showing how definitions of community good get inflected both by neoliberal encroachment of market interests into conversations about space and stereotypes that pre-classify certain actors as deviant, I hope to trouble the idea that “community good” can be treated as an objective claim divorced from its social context. Using this analysis, I will not argue that either liberal rights or communal well-being should become the sole standard by which the state regulates its citizens. Instead, I’m hoping a close analysis of states’ competing responsibilities to individuals and the general public can provide a better understanding of the high stakes of attempts to balance competing theories of governance.

Zuccotti Park and Occupy Wall Street—Previous Findings

In a previous paper on the regulation of public space, I studied the Occupy Wall Street movement, looking closely at the legal arguments used to justify their eviction from Zuccotti Park. While protesters claimed the right to stay in Zuccotti Park on the grounds that their right to symbolic speech was protected by the First Amendment of the Constitution (a document focused on individual rights and liberties) city officials used Supreme Court precedents placing “time, place and manner” restrictions on First Amendment rights to argue for the occupiers’ eviction. I claimed that such restrictions privilege public well-being over individuals’ rights to do as they please. I further looked at the range of actors that claimed an interest in the events at Zuccotti Park. Through examining how the New York City government took into account the concerns of OWS protesters, neighborhood residents, surrounding businesses, and the park owners in their

decision to evict protesters, I argued that “public order” is not a pre-existing good, but rather something that states subjectively construct. I noted that a number of parties were making claims to the space on the basis of market interests (in particular, Brookfield properties, which managed this “privately-owned public space,”) arguing that this trend represented a neoliberal influence of the markets on state practices. I also noted that actors did not need to have a physical presence in Zuccotti Park in order to make claims to how it should be regulated; from this, I concluded that the ways in which peoples’ actions transcend the borders of their physical spaces and influence the markets and infrastructures beyond them allows a range of people to make communitarian claims about public good.

From my conclusions about the difficulty of defining “public order” in Zuccotti Park during the OWS protests, I argued in this paper that unlike liberal models of citizenship—which allow citizens to pursue a range of interpretations of “the good life”—communitarian models of governance require the state to privilege particular interpretations of public “order” and “well-being.” While I acknowledged that liberal models of citizenship are limited in their ability to account for how people experience their daily lives as part of a community, I argued that the liberal model is uniquely able to protect all citizens’ basic rights.

Sidewalk

“Occupy Wall Street” has been portrayed by popular media as a unique event that poses new questions of individual rights to public commons interact with communal goods. However, placing it in relation to Greenwich Village street vendors in Mitchell Dunnier’s classic microsociological text *Sidewalk* shows how this controversy is part of a

larger conversation about who can use public space and for what “appropriate” uses. Both the highly visible, violent and controversial struggles over Zuccotti Park, and the quieter contestations over Greenwich Village sidewalks in the 1990s are examples of individual rights being subordinated to communal concerns about the public good, framed in the rhetoric of public health, safety and welfare. Furthermore, both situations reflect the ways in which the market interests play into the ways that “community good” gets articulated. Dunnier’s study of Greenwich Village sidewalks, however, adds the element of raced and classed marginalization to the debate, highlighting the social constructions of public order and deviance.

Because OWS protesters are engaging in intentionally deviant acts as a political tactic, conversations about peoples’ right to protest in Zuccotti Park have taken the deviant nature of the protest as a given, arguing that citizens have a right to engage in these types of deviant speech acts even at the expense of community good. But as Mitchell Dunnier shows in *Sidewalk*, “deviance” is not always directly claimed and easily defined.

A classic piece of ethnographic research, *Sidewalk* examines the lives of book and magazine vendors and other marginalized people on just three blocks of Greenwich Village in the late 1990s. Dunnier wrote the book in response to Giuliani-era “broken-window theory” crime policy that positions street vendors and panhandlers as a form of deviance and disorder. By revealing the “largely invisible social structure of the sidewalk,” Dunnier tries to show how sidewalk vending “can be seen as an integrated part of communities that benefits both vendors and the general public.”¹ Dunnier’s text

¹ Dunnier, Mitchell. 1999. *Sidewalk*. New York, NY/USA: Farrar, Straus and Giroux. Pp 314.

traces tensions between those who use the sidewalks for their livelihoods and those who see vendors as a community nuisance.

In his examination of Greenwich Village sidewalks, Dunnier documents many of the same claims to space that I have remarked upon in my examination of Zuccotti Park during Occupy Wall Street. Dunnier explains how a broad interpretation of First Amendment rights protects vendors who wish to sell written material on Greenwich Village sidewalks, and how this provision of municipal law opens these public spaces designed for pedestrian traffic to those wishing to use them to earn a living.² Even as he argues that vendors play an integrated and valued role in their communities, Dunnier discusses other social actors who claim that sidewalk vendors are infringing upon their quality of life and their economic livelihoods. Among these complainants are local book retailers, who claim that vendors compete with their more “legitimate” business, and local business who conflict with street vendors who they see as abusing their bathrooms.³

Dunnier further describes how the state managed these concerns in the passing of “Local Law 45,” a piece of legislations that increases restrictions on the ways in which vendors can use public sidewalks.⁴ Dunnier attributes the passage of this law to the work of local “Business Improvement Districts,” private entities that take on a lot of functions of governments such as security and sanitation.⁵ Dunnier shows that, while this law was passed under pressure from the local business community, it used the rhetoric of “public

² Dunnier 1999: 136

³ Dunnier 1999: 217

⁴ Dunnier 1999: 238

⁵ Dunnier 1999: 232

good,” making claims (which Dunnier sees as unsupported) about sidewalk vendors blocking pedestrian traffic and impeding police tracking criminals.⁶

What an analysis of *Sidewalk* adds to the conversation about public space is an examination of how racial and economic marginalization play into the perception of certain activities in public spaces as “deviant” and in need of regulation. As part of his project, Dunnier compares the experiences of the mostly-black street vendors that he focuses on to the experiences of the “Romps”—a white family from Vermont who sell Christmas trees from a trailer they set up on Jane Street every Christmas. Dunnier shows how the Romps, while engaging in activities similar to those of his sidewalk vendor subjects, are seen as an integrated part of the Greenwich Village community and, because of this, are able to act in ways that are not disruptive to their neighborhood.⁷ For example, he describes how many white residents instinctively trust the Romps, allowing them into their homes to shower and inviting their children on playdates; Dunnier notes that this initial trust allows the Romps to maintain the cleanliness and lawfulness necessary to be accepted as part of the community. Through this comparison, Dunnier emphasizes the subjective nature of “deviance” and “public order” in a racist, capitalist community and shows how negative stereotypes can overdetermine peoples’ abilities to live in harmony with their community.

In the conclusion of his book, Dunnier directly takes on the “broken windows” theory of crime policy that shapes how nonviolent street vendors and panhandlers become officially criminalized by legal policy and unofficially regulated through individual law enforcement officers’ on-the-ground discretion. George Kelling and

⁶ Dunnier 1999: 252

⁷ Dunnier 1999: 311

James Wilson's 1982 Atlantic Monthly article that originally laid out "broken window" theory argued the state should shift the role of its police force from a law-enforcement model that punishes violent crime to an "order-maintenance" one that creates an ordered public environment that sends citizens the message that community standards are being enforced and deviance will not be tolerated.⁸ Kelling and Wilson's recommendations can be seen as a shift from a liberal state that only intervenes when individual rights to life, liberty and property are compromised, to a communitarian state that works to curate public good.

This reconceptualization of the state becomes especially relevant to the regulation of public spaces in Kelling and Wilson's assertion that anti-vagrancy and public intoxication laws should serve the function of granting police the "legal tools to remove undesirable persons from a neighborhood when informal efforts to preserve order in the streets have failed."⁹ Dunninger brings this argument to task when he argues "it cannot correctly be assumed that certain kinds of human beings constitute "broken windows," especially without an understanding of how these people live their lives."¹⁰ One does not need to look far to find the potential for state-sanctioned bigotry in "broken windows"-style governing. Kelling and Wilson themselves bring up this important question in their article, asking, "We might agree that certain behavior makes one person more undesirable than another but how do we ensure that age or skin color or national origin or harmless mannerisms will not also become the basis for distinguishing the undesirable from the

⁸ Kelling, George and Wilson, James. 1982 "Broken Windows." Atlantic Monthly March. Retrieved December 2 from (<http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/4465/>).

⁹ Kelling and Wilson, 1982

¹⁰ Dunninger 1999: 315

desirable?”¹¹ Even they assert that their answer to this question—their claim that “the police exist to help regulate behavior, not to maintain the racial or ethnic purity of a neighborhood”—is not “wholly satisfactory.”¹² Dunninger is less optimistic about the implications that “broken windows” theory holds for equity, writing, “Because Americans ruthlessly use race and class categories as they navigate through life, many citizens generalize from the actual broken windows to all the windows that look like them—and assume that a person who looks broken must be shattered, when in fact he is trying to fix himself the best he can.”¹³ Although Dunninger does not entirely discount communitarian concerns with public well-being, and even concedes to some value in “broken windows”-style crime prevention, he brings up concerns about raced and classed equity in order to warn against the dangers of letting communal concerns like “public order” completely trump individual rights.

Conclusions

Through examining two different contestations over public space in New York City, I’ve examined how individual rights and community welfare get negotiated in the regulations of spaces and the governance of bodies. In both of these situations, I’ve shown how conceptions of public order and well being have been constructed in ways that have legally trumped individual’s claims to act in ways perceived to be deviant. I’ve also shown how a neoliberal encroachment of market concerns into conversations about the common good has shaped subjective determinations of public good to conform to market interest in creating spaces focused on capitalist production and consumption.

¹¹ Kelling and Wilson, 1982

¹² Kelling and Wilson, 1982

¹³ Dunninger, 315

How, however, do these two cases interject themselves into the lively debates over liberal and communitarian models of citizenship? While these two situations trouble the idea of strict pursuance of a “common good” in a racist, capitalist society, it would be an oversimplification to say that either situation offers a clear-cut case for taking on a strict liberal model of citizenship. In writing on the limits of liberal citizenship, Adrian Oldfield writes “Autonomous individuals are the subject matter of any social and political theory, but they are not its only subject matter.”¹⁴ Just as Oldfield cautions against seeing citizens as autonomous individuals, both of these situations demonstrate how spaces must also be seen as existing as parts of communities. The ways in which contemporary Lower Manhattan businesses and residents claim a right to regulate the Occupy protests at Zuccotti Park, and the ways in which Greenwich Village business owners work with Business Improvement Districts to regulate local sidewalks, shows that people do not have to physically exist in a space in order to claim to be affected by the ways in which it is regulated. Sounds and smells, as well as physical threats such as fire and disease, can permeate the boundaries of legally-defined spaces, and people are physically forced to pass through these boundaries as they travel through public spaces on their ways between private places. Furthermore, lack of public infrastructure such as acceptable public bathrooms pushes people to blur the lines between public and private spaces as they claim private resources such as bathrooms as a public common.¹⁵ When public spaces are placed into the context of the communities that they are a part of, it becomes difficult

¹⁴ Oldfield 1998: 77

¹⁵ Bernard, Anne. 2011. "Barristas Lock Restrooms, but the Revolt Doesn't Last." New York Times, November 22. Retrieved December 1, 2011 (http://www.nytimes.com/2011/11/23/nyregion/starbucks-mutiny-exposes-new-yorks-reliance-on-chains-toilets.html?_r=1).

to see public spaces as fully autonomous from nearby private spaces that people claim a capital right to control.

These two tales of public space, then, cannot resolve the age-old debate in favor of either classical ideal. Instead, these two cases should be seen as evidence of the need to consider both concerns, and warnings of what can come about when individual rights are sacrificed to communitarian (and, in many cases, market) concerns. While classically liberal thought can be theorized as a relic of the Enlightenment-era myth of the rational, autonomous subject, these two concrete cases show the continuing importance of individual rights. By existing in the grey area of legitimate controversy, both of these cases hint at what could happen if individual rights to use public space for deviant and disruptive acts are wholly neglected. While one might argue (and, in fact, many have argued) that “Free Speech” does not necessitate letting people camp in a public park for months, few would argue that a true democracy can flourish without allowing some provisions for speech that creates discomfort or inconvenience to the general public.

The case of *Sidewalk* hints at even greater stakes by discussing marginalized actors and invoking the specter of homelessness. By explaining that many of his subjects rely on public sidewalks as a source of an “honest” livelihood and in some cases as a home, Dunninger hints that heavier street regulation could turn his subjects to pursue crime as a survival tactic, or it could push citizens into the passive violence of resource and shelter deprivation. While neither the recent controversy at Zuccotti Park nor the more quiet scuffles over Greenwich Village sidewalks in the late 1990s can provide a clear proscription for decisions about public spaces, they both reveal the difficulties of reconciling competing interests of citizens, and the stakes that these decisions hold.