

J. Locke, op. cit.: Invocations of Law on Snowy Streets

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(forthcoming Journal of Comparative Law)

Each winter in the northern cities of the United States, a familiar scene illustrates tacit and deeply sedimented, yet common invocations of law. After a heavy snow storm, one can see old chairs, traffic cones, milk crates, light weight tables, dead house plants, or other noticeably bulky objects in recently shoveled out parking spots on an otherwise snow-filled public street. “Before snowfalls, a parking space belongs to the one who occupies it: you leave it, you lose it. In wintertime Chicago, however,” writes Fred McChesney in an economic analysis of this practice, “excavating one’s car [from the snow that fell on it] changes the system of property rights... The initial digger of the spot is given a limited monopoly for its use.”² Although calculating an efficient duration for the monopoly preoccupies some analysts, my attention to the practice of claiming parking spots on snowy streets derives from an interest in understanding legal culture, more specifically, how practices of everyday life sustain the rule of law.³

The practice of holding shoveled-out parking spots on snow covered streets is not a recent invention in northern American cities, neither is it universal, nor without contest. It is, however, widespread, a subject of regular and increasing discussion in public forums,

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² Fred S. McChesney, *Snow Jobs*, LIBR. ECON. & LIBERTY, Oct. 15, 2001, available at <http://www.econlib.org/library/columns/mcchesneysnow.html>.

³ Susan S. Silbey, “Legal Culture and Cultures of Legality” in *Sociology of Culture: A Handbook*, John R. Hall, Laura Grindstaff, Ming-cheng Lo (eds.) pp. 470-479; “Everyday Life and the Constitution of Legality,” in *The Blackwell Companion to the Sociology of Culture*, Marc Jacobs and Nancy Hanrahan (eds.) pp. 332-345; “Legal Culture and Consciousness,” *International Encyclopedia of the Social and Behavioral Sciences*.. p. 8623-8629; Patricia Ewick and Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life*, 1998.

newspapers and internet media.⁴ It has been subject to legal regulation, although uneven law enforcement, and a topic of scholarly analysis.⁵ This essay uses the example of the chair in the shoveled out parking spot to illustrate how cultural analysis can document both the practices and systematicity of legal culture(s), in this way hoping to unravel some of the confusion characterizing discussions of legal culture as well as culture more generally. Following a more extended introduction, the section following both describes and interprets the practice of space-saving on snowy public streets, using the actors' own accounts to construct an interpretation of what placing chairs in parking spots on snowy streets means to the participants. I follow this descriptive and interpretive work with a short discussion of what such cultural analysis brings to legal inquiry.

Introduction: Chairs in the Snow⁶ and Cultural Analysis

Imagine being a stranger driving down a street in Chicago, Boston or Philadelphia recently covered with snow. You see a chair in a shoveled out parking spot. You do not know what to make of this. Perhaps someone is moving furniture out of the house, getting ready to load it to a truck; perhaps the chair was being thrown away and the trash collectors neglected to pick it up, or perhaps it fell off a truck and just happened to land in this spot. You drive a little further, you see another chair in a similarly shoveled out spot. As you drive even further, you see milk crates, and tables and dead plants as well as chairs in these shoveled out parking spots. What was ambiguous, perhaps indecipherable as a single item, by repetition and accumulation becomes clear: the objects are placeholders occupying the parking places. You imagine the person who shoveled out the spot put the placeholder there, but you do not know. Without locating this action within a web of signs and significations, i.e. culture, the space-saver⁷ is relatively meaningless, an empty signifier, lacking communicative capacity for either motivation or reception. The behavior is, however, not at all empty, meaningless, or ambiguous for residents of the city. It is laden with significance for both the person who placed the object

⁴ See cites below for internet coverage from public blogs, newspapers and public officials.

⁵ Ewick and Silbey, op. cit. p21; McChesney op.cit; Richard A. Epstein, *The Allocation of the Commons: Parking on Public Roads*, 31 J. LEGAL STUD. S515, S528 (2002); Silbey "Talk of Law: Contested and Conventional Legality" *DePaul Law Review*, Volume 56, Number 2, pp. 639-660; Silbey and Cavicchi, "The Common Place of Law: Transforming Matters of Concern into the Objects of Everyday Life" in *Making Things Public: Atmospheres of Democracy*, Bruno Latour and Peter Weibel (eds.). pp. 556-563. See also, http://en.wikipedia.org/wiki/Parking_chair http://en.wikipedia.org/wiki/Parking_chair.

⁶ Because chairs and traffic cones are the most numerous, and historically most familiar placeholder, I most often refer to the placeholders as chairs. Also, the easiest way to find references to this practice is usually by searching for 'chairs in parking spots'.

⁷ Space saver has become term of choice in Boston for this practice.

in the shoveled-out spot and the neighborhood audience because saving spaces on snowy urban streets invokes associations, language, and concepts with long historic legal genealogies.

The placeholders communicate a property claim: this spot is mine, at least for as long as the object sits in it. As a property claim, it invokes historic legal associations and meanings. The person who places the object in the shoveled out spot, references, knowingly or not, Locke's labor theory of property, "the standard bourgeois theory:"⁸ "Every man has a property in his own person. This nobody has a right to, but himself. . . . The reason why men enter into society is the preservation of their property."⁹ The snow shoveler performed the labor of removing the snow and publicly announces her claim to the use value produced. That the chair in the shoveled out parking spot can serve as a public claim to the shoveler's exclusive use relies on the audience recognizing the property claim signified by the chair, plant, or other object. To the extent that property owes its existence to state protection through law rather than through the unregulated violence of the stronger party, property claims implicitly or explicitly reference law. Thus, the act is cognizable – can be deciphered, understood, and as a consequence consistently responded to -- *only* because both the actor and the audience share legal-cultural membership; they participate in the circulation of tropes and concepts that include labor, property, right, and trespass.

The actors (the snow shoveler, neighbors, and drivers seeking a parking spot) who recognize the property claim need not agree that this claim is legitimate, that the snow shoveler's labor justifies a monopoly use, however temporary, of a public street. Indeed they may actively disagree, as I will illustrate below. Some drivers may challenge the legitimacy, and others may simply fear retaliation even if they do not think the claim legitimate. Nonetheless, the disagreement is engaged within commonly exchanged terms and meanings about property, right, trespass, however diverse and unambiguous those meanings. Thus, just like the act of placing the chair in the shoveled out parking spot, the disagreement is embedded in local, and it turns out not so local, legal culture.

The term 'legal culture' is difficult and not easy to parse. Those of us who find it a useful concept to understand the various ways law is enacted and understood in different social systems (whether within one national regime or across regimes) may be as responsible for some of the confusion surrounding the term as the terminology's own complex genealogy. Its uses are often abstruse, unstable theoretically and empirically. Adding legal to culture only exacerbates the conceptual tumult,¹⁰ reproducing for legal scholars the cacophony that attaches to the concept of culture more generally.

⁸ Richard Schlatter, 1977, *Private Property Rights: Philosophic Foundations* p. 49.

⁹ John Locke, *Second Treatise on Civil Government*. Secs. 25, 27, 28, 1690.

¹⁰ Portions of this discussion of the meaning of culture are taken from Silbey 2001, 2005, *op. cit.*

Some confusion derives from intermingling two meanings of culture: one meaning names a particular world or specific human group. The second meaning is analytic rather than empirically denotative, referring to the outcome of social analysis. In this analytic sense, culture refers to a system of symbols and meanings abstracted and identified by the analyst as simultaneously the product and context of social action. In the former use, referring to the distinctive customs, opinions and practices of a particular group or society, the term is often used in the plural, as in African or Latin cultures, or the legal cultures of Japan and China. In the latter analytic sense, the word is used in the singular, as in legal culture, or the culture of academia. The unprecedented and rapidly proliferating use of the concept has unfortunately exacerbated the frequently unruly discourse.¹¹

In this essay, I offer an empirical analysis of the social practice of holding parking spots on snowy streets to illustrate how its performances and interpretations enact and display deep-seated, and relatively systematic, conceptions of law and legality.¹² There are obvious social issues that could be discussed; for example, how do parking spots get generally allocated on residential streets, or how come people have so many items that they are willing to put on public streets for anyone to take? And, there are obvious legal puzzles, some of which I will mention below; for example, why don't the city officials, e.g. police, stop this littering of the public streets? There are, however, more complexities beyond what is otherwise apparent. "Believing with Max Weber, that man [sic] is an animal suspended in webs of significance he himself has spun, I take culture to be those webs, and the analysis of it to be therefore not an experimental science in search of law but an interpretive one in search of meaning."¹³

¹¹Benton 2002, *Law and Colonial Cultures*; Bierbrauer G 1994 *Toward an Understanding of Legal Culture: Variations in Individualism and Collectivism Between Kurds, Lebanese, and Germans*. *Law and Society Review* 28 (2):243-264; Blankenburg E 1994 *The Infrastructure of Legal Culture in Holland and West Germany*. *Law and Society Review* 28 (4):789-809; Bracey 2006, *Exploring Law and Cultures*; Cotterrell R [1984] 1992 *The Sociology of Law: An Introduction*, 2nd edn.; Cotterrell, 1997 "The Concept of Legal Culture" In: Nelken D (ed.) *Comparing Legal Cultures* pp/ 13-32; Merry, S. "Concepts of Law and Justice among working-Class Americans: Ideology as Culture" 9 *Legal Studies Forum*, pp. 59-70. Nelken D 1997 *Comparing Legal Cultures*, pp. 69-92; Rosen 2006, *Law as Culture*.

¹² Ewick and Silbey, *op. cit.* pp.22-23, "use the word legality to identify the meanings, sources of authority and cultural practices that are commonly recognized as legal, regardless of who employs them or for what ends...Use the word "law" specifically to refer to aspects of legality as it is employed by or attributed to formal institutions and their actors."

¹³ Clifford Geertz, *The Interpretation of Cultures*.

For this analysis of legal culture, I use the concept to refer to a system of symbols and meanings and their associated social practices.¹⁴ This formulation of culture treats signs and performances, meanings and actions as ontologically inseparable. It highlights, by abstracting, “the meaningful aspect of human action out of the flow of concrete interactions... [by *disentangling*], for the purpose of analysis, the semiotic influences on action from the other sorts of influences - demographic, geographical, biological, technological, economic, and so on - that they are necessarily mixed with in any concrete sequence of behavior.”¹⁵ This attention to linguistic and symbolic aspects of social action derives from classic work in anthropology, but importantly rejects notions (that had pervaded early, classical anthropology) that culture is uniform, static, or ubiquitously shared.¹⁶ Moreover, this conception of culture – as a *system* of *circulating signs* and significations - goes beyond a focus on language alone. By drawing from sociological theories of action and practice,¹⁷ culture is conceived as an arena or field of practical activity, competition, negotiation, and struggle. Culture is not only a system of signs but performed daily in all social transactions¹⁸ and settings. A succinct formulation describes culture as a “repertoire” of “strategies of action,”¹⁹ a collection of tools for the performance of social action. Importantly, culture is not a coherent, logical and autonomous system of symbols, as may have been suggested by authors such as Levi-Strauss, but a diverse collection of semiotic resources that are deployed in the performance of action. Variation and conflict concerning the meaning and use of these symbols and resources is likely and expected because at its core, culture “is an intricate system of claims about how to understand the world and act on it”.²⁰

¹⁴ Sewell Jr. W H 1999 The Concepts of Culture. In: Bonnell V E, Hunt A H, Biernacki R (eds.) Beyond the Cultural Turn: New Directions in the Study of Society and Culture,

¹⁵ Sewell Jr. W H 1999, op. cit., p.44, my emphasis.

¹⁶ Levi-Strauss C 1963 Structural Anthropology; 1966 The Savage Mind; Schneider D M 1968 American Kinship: A Cultural Account; 1976 Notes Toward a Theory of Culture. In: Basso K H, Selby H A (eds.) Meaning in Anthropology pp. 197-220; Turner V W 1967 Forest of Symbols: Aspects of Ndembu Ritual; 1969 The Ritual Process: Structure and Anti-structure; Geertz, op. cit.

¹⁷ Bourdieu P 1977 Outline of a Theory of Practice; 1990 The Logic of Practice; 1994 In Other Words: Essays Towards a Reflexive Sociology; Giddens A 1979, Central Problems in Social theory; 1984 The Constitution of Society: Outline of the Theory of Structuration; Goffman, E. 1967 Interaction Rituals: Essays on Face to Face Behavior.

¹⁸ Emirbayer, M. 1997, “Manifesto for a Relational Sociology,” American Journal of Sociology 103 (2) 281-317.

¹⁹ Swidler A. 1986 Culture and Action: Symbols and Strategies. American Sociological Review 51:273-286.

²⁰ Perin C. 2005. Shouldering risks : the culture of control in the nuclear power industry. p.xii.

Recognizing that the cultural system of signs may not be as coherent, logical, or autonomous as historically posited, does not mean it lacks systematicity, that is, networks of referential association. It is the job of the analyst to identify and portray that systematicity. Many cultural resources are discrete, local, and intended for specific purposes, such as the practice of placing chairs in shoveled out parking spots in northeastern and mid-western American cities but not in the coldest and snowiest cities, and not in Canadian cities. Despite being varied and contested, it is nonetheless possible to observe patterns in the signs and practices so that we are able to speak of a culture, or cultural system at specified scales and levels of social organization. Sewell very clearly and importantly lays out the relationships among system and practice, variation and connection.

“System and practice are complementary concepts: each presupposes the other... The employment of a symbol can be expected to accomplish a particular goal only because symbols have more or less determinate meanings - meanings specified by their systematically structured relations to other symbols. Hence practice implies a system. But it is equally true that the system has no existence apart from the succession of practices that instantiate, reproduce, or - most interestingly - transform it. Hence a system implies practice. System and practice constitute an indissoluble duality or dialectic: the important theoretical question is thus not whether culture should be conceptualized as practice or as a system of symbols and meanings, but how to conceptualize the articulation of system and practice.”²¹

This analysis of chairs on snowy streets as invocations of law attempts to articulate exactly that, - the relationship between this peculiar practice and historically recognized and legitimate legal concepts. As a system of semiotic resources deployed in transactions, “culture is not a power, something to which social events, behaviors, institutions, or processes can be causally attributed; it is a context, something within which [events, behaviors, institutions, and processes] can be intelligibly – that is, thickly – described.”²²

Space-savers and Property Claims on Snowy Public Streets

Let’s get the object of our analysis located and then described before interpreting and theorizing it²³. The northern parts of the United States above latitude of 39° (excepting Alaska) receive annual winter snow falls ranging from approximately 20 inches in Washington D.C. to

²¹ Sewell, op. cit.

²² Geertz, 1973 op. cit. p.14

²³ Maxwell, J. A. 2002. Understanding and Validity in Qualitative Research. In Huberman and Miles (eds.) *The Qualitative Researcher’s Companion*, pp. 37-64..

over 240 inches at a similar latitude in northern California.²⁴ Of course, Blue Canyon in northern California receives these heavy snowfalls at an altitude of 4700 hundred feet. If we look at northern cities close to sea level, the annual snowfall can still reach more than 90 inches in Buffalo and parts of Oregon, and closer to 140 inches in parts of Michigan. Along the east coast from Washington D.C. to Portland Maine, maximum snowfalls rarely exceed 70 inches and the most heavily populated areas – Baltimore, Philadelphia, Pittsburgh, New York City, and Boston - rarely record annual snowfalls of more than 42 inches. In the midwest, Chicago, generally described as a cold and snowy city, averages about 38 inches. Interestingly, the practice of placing space-savers in shoveled out parking spots on city streets is most common in the cities with median rather than maximal snowfalls. The practice has been reported from Washington DC north to Boston, west from Philadelphia through Indianapolis and Chicago. However, it is not practiced in Buffalo, Wisconsin or Minnesota, as far as we have been able to determine. How does this practice work? What does it signify to the practitioners and the audiences? And, do these variations express differences in legal cultures?

How does this practice work? Cars are parked on public streets, usually in front of residential buildings where there is insufficient off-street parking in designated spots and garages. Snow falls to a height where the car cannot be driven away without someone removing the snow from the vehicle and its surrounding area. Once the snow and car are removed, an object is placed in the shoveled out spot providing a form of public notice that this spot is taken. The chair placed in a shoveled out parking spot on a public street, with or without a person in the chair, is understood as a claim of exclusive use of the space. The chair signals to the neighborhood, or any passerby, contingently limited ownership. In claiming that limited monopoly, the chair usually elicits the same sorts of deference and respect accorded more conventional types of property. Other drivers park elsewhere. Similarly, the violation or transgression of this monopoly claim by removing the chair and parking in the spot may lead to conflicts and disputes more commonly associated with property or monopoly as formally defined by the legal system—claims of trespass. Yet, without those formal enactments, without the professional labor of registering ownership with the state, these public claims of possession as desert for hard work are performed and responded to because they invoke commonplace signs of law and legality.

What does the practice of placeholders for shoveled out parking spots signify to the actors involved? The words of the citizens enacting and contesting this practice provide the most important evidence that labor is the primary justification for claiming to exclusive use.²⁵ It is explicitly articulated, for example, by Boston residents: “I cleared it, I get to keep

²⁴ Annual winter snowfalls, reported by the National Oceanographic and Atmospheric Administration, <http://lwf.ncdc.noaa.gov/oa/climate/online/ccd/snowfall.html>. Washington D.C. is actually located at a latitude of 38°53'N.

²⁵ We collected these accounts by searching newspapers on line as well as community and individual blogs with comments. We quote from a sample of what we collected.

it;”²⁶ “You shovel it out, you deserve it, ... that’s only right.”²⁷ From a weblog of signs explaining the practice,²⁸

A Chicagoan wrote:

“When someone digs out a spot and places a chair in the empty space, it is theirs. It is somewhat of a tradition here.”

From a woman in New Jersey:

“This table is not trash, it is mine. I am using it to mark my parking spot that I so diligently shoveled out twice yesterday. There are four people living in 69 South Union Street (right in front of you), all of whom own cars. If you diligently shovel out a spot in front to your house and want to trade, that’s fair. Stealing my diligently cleared out spot because you failed to shovel out is not. Enjoy your day!!!”

From an unidentified source, posted at the weblog, “snowparking.com,” a picture of tan plastic box, with a sign reading:

“I cleaned this spot and took pictures of it!! Therefore, it is my spot. Green Saturn.”²⁹

From Indianapolis:

“I spent 3.5 hours over 2 days to shovel this parking space out so I could get to work and earn a paycheck. Since parking on the street is my only option at the moment, I would ask that you respect my hard work in shoveling myself out and not take my spot to park. Have your business spend money to plow your spots in front of your business if you would like a clean spot to park. Regards, A homeowner with a sore back from shoveling so much snow!!!” [underline in the original]

From Pittsburgh:

(In very large printing) “Please don’t park here.” (In smaller printing) “I spent my morning and every aforementioned morning this week unburying my car. So I want this

²⁶ Boston Globe, Jan 19, 2011, p. A1, Lorenzo Paulino, Savin Hill, Boston MA.

²⁷ Boston Globe, Jan 19, 2011, p. A14, Melvin Seay, Bowdoin-Geneva section of Dorchester, MA.

²⁸ <http://www.passiveagressivenotes.com/2010/02/21/can-you-dig-it/>. Taken off the web Feb 21, 2010.

²⁹ Posted 2/8/2011, <http://www.snowparking.com/> taken off 6/25/11.

spot when I come back. Look elsewhere on the street for any of my other previous spots, they are all yours now! Thanks! Have a Happy Saturday!!”

From Albany:

“Don’t think about parking here. Shovel your own space. Thank you. Have a nice day.”

From East Boston, a resident who has learned the moral code of the snow covered city street posted a sign reading:³⁰

“Please do not park here; I spend 3 hours cleaning this parking spot. My body is on pain now.”

Another Chicagoan posted:

“Call it selfish, but don’t knock it until you’ve shoveled out a space in a wind chill of minus x degrees. In Chicago. And although the city’s known for its friendly Midwestern hospitality, I’m certainly not going to chance it by parking in someone’s space and risk having my windows smashed.”³¹

And, another from Boston:

“Attention!! To Whom It May Concern. Your [sic] parked in my space I shoveled It in the middle of the storm. Your [sic] welcome to borrow my shovel to dig our your own! – My space call for more inform (address inserted).”

A former member School Board chair, and candidate for Mayor in Chicago, explained:

“Look, if a guy’s out there shoveling for an hour and a half, he’s not shoveling it for someone else to use... It’s a civil way to allocate parking and its been going on for 100 years in Chicago.”³²

These statements, which are thematically consistent with comments from Philadelphia and Baltimore as well, express sentiments entirely consistent with the labor theory of property. The voices express a clear and unambiguous argument in favor of rewarding useful labor with

³⁰ <http://universalhub.com/2011/space-saver-explanation>, taken off web 1/14/11, 10:33 am.

³¹ www.apartmenttherapy.com/.../saving-parking-spots-with-furniture-073725, posted by *truenic* January 13, 2009.

Abdon M. Pallasch, “We asked mayoral candidates: Do you support ‘dibs’ on parking spots?”, *Sun Times*, February 2, 2011. ³²<http://www.suntimes.com/news/politics/3605418-418/dibs-chicago-snow-spot-candidates.html>. taken off 2/3/2011.

a just desert of exclusive use. Following Locke, our snow-shoveling protagonists argue that one acquires a time-bound monopoly(a form of property) by mixing what one owns (one's body, one's labor) with what one does not own (in this case, space on a public street). Locke's claim was not merely empirical, however, but also normative; he was, after all, constructing a defense for the liberal-bourgeois state. "Locke argued [that] people deserve to have those items produced by their toil and industry, the products (or value thereof) being a fitting reward for their effort. His underlying idea was to guarantee to individuals the fruits of their own labor and abstinence."³³ Some contemporary theorists also suggest that reward for labor is a basic principle of justice, insofar as the labor contributes to the collective social product, or standard of living.³⁴ It is not labor itself that requires a reward, that is itself deserving, but rather labor's contribution to the public good, a general benefit for the community and incentive for coordinated action and economy. Here, however, our snow-shovelers may have a problem because it is not at all clear that there is a general benefit achieved. Paula Worthington claims that the shoveled out parking spot creates a 'semi-durable public asset – a usable parking space... and we all benefit even when you alone have rights to the spot, as then you don't cruise around the neighborhood looking for parking," crowding the public streets and wasting fuel.³⁵ McChesney extends the argument claiming that the system incentivizes people to put in the labor that actually expands the amount of parking available. The would-be snow-shovelers see the benefit and begin to shovel the snow, including the mounds created by the city street plows, making spaces for themselves. Without this incentive, many cars would simply sit under the mounds of snow.

What is important for our analysis of legal culture is that the claim of just desert for labor has a long and respectable legal lineage. And, although philosophers and legal scholars have criticized the labor theory of property, it remains the most popular justification for exclusive use, or ownership, however temporary. Even if it were not the most popular argument, simply being one in circulation, subject to argumentation, would be sufficient to include it within legal culture. Most criticisms of just desert are primarily logical, rather than empirical or normative. For example, Robert Nozick, suggests that mixing one's labor with something else offers no guidance as to the scope of the consequent claim. How much labor mixed with how much other stuff justifies what extent of exclusive control? The labor theory's unlimited claim also turns out to be a criticism for those opposing exclusive use of a shoveled out parking spot. "These are public streets we're talking about right?? So if I clear off a picnic

³³ Lamont, J. and Favor, C., "Distributive Justice", *The Stanford Encyclopedia of Philosophy (Fall 2008 Edition)*, Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/fall2008/entries/justice-distributive/>>.

³⁴ Ibid.

³⁵ Vanderbilt T. "The Ethics of Winter Dibs Parking," <http://www.slate.com/formatdynamics/CleanPrintProxy.aspx?/> posted Friday February 25, 2011, taken off 2/28/11.

table at a public park, that's mine? For how long? I can just kick people off any time I come back?"³⁶

Because logical and normative concerns limit the desert theory of property, Carol Rose³⁷ suggests that possession is the more fundamental, logically sustainable, and morally justifiable origin of property. Here, as with the labor theory, snow-shoveler's comments and acts express associations with central elements of historic and conventional legal theory. From case law, Rose argues that possession involves occupancy or 'certain control,'³⁸ as well as a clear act giving notice to the public of the property claim. How else can we interpret the placeholders – the colloquial chairs in the snow – other than as simultaneously occupying the space and giving notice that this place is reserved for the person who placed the object in the shoveled out parking spot? Both elements of the property claim - occupancy and notice – are performed by the single material item. The object prevents a car from also occupying the space under the basic physical principle that no two objects can be in the same space at the same time. The object also gives the requisite public notice that this space is already claimed, which in the circumstances of other property claims is necessary because occupancy may not be as visible. Central to the symbolic – rather than physical - capacity of the object, the place-holding object communicates the claim of exclusive use because the practice of holding parking spots with objects is more common than holding shoveled out parking spots on snowy streets. Objects are regularly placed in parking spots on public streets to reserve use for special categories of parkers: construction workers, moving companies, and valets at restaurants. Although these uses are often licensed by the city for these specific purposes, with designated dates and times, the material symbolism of the object holding the spot is so conventional that it is interpretable by the vast majority of urban dwellers, and thus can be transposed from the licensed use by movers and valets to the unlicensed snow-shoveler.

The range of objects performing these functions (of occupancy and notice) is vast, the most numerous category being chairs (including lawn chairs – with and without weighted bricks, wooden straight back kitchen or desk chairs, upholstered wing chair, folding chairs, rocking chairs, a wicker stool, computer desk chairs, old arm chairs, recliners, and benches);

³⁶ Timothy B. Wheeler, "Mayor says she won't enforce ban on parking space savers", Baltimore Sun, February 9, 2010, <http://www.baltimoresun.com/news/weather/bal-snow-chairs-0209,0,6906642.story>, taken off 2/4/2011.

³⁷ Rose, C. "Possession as the Origin of Property," 52 U. Chicago L. Rev. 73, 1985.

³⁸ 3 Cai. R. 175 (N.Y. Sup. Ct. 1805), quoted in Rose, *Ibid.*

thus the now colloquial, chair in the snow.³⁹ After chairs, big plastic orange traffic cones seem to be the preferred choice. Other items placed as a form of public notice of possession include: tables (including a table set for two), children’s play things, TVs (in cabinets and without), toilets, tripod, containers of kitty litter, a child’s stroller, supermarket wagons, air purifier, laundry hampers and baskets filled with folded clothes, large empty bottles of laundry detergent, shovels, clothes racks, a dead potted palm plant, plastic crates, milk crates, trash barrels, refrigerators, computer screens, cat scratching post, a plastic recycling bin, paint cans, patio/deck furniture, picnic coolers, chunks of wood, chests of drawers, a series of cones with a rope connecting them, and a bust of Elvis Presley. Not only do the placeholders give public notice that the parking spot is occupied, they often also display an enticing sense of humor, creativity and personality, as well as authority.⁴⁰



³⁹ Because chairs and traffic cones are the most numerous, and historically most familiar placeholder, I most often refer to the placeholders as chairs. Also, the easiest way to find references to this practice is usually by searching for ‘chairs in parking spots’. Each of these objects has been used to hold a parking spot on a snow-covered street. Descriptions or photographs are on file with the author.

⁴⁰ This cultural practice expresses not only legal associations but offers opportunities for expressing creativity and personality as well as authority, and as such provoke intriguing empirical queries. One certainly knows more about the owner of an Elvis bust than a traffic cone. An Elvis bust appeals to non-law (extra-legal) forms of persuasion—reciprocity, morality, etc or personal connection, homophily? Yet the cone conveys authority, perhaps even official law. Do the different place-holders engender different kinds and rates of response or compliance? See Zev J. Eigen, *When and Why Individuals Obey Form-Adhesive Contracts: Experimental Evidence of Consent, Compliance, Promise and Performance* (Under Review *Journal of Legal Studies*), paper available at: <http://ssrn.com/abstract=1640245> for a discussion of how compliance varies by perceived sanction or connection; also, Zev J. Eigen, *The Devil in the Details: The Interrelationship Among Citizenship, Rule of Law, and Form-Adhesive Contracts*, 41 *Conn. L. Rev.* 381 (2008).





In a market society, clear communication, although often in short supply, is essential to facilitate exchange. The objects placed in the shoveled out spot constitute in themselves the act of notice that case law demands for a property claim, a clear act “whereby all the world understands that [the snow-shoveler] has an unequivocal intention of appropriating [this space] to his individual use.”⁴¹ The clear act (a necessary element of a property claim) “prevents confusion and quarreling”⁴² among the public audience, including those who would also claim the spot. “[I]f no one knows whether he can safely use the land, or from whom he should buy it if it is already claimed, the land may end up being used by too many people or by none at all.”⁴³ In Blackstone’s language, the act itself is “a declaration of one’s intent to appropriate.”⁴⁴ Because the ultimate purpose of property, again harkening to Locke’s justifications for the liberal-bourgeois state, is to allocate effort and reward so as to enhance the collective good, “[s]ociety is worse off,” Rose writes, “in a world of vague claims.”⁴⁵

Although parking spots on snowy public streets have been exempted from the market (with the exception of metered spots for which exemption is sometimes granted when there are heavy snowfalls), the meaning of property, labor, and desert⁴⁶ is more general, and thus the role of occupancy and notice as the legal basis of legitimate property claims circulate widely. Even the doctrine of adverse possession, an historic challenge to market mechanisms, works in a similar manner to support those who give public notice of occupancy. Traditionally, the

⁴¹ 3 Cai. R. 175 (N.Y. Sup. Ct. 1805), cited in Rose 1985, p. 76.

⁴² Rose, op.cit. p. 76.

⁴³ Ibid.

⁴⁴ W. Blackstone, Commentaries on the Laws of England, at pp. 9, 258.

⁴⁵ Rose, op. cit. p. 78.

⁴⁶ One sometimes encounters discussion of the appropriate spelling of desert; shouldn’t it be dessert as in the sweet at the end of a meal. But its use in these discussions as reward derives from the verb deserve, and thus is usually spelled with one s.

doctrine of adverse possession transfers property to someone who may initially be a trespasser, “if the trespasser’s presence is open to everyone, lasts continuously for a given period of time, and if the title owner takes no action to get rid of him during that time.”⁴⁷ Because the titled owner has not publicly and continuously asserted the property claim, adverse possession permits the title to pass to the trespasser who has made this public claim, even if he has not purchased the land. Here, Rose quotes modern confirmatory case law stating that “‘Possession’ means acts that ‘apprise the community[,] ... arrest attention, and put others claiming title upon inquiry.’”⁴⁸

“An owner who fails to correct misleading appearances may find his title lost to one who speaks loudly and clearly, though erroneously.”⁴⁹ To avoid any possible ambiguity, or for those perhaps new to the practice, some persons attach notes to their space-saving objects explicitly notifying the public of the shoveler’s claim to exclusive use. Some of these notes were quoted above: “Don’t even think about it,” read one sign painted on the top of a deconstructed coffee table.⁵⁰ “Please don’t park here” read a big blue sign attached to a large cardboard box in Pittsburgh that also included a red sign on the street side of the box, lest someone miss the street facing notice.⁵¹ And, finally, the small essay attached with black electrical tape to a damask table cloth we quoted above from Anna in New Jersey, explaining that “This table is not trash. It is mine... Enjoy your day??”⁵² The notes convey a range of social control strategies: (1) the most informal being identity or homophily (“I am like you, please don’t park here. I, too, like Elvis”); (2) social stigma (“This is tradition; the community frowns on trespassers. You will be a pariah”); (3) legal (“This chair signifies my claim to this spot because I worked hard to remove the snow”); and (4) retaliatory threat (“Park here and you car will be keyed”).⁵³

In sum, Rose describes the possession theory of property so well expressed in the actions of our urban dwelling drivers,

⁴⁷ Rose, *op. cit.* p. 79.

⁴⁸ Rose, *op. cit.* p. 80, quoting *Slatin’s Properties, Inc. v. Hassler*, 53 Ill. 2d 325,329, 291 N.E. 2d 641, 643 (1972) (quoting *Chicago Title & Trust Co. v. Drobnick*, 20 Ill. 2d 372, 379, 169 N.E.2d 792,796 (1960)).

⁴⁹ Rose, *op. cit.* p. 80.

⁵⁰<http://www.google.com/search?q=%22Apparently%2C+Jamaica+Plain+is+full+of+Massholes+with+snow+shovels%22&ie=utf-8&oe=utf-8&aq=t&rls=org.mozilla:en-US:official&client=firefox-a> /1/13/2011. Taken off 6/23/2011.

⁵¹ <http://www.passiveaggressivenotes.com/2010/02/21/can-yuou-dig-it/taken> off 6/23/11.

⁵² *Ibid.*

⁵³ *Eigen, op. cit.* fn 40.

“Possession as the basis of property ownership, then, seems to be amount to something like yelling loudly enough to all who may be interested. The first to say, ‘This is mine,’ in a way that the public understands, gets the prize, and the law will help him get keep it against someone who says, ‘No, this is *mine*.’ But if the original communicator dallies too long and allows the public to believe the interloper, he will find that the interloper has stepped into his shoes and has become the owner.”⁵⁴

Coincidentally, she goes on to make explicit the relationship between this possession-notice theory of property and the chairs in the snow.

“Indeed, notice plays a part in the most mundane property-like claims to things the law does not even recognize as capable of being reduced to ownership. ‘Would you please save my place?’ one says to one’s neighbor in the movie line, in order to ensure that others in line know that one is coming back and not relinquishing one’s claim.⁵⁵ In my home town of Chicago, one may choose to shovel the snow from a parking place on the street, but in order to establish a claim to it one must put a chair or some other object in the cleared spaced.⁵⁶ The useful act of shoveling snow does not speak as unambiguously as the presence of an object that blocks entry.”⁵⁷

Thus far, the line of argument has proceeded as follows. Chairs, or other objects, placed in shoveled out parking spaces on public streets in American cities can be understood as expressions of legal culture. They are performed and interpreted by those observing the practice by invoking relevant and legitimate legal concepts and theories, specifically labor and possession theories of property. The person who removes the snow from a parked car and then leaves an object occupying the space expects other drivers will understand that, at least until the snow melts, he will be using this spot and that they should park elsewhere. Thus, the shoveler performs historic legal concepts of work and property and assumes that others organize their activities, in part, with these same notions. None of this need be articulated, neither the legal concepts nor the snow-shoveler’s assumptions that others think the same way that he does. The snow-shoveler is entitled to this exclusive use of public space, he assumes and by his actions claims, because he worked to clear the parking spot of snow, and labor deserves its reward. By placing an object in the parking spot, he fulfills the requirements of the possession theory of property, notifying the public that the parking space is occupied and therefore not available for others. The actors’ words and actions demonstrate how legal

⁵⁴ Rose, op. cit. p. 81.

⁵⁵ Rose fn 37.

⁵⁶ Rose fn 38.

⁵⁷ Rose, op. cit. p. 81.

doctrine⁵⁸ creates communicative symbols and relationships far removed from the professional work of lawyers, judges, or legislatures, however, implicit and tacit those understandings and relationships may be.

Trespass and Retribution. Sometimes the legal meanings of the space-saving practice are not tacit at all, but announced quite explicitly. This often happens when taken-for-granted assumptions that organize commonplace activities and events, including deeply sedimented legal meanings of work, possession, or property are challenged. In recent years, we have come to understand that “the law operates, perhaps most powerfully, by rendering the world unproblematic. Indeed, in organizing and giving meaning to the most routine, everyday events -- such as buying groceries or driving down the street -- the law may be most present in its conspicuous absence.”⁵⁹ If the rule of law works invisibly by rendering the organization of relations unproblematic, we are more likely to observe it at those moments when the routine seems to break down. At moments when expectations are thwarted and tacit assumptions negated, people's actions often reveal what is usually their unarticulated understandings of the mundane; in short, that the taken-for-granted reveals itself in its breach.⁶⁰

So, too, with the practice of placing chairs in parking spots on snow covered public streets. Three options are available to those whose property claims go unheeded: do nothing, respond verbally, or retaliate. The continuum of social control strategies just mentioned above⁶¹ including identity, stigma, and retaliation are in stark display. We do not know how often violations of place-holding are ignored, but it is apparent that many violations of the conventional assumptions call forth explicit, often vociferous accounts of the deference due to the person who shoveled the snow. A Chicagoan posted the following didactic and sarcastic sign on a car with New York State license plates that had been parked in a spot previously shoveled by the writer:

“Dear Transplant,

⁵⁸ Cotterrell R. op. cit. fn 11 above, argues that legal culture must always have some discernible connection to legal doctrine.

⁵⁹ Ewick P. and Silbey S.S. 1998, op. cit. p. 27.

⁶⁰ Garfinkel, H., 1966 [Reprint]. *Studies in Ethnomethodology*; Goffman, E, 1985. *Behavior in Public Places*; 1963, *Stigma: Notes on the Management of Spoiled Identity*. Hoebel, E.A. and Llewellyn K. (1941) *The Cheyenne Way*, describe mode of accessing the law, or we might say legal culture, of a group without formal legal institutions as written codes, court procedures, specialized offices, through what they describe as ‘trouble case’, instances in which the normal affairs of the group are ruptured. Collecting accounts of ‘the trouble,’ researchers are able to unearth the threads of normativity and the conventional responses, the legal culture, Hoebel and Llewellyn suggest, of the group.

⁶¹ See text associated with fn 53.

You obviously haven't lived in Chicago long. When someone digs out a spot and places a chair in the empty space, it is theirs. It is somewhat of a tradition here. I know you are from NY and think are you better than everyone else so I won't hold it against you. Just so you know in the future. Have a great day. – Your neighbor. P.S. Yankees suck!"⁶²

While this note expresses mocking deference to the newcomer who does not know any better, it also reflects the long standing status competition between residents of the official second city, Chicago, and the supposedly premier city of New York, including its legendary baseball team that too regularly wins against the Chicago American league team, the White Sox. It is contemptuous in its acquiescence, giving the trespasser a free pass for ignorance, despite coming from the supposedly first American city. A note with less resentment about status differences, but its own dose of sarcasm, read: "Thanks for being so rude by parking in the space I shoveled for my family."⁶³

Mockery seems to be the general tone in written responses to those who violate the local culture. From Washington, D.C. :

"Dear Neighbor,

I'm sure you thought the recycling bin and trash bag were just there for decoration. When a person spends hours digging out a parking spot through two separate snowstorms, she has a right to park there upon her return."⁶⁴

From Silver Spring, Maryland: "Not cool!! You didn't take 3 hours to shovel this spot out!! This is MY parking spot!!"[emphasis in original]⁶⁵ Some people become quite nasty: "Hey fucking asshole. The barrel was there for a reason. I didn't shovel out the spot so that you could park your shitbox in it you fucking dickhead."

Removing a placeholder is clearly understood and treated as trespass, and neighborhood retribution for such violations can be swift, whether lighthearted or violent.

"Longtime Pittsburghers know the unwritten code of saving parking spaces with a chair, and the tradition is in full effect after a storm dumped 20 inches of snow on the city last weekend. Neighborhood justice can be swift --- like in Squirrel Hill, where

⁶²<http://www.passiveaggressivenotes.com/2010/02/21/can-you-dig-it/>, taken off the web**

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

someone cleared a spot on Hobart Street and left a chair, but the chair was later removed and another car parked there. That car somehow became buried in snow, and a sign left at the scene said, “Now yinz know not to break the rules.”⁶⁶

The chair that had been holding the previously shoveled out spot was now placed on top of the car reburied in the snow, a commensurate, somewhat humorous, and very visible retribution for having appropriated someone else’s shoveled out spot.

Reburying a car is, however, a considerably less permanent and costly form of retribution for the trespass than ‘keying the car,’ (scratching it with car keys), or slashing the tires. In areas where the practice is sacred, residents are not unwilling to declare support for what we might consider vigilante justice, especially in the face of unavailable, or ineffective, formal social control (law enforcement).⁶⁷

“When snow puts parking spots at a premium ... snatching someone’s marked spaced can led to hurled insults, slashed tired or worse – in 2005, a man was arrested after smashing a car window with a plunger during an argument over a freshly shoveled spot.”⁶⁸

“You move it, you might find it tossed through your windshield.”⁶⁹

“If someone takes the spot you shoveled out and somehow the air escaped from his tires maybe he wouldn’t steal your stop again.”⁷⁰

“Anybody who takes my shoveled out spots gets their tires slashed, their driver’s side door dented and their face kicked in.”⁷¹

⁶⁶ <http://www.wtae.com/r/22514683/detail.html>, taken off 2/4/11, and 6/25/11.

⁶⁷ Black, D. “Crime as Social Control,” *American Sociological Review*, Vol 48, No. 1, (Feb 1983), pp. 34-45.

⁶⁸ Abby Goodnough, “Making it clear that a clear parking spaces isn’t”, *New York Times*, December 28, 2010,

⁶⁹ Peter Schworm, “Claiming a spot before shoveling? That’s not Southie” *Boston Globe*, February 11, 2010.

⁷⁰ Amanda Pinto, “As snow piles up, New Haven neighbors seeing red over parking spaces,” *New Haven Register*, Feb 1, 2011, comments at http://nhregister.com/artciles/2011/02/01/news/aa1_nesnoparking.txt0131/reader comments/ taken off 2/4/2011.

⁷¹ *Ibid.*

“If you are brave enough to remove someone’s parking space holder then, be prepared to have your neighbor pay your vehicle a visit that might possibly end up in slit tires.”⁷²

“Being unaware of the practice, one day my bf (boyfriend) and I parked the car in a freshly dug-out space (to our credit, we had also dug ourselves out of a different space earlier that morning), we didn’t see the white 5-gallon bucket holding the space, and my bf got a large, deep scratch along every body panel on the driver’s side. It’s still there 4 years later, a proud reminder of why we moved to the Bay area, where it never snows.”⁷³

“I grew up with the designated snow chair in the front hallway. Not long ago, after someone had taken my chair and thrown it to the side, I found a spot without one. Unfortunately, the spot-claimer still felt it was theirs – they slashed 3 of my tires!”⁷⁴

“All the guy at the Mayor’s Office would tell me was, go ahead and move the chair and then file a police report when your tires get slashed. Not in so many words, but that was the idea.”⁷⁵

The rules of retaliation seem to be transparent; even those who acknowledge the illegality of vigilante justice, simultaneously recognize the attraction of ‘eye for an eye’ retribution. “If you move someone’s space saver and park your car in its place, you have no right to complain about what happens to your car. However, you are allowed to retaliate as long as you don’t get caught.”⁷⁶

Some residents in congested urban neighborhoods respond from the more informal end of the continuum of social control strategies, mobilizing social stigma rather than material retribution. A New Haven resident posted the following notice on a car that trespassed on her already shoveled out and claimed spot:

“You lazy slob. I promise to let everyone on this street know what a selfish person you are. Your neighbor that spent 3 hours shoveling out this spot... and taken a picture of

⁷² http://izismile.com/2010/12/29/tilted_tens_parking_spot_savers_12_pics.html/ taken off 6/25/11

⁷³ <http://apartmenttherapy.com/chicago/outdoor/saving-parking-spots-with-furniture-073725>, posted 1/12/2009, taken off 2/4/11.

⁷⁴ Freakonomics, “Buying Property with a Shovel,” <http://www.freakonomics.com/2010/02/10/buying-property-with-a-shovel/> Posted in comments. Taken off 2/4/11.

⁷⁵ <http://yelp.com/topic/boston-saving-parking-spots-in-southie-is-wrong>.

⁷⁶ Abby Goodnough, op. cit.

two of the losers getting in their car is always good for community laughs come the warm weather and they have to face everyone for who they really are.”⁷⁷

“And we can always tag their homes with a scarlet letter ‘s’.”⁷⁸

Thus, whether formal or informal norms are operating, the consequences seem sufficient to constrain those who would deviate. “It is a social phenomena that commands your obedience. I fought the power when I lived in Charlestown. I almost got killed. Seriously, I learned my lesson.”⁷⁹ Another Boston resident deferred to the local practice when she first moved there, but soon learned better. “[I] respected the sanctity of parking barrels and paint cans. But then people started stealing her hard-dug spots, so she took someone else’s. Retribution was swift. My car got boxed in to badly, I couldn’t wedge it out... I went back to following the rules.”⁸⁰

Challenges and consent to space-saving on snowy streets. When claims about the legitimacy of space-saving are challenged, the disagreement is usually engaged with the same legal concepts. Critics rarely deny that hard work deserves reward or question whether due notice was given, the two basic claims to property on the basis of possession. Often, challengers acknowledge the moral weight of labor claims generally, but nonetheless deny its applicability on public streets. A Chicagoan stated the challenge baldly, harkening back to a time before the development of the modern city of paved streets, curbs and parking rules to an era when property was there for the taking, created through formally organized squatter’s rights: “Whether you shoveled it or not, it’s a public street. This isn’t mid 19th century Oklahoma. You’ve got no claim.”⁸¹ Echoing the distinction from that earlier time, “Its total silliness. Just because you cleared it, doesn’t make it yours. This is not street ‘homesteading’ where you can just lay claim to it.”⁸² “It’s a public street. People don’t have the right to label it as their own. It’s shortsighted to think they have squatter’s rights.”⁸³ “I dig out my car too but

⁷⁷ Amana Pinto, *op. cit.*

⁷⁸ *Ibid.*

⁷⁹ Freakonomics, *op. cit.*

⁸⁰ Peter Schworm, *op. cit.* http://www.boston.com/news/local/massachusetts/articles/2010/02/11/claiming_a_spot_before_shoveling_thats_not_southie/, taken off 2/11/2010.

⁸¹ <http://Chicago.metlogs.com/2005/01/27/when-is-parking-spot-holding-not-cool-anymore/>, taken off Jan 22, 2011.

⁸² www.apartmenttherapy.com/.../saving-parking-spots-with-furniture-073725, posted by dierdre, Jan 13, 2009. *taken off Jan 22, 2011.*

⁸³ Boston Globe, January 19, 2011, p. A1.

if you want a personal parking space, pay for it.”⁸⁴ “Though I’ve had to shovel snow to get my car out (on-street parking) the thought never occurred to me that I should ‘save’ the space with garbage cans or chairs. To me, it comes off as trashy and boorish behavior.”⁸⁵ “It’s purely based on morals of entitlement, which is why I disagree with it. No one person can claim a public stake of land of which we all pay taxes for.”⁸⁶ The Boston Public Works Commissioner summed up this position of the argument, “No one owns a spot, even though you may have put some sweat equity into it... These are public streets, and everyone has a right to them.”⁸⁷ Thus, even as the labor and possession theory are challenged, they are invoked, and as such the disagreement is waged with the same cognitive materials.

The public streets, that to which everyone has a right, as our long history shows, nonetheless necessitate some principles of allocation.⁸⁸ To those for which labor or possession warrant the claim to exclusive use, limited duration of the monopoly is the essence of its legitimacy. The City Clerk of Chicago explained: “If you work real hard to clear the area in front of your house because otherwise you don’t have a spot, it’s OK. People have gotten pretty good over the years about only reserving their spot for a couple of days. In the old days, people would attempt to reserve spots long after the snow was gone and the streets were dry.”⁸⁹ In a discussion associating the practice of placing chairs in the snow with the evolution of property rights and allocation of the commons, Richard Epstein emphasizes the time-bound monopoly as an essential feature of “a trade-off not dissimilar to that found in the patent and copyright law,” a pragmatic accommodation to material constraint.

“Under current practice, Chicago style, it appears that the property right lasts as long as the dug-out space retains its physical integrity--that is, until the street is cleared or the ice and snow melt away. There is, of course, no natural necessity that leads to this determination. It is easy to make arguments that the proper social position is one that gives the digger exclusive use of the space for some more limited time, say a week, after which it then returns to the public domain. That kind of fine-tuning is a hallmark of the law of patent and copyright, where the statutory periods of protection are subject to explicit compromises. But the customary world of dibs, which results from loose social interactions, has no place for these refinements. One difficulty is that there is no centralized system (akin to the registration of patents or copyrights) that tells us when

⁸⁴ Ibid. ECB posted January 13, 2009.

⁸⁵ Ibid, david @ justveggingout.co, Jan 13, 2009.

⁸⁶ Ibid, nkr707, Jan 13, 2009.

⁸⁷ Boston Globe, Jan 19, 2011, p.A14.

⁸⁸ Ostrom E. 1990, *Governing the Commons: The Evolution of Institutions for Collective Action*.

⁸⁹ Abdom Pallasch, op. cit.

the meter should start to run. A second is that no collective decentralized mechanism that can set the shorter time period exists. In a world of second best, there is no need to set these limits because everyone can easily understand that the right ends when the space disappears. So the obvious focal point dominates over lesser solutions that, however efficient, are also unattainable.”⁹⁰

But even the time-limited monopoly is insufficient to justify the practice to many. The public good is insufficiently promoted by incentivizing this selfishness, according to those who oppose the practice.⁹¹ Claiming spots before the snow falls as a pre-emptive strike exposes the fragility of the space-savers’ claims, some argue, returning us to the inappropriate norms of the land rush days rather than the legitimate dessert for hard labor. Using the clear language of property purchase, one increasingly skeptical Bostonian said, “Protocol has long held that shoveling is a required down payment, but increasingly drivers are snatching up spaces in advance, knowing they will be harder to come by after the snow falls.”⁹² Without the requisite labor, the claim fails. “Claiming a spot you haven’t even dug out? That’s just lazy.”⁹³

A third, final theory of property relying on community consent is echoed in these debates about the practice, associations entwining community traditions, respect for neighbors, fairness, ethical practice and good government. Some writers contemporaneous with Locke and since have argued that “consent takes a passive or negative form of acquiescence: humanity might be viewed as consenting to those individual claims to which no one objects.”⁹⁴ It is possible, Carol Rose suggests, “to read Locke’s property theory in this light, and indeed such a reading might resolve the contradictions between his stated views that (1) God gave the world to all mankind in common, but (2) all mankind need not consent to individual appropriation.”⁹⁵ Although consent was never as well accepted as the labor and possession theories, the repeated references to respecting or challenging local tradition of placing chairs in the snow associate themselves with the consent theory of property, some quite explicitly, some derisively. That it is a long-standing practice, where it occurs, is not disputed; contest focuses on whether it is a fair or selfish tradition.

“The cone/barrel says I worked hard to clear a spot. In a sense, I earned it. As a community we have agreed to this and it works. In two years you’ll be gone because

⁹⁰ Richard A. Epstein, *The Allocation of the Commons: Parking on Public Roads*, 31 J. LEGAL STUD. S515, S528 (2002).

⁹¹ Abdom Pallasch, *op. cit.*

⁹² Peter Schworm, *op. cit.*

⁹³ *Ibid.*

⁹⁴ Rose, *op. cit.* fn 7, p.74.

⁹⁵ *Ibid.*

there's a movies made in some other neighborhood that you think look cool. Maybe there will be driveways. In the meantime please play by the rules."⁹⁶

A contrary voice, explicitly deferring to the law rather than local practice, writes:

"I've lived in this community for years, and I never agreed to this ridiculous, selfish, unsustainable idea. The common contract we agree to as members of the community is defined by the legal code."⁹⁷

"I can't believe the city allows this for two minutes much less two days. This is one of the most insane customs of the area. All streets are public streets. No one has the right to claim a parking spot on any of them. ... Nuts thinking this is acceptable because it has been passed down from earlier generations."⁹⁸

Local tradition can be difficult because newcomers do not always know the local rules.

"In live in South Boston and have been a lifelong resident of South Boston and I am the first to say that the whole saving parking spots and what not is insane and ridiculous. However, ... saving spots is something that has been done long before our time. Growing up in the 70s, 80s, and 90s this was never much of an issue. The only time it ever presented a problem was if a new resident from out of town moved in and didn't respect the way things have been done for over 100 years and now it is just out of control."⁹⁹

In response to a news article, one hears class resentment, which is not unusual in these postings, as indoor parking is generally expensive. This writer covers a range of concerns about neighborhood and collective action, proper and improper shoveling, as well as class sensitivity and tradition:

"Dear Mr. Schworm,

Do you live in the city? Are you FROM here? This practice has been going on for decades all over the city. It isn't news just because the yuppie editors are annoyed by the practice. And it snowed yesterday, while piled from the last story still remained, so of course some people marked a spot. The practice is less common in areas with

⁹⁶ <http://www.universalhub.com/node/11930>, 12/18/07 (taken off 2/2/11).

⁹⁷ Ibid., 1/28/08

⁹⁸ <http://forgeflyer.com/2010/02/saving-parking-spots-in-snot.html>.

⁹⁹ Ibid., 12/18/07.

driveways, but now people have more cars, and those who don't feel attachment to their neighborhood do not shovel out their spaces properly.

While those who mark their spaces don't 'own' them, they put the effort into cleaning them out and when they arrive home from work, they shouldn't have to shovel out yet another spot because their neighbors didn't feel like clearing out their spaces. The solution is for everyone to use their shovels. Then the space savers might disappear."¹⁰⁰

From Pittsburgh, a rational analyst posts:

"Community acceptance of the tradition does not show that it's welfare-promoting; instead, it shows that the community is willing to internalize the benefits and externalize the costs of private enforcement... there is no answer in this debate. The problem is that the parking chair phenomenon has been around for so long that no one is really sure what would happen if parking chairs **were**'t allowed. Maybe everyone would clear their spots anyway, and everyone would have places to park when they came back from running errands... Maybe the population of the neighborhood would turn over rapidly enough that no one remembers that the place has to follow the same rules that were in effect decades ago.

Maybe the streets would be cleared, and everyone would take the bus.

Despite the fact that the parking chair phenomenon is not unique to Pittsburgh, I've always thought that it speaks an essential truth about the region: A lot of Pittsburghers would choose to dig a giant hole and sit in it over clearing a path of parking spaces that helps other people get moving again."¹⁰¹

In an authoritative voice, the New York Times ethicist, Randy Cohen, claimed to understand "the gut-level 'exasperation' to 'see some non-shoveler pull in just as you pull out,'" but opposes the practice on what he claimed were ethical grounds that were, in essence, reproductions of the basic objections to the labor theory of property. "Shoveling out your car is simply the price you pay for storing your private property in our public space... After all, shoveling the sidewalk in front of your house (if only for a fear of a lawsuit) does not 'transform it into your personal property. You can't charge a toll to passers-by who want to walk on it. You can't barricade it with hideous lawn furniture or suspiciously numerous beer coolers.'" ¹⁰²

¹⁰⁰ Peter Schworm, op. cit. comments.

¹⁰¹ Michael J. Madison, The Parking Chair Thing, *Pittsblog*, <http://pittsblog.blogspot.com/2010/02/parking-chair-thing.html> posted February 10, 2010, taken off 2/4/2011.

¹⁰² Vanderbilt T. "The Ethics of Winter Dibs Parking," <http://www.slate.com/formatfynamics/CleanPrintProxy.aspx?/> posted Friday February 25, 2011, taken off 2/28/11.

Several themes emerge from these statements. First, that tradition does not necessarily signal widespread community support or acquiescence, although challenges to the practice may be waged on the basis of whether the practice is a good or bad tradition.¹⁰³ Second, many of those who practice space-holding agree with those who challenge the practice that all would be better served if everyone shoveled out parking spots to clear the streets so that space-savers would not be necessary for those who must use their cars after snowstorms. Third, most citizens seem to agree that official law enforcement agencies and processes are complicit by either creating the condition that invites self-help (inadequate snow removal) or by failing to stop the practice (inadequate policing).

Thus, the practice of placing chairs in shoveled out parking spots not only tacitly references legal concepts but often also specifically names local governance and law enforcement as a condition enabling the practice. Government is instituted, so common liberal theory asserts, to provide for the common welfare, to do what cannot be done by individual uncoordinated action. If everyone shoveled out there would be no need for this illegal practice, the supporters agree, but there is never likely to be a situation in which everyone can or will perform the work and contribute their own share. As many pro and con commentators argue, there are elderly people who cannot shovel out for themselves, pregnant women, or parents with very young children to care for. The government steps in because we need coordinated action across a population who cannot be counted on to do for themselves what we collectively need done for all. Of course, the market provides an alternative coordinating mechanism, but American cities have not yet taken to privatizing the public streets in any mass fashion, at least not for more than a few hours at a time paid for through a metering system.

Thus, many of those who claim title to shoveled out parking spots justify the practice not only by sweat equity but because the city – whatever the city – does not clear the streets soon or fully enough after a storm. Indeed, the variation observed in the prevalence of the chair in the parking spot phenomenon is likely correlated with the efficiency of public snow removal. And, those cities with the very heaviest snow falls, e.g. Minneapolis, Buffalo, Montreal, have more systematic methods (planning, budgeting, and equipment) for dealing with what is often a constant, rather than sporadic, blanket of winter snows. These are cities where there is no tradition of holding parking spots. Their local ordinances and city services function very differently, investing more resources than cities that are not only older, but also experience more uneven snow coverage.

Geological conditions, rational planning, and city budgets aside, where the practice of chairs in the snow prevails, city government is described as complicit not only because it fails to remove the snow but because it fails to put in place or enforce bans on the practice. Here,

¹⁰³ Indeed, a good part of the late twentieth century social and anthropological theory of sociality as well as culture has been devoted to just this point that had been too often overlooked in early sociology.

lax law enforcement becomes a different measure of community consent. Yet, enforcement is not easy. Although placeholders in parking spots is illegal in many cities, specifically proscribed or generally prohibited because it is unlawful to place private property along public roadways (part of general nuisance legislation), officials say that “they tolerate the practice because parking is at a premium, even when streets are clear of snow – and a city would need to devote scarce resources after a winter storm to catch someone in the act. ‘It’s kind of difficult to ticket a chair,’” a spokesman for Passaic New Jersey said. “It’s currently not a priority. There’s not a citywide enforcement, and it’s something that is dealt with when it becomes a hindrance.”¹⁰⁴

Nonetheless, some daring officials do try to constrain the practice and the resistance to enforcement perhaps says as much as anything about the depth of citizen commitments to the practice and about the meaning of the rule of law as do any of the expressions already cited. Beginning during the winter of 2004-2005, Boston Mayor Thomas Menino, a much beloved and many times re-elected mayor, decided that it was time to act. The traditional practice had indeed become a hindrance, a hindrance to the snow plowing effort itself, to trash collection, and to peace in the city – some of the self-help and retaliation had gotten out of hand. He gave notice to city residents that sanitation workers were instructed to collect as trash any space holders found in parking spots on city streets. The outcry was clamorous and the resistance widespread. “This means war,” read a headline in the Boston Globe, “parking battle gets nasty as city trashes rules of the street.”¹⁰⁵ The mayor had begun, the paper said, “guarded on the law of the shovel,” using the state of snow emergency to delay implementation. “The city has some public safety priorities that supersede, at this time, the discussion of the spacesaver rule.”¹⁰⁶ Sensitive to the public reaction, the mayor moderated enforcement, offering a compromise position of a “48 hour grace period for shovelers to reserve their spots with lawn furniture before crews would take them away.”¹⁰⁷ Yet, several weeks and snow storms later, the Boston Globe reported “X still marks spot: Space savers still litter city streets despite mayor’s proclamation... some neighborhood streets were so littered with chairs that they might have seated a cocktail party. Metal folding chairs, traffic cones, and shopping carriages lined the streets... space savers ranged from old milk crates to colorful plastic beach chairs. None

¹⁰⁴http://www.northjersey.com/news/transportation/8420477_After_digging_out_drivers_reserve_their_spaces.html. Taken off 1/22/11.

¹⁰⁵ Szanizlo, M. “Operation Pahk and Aww: City hits pavement for war on snow spot savers.” Boston Herald, December 30, 2004. Pp. 007.

¹⁰⁶ Michael Levenson, “The Mayor is Guarded on law of the shovel,” Boston Globe, Friday January 28, 2005, p. A1 and B6.

¹⁰⁷ Ibid.

appeared to have been touched by city crews.”¹⁰⁸ When the sanitation workers did begin to pick up the spaces-avers, residents incensed by this violation of historic tradition placed in the shoveled out spots objects the city normally refused to collect, for example, refrigerators and television sets (objects required special pick-up because of their environmentally damaging chemical and electronic components). A venerable, if hyperbolic member of the Boston City Council, took the struggle to the national airwaves, with appearances on morning TV talk shows, radio talk shows, and various newspapers including the Washington Post and New York Times. “Referring to his intention to defy Menino come what may, [Councillor] Kelly told the Washington Post that he had more barrels than the mayor had trucks to take them away. And on “Good Morning America,” he talked about sweat equity and moral rights.”¹⁰⁹ “It’s just the kind of spectacle that resonates these days,” continued the Boston Globe,

“featuring characters whose accents are straight from central casting, and with a story line played as both epic and ridiculous. The tales of ironing boards and household furniture reserving curbside spots has become a novelty in places where parking is not so scarce and winters not so snow-packed. And after a bitter presidential campaign in which the Northeast showed itself to be out of step with much of the rest of the country, this part of the world offers another curiosity.

“By itself, its not life or death, but it gets at this great cultural divide,” said Bill Radke, co-host of “Weekend America, a slice-of-American-life radio show that has interviewed Kelly twice in the past month. “It’s not just about saving your parking spot with a chair. It’s something we can talk about when we’re really talking about a bunch of other values and approaches to life.”

“The issue speaks to the basic principle of what it means to be an American,” Kelly said, “it’s about when government should intervene in citizens’ lives and when it should stay out. Like the gold miners and pioneers, Kelly said, residents have a right to stake their claims.”¹¹⁰

This story of public resistance to the mayor’s effort to enforce the law governing public streets provides a fitting conclusion, bringing us full circle to where we began in this analysis of legal culture. It illustrates unambiguously that law succeeds best when people go along

¹⁰⁸ Stephanie Ebbert and Megan Tench, Globe Staff Date: Feb 3, 2005 Start Page: B.1 Section: Metro/Region

¹⁰⁹ Donovan Slack, “Kelly’s parking pitch hits national arena,” Boston Globe, January 28, 2005, <http://boston.com/news/local/massachusetts/articles/2005/01/2/>; taken off web 2/2/05.

¹¹⁰ Ibid.

without enforcement. Where the force of law needs to be justified, it is that much more vulnerable. Where the force of law is absent, then violence prevails.¹¹¹

Conclusions

In its simplest and most prosaic form, the chair in the shoveled out parking spot is a form of ‘dibs.’¹¹² A colloquial English expression, ‘dibs’ refers to a variety of informal practices of claiming “full or partial ownership of community resources.” For example, friends vying for a preferred seat in a car or a classroom, or for the attention of an attractive person at a party, may call dibs on the seat or the person, announcing the caller’s priority in a friendly competition. Claiming dibs on a parking spot, however, is less an expression of priority in a lighthearted exchange among intimates than a claim, against unspecified strangers, of monopoly use for an equally unspecified period of time. While dibs “reduces available parking spaces ... it also rewards those who have put the effort into the job. Would the shovelers spend all that time if they only got to use the space just once?”¹¹³ “Clearly some additional clearing out will take place if the reward is there, but it may well be insufficient,” Epstein argues, “to justify the entire dibs system.”¹¹⁴ Nonetheless, the system is justified, as we have seen in the

¹¹¹ Black, D. “Crime as Social Control,” *American Sociological Review*, 1983, Vol 48, (Feb 34-45); Seagle, W. 1947, *Men of Law*; Bobbio, N. 1965, “Law and Force”, *The Monist*, Vol 49. See also, Cover, R. “Violence and the Word,” 95 *Yale Law Journal*, 1601, 1985-1986.

¹¹² Richard A. Epstein, *The Allocation of the Commons: Parking on Public Roads*, 31 *J. LEGAL STUD.* S515, S528 (2002); Vanderbilt T. “The Ethics of Winter Dibs Parking,” [http://www.slate.com/formatfynamics/CleanPrintProxy.aspx/?/](http://www.slate.com/formatfynamics/CleanPrintProxy.aspx?/) posted Friday February 25, 2011, taken off 2/28/11.

13. Wikipedia describes Dibs: The etymology of the word is unclear. One theory for the origin of the word comes from markings made with chalk on the back of livestock up for sale in cattle yards throughout the southern states of the USA. Each potential customer would register their unique mark with a registrar at the meet, who would record this information in a "Dibs Identification Book." These books themselves came to be known collectively as DIBS, thereby forming a backronym. This practice continues today and has been adapted to many new situations. the 1967 edition of "Dictionary of American Slang" states that the word "dibs" comes from the verb to divvy, for example claiming dibs on the front seat of a car . In the non-English speaking world, there are some local equivalents to this term, including prems' in France, primeiros or "primeiras" in Portugal, but in the Netherlands, helle in Denmark, pant in Iceland, shot in Mexico, primeiro or prima in Brazil, pax in Sweden, fus in Norway, stipistopi in Hungary, canté or pri (or even canté pri) in Argentina, kerchief in Kannada, India, cop (pronounced chope) in Malaysia.

¹¹³ Richard Epstein, *Parking and Property*, *U. CHI. MAG.*, Apr. 2003, at 42.

¹¹⁴ Epstein 2002, op. cit. p. 522.

words of the participants, by references -- not primarily to efficiency or spontaneous order¹¹⁵ as the economists suggest, but to longstanding associations between work and space, i.e. property and law.

Importantly, for understanding how culture works, these communicative transactions and justifications of chairs in shoveled out parking spots take place without naming the doctrinal precedents, including constructive or adverse possession. There are no registered deeds or titles, stamps or seals, no notices of intent. The law is absent in its formal, textual, and professional sense. Unlike contracts, copyrights, bills of sale or, most immediately relevant, parking ordinances and street signs which are standard markers of legality, the chair in the snow is neither the direct nor intentional product of professional legal work. Yet, legality is continually present in organizing social relations on city streets around this particular construction of the automobile, the parking space, monopoly use and private property.

Indeed, without invoking legal concepts and meanings, this practice is nonsensical by those who engage in or observe it; it is unintelligible without notions of property and trespass. Rather than a piece of professionalized law, this is a visual image and practice of the law from the bottom up and from outside of legal institutions, what we might consider a durable residue of that formal, professional legal practice. The person placing the chair in a clearing among mounds of snow silently, and more often than not implicitly, invokes conventional and historic justifications for property on the basis of investment and labor, the same arguments that underwrote the emergence of liberal law in the seventeenth century.

With close attention to this practice of placing objects in shoveled out parking spots, the public street becomes a legal, or political, forum with a particular “set of procedures, its definition of freedom and domination, its ways to bring together those who are concerned . . .

¹¹⁵ Ellickson, R. *Order Without Law* 1991. Ellickson argues that much of social life is organized in the absence of law through spontaneous relations sustained through continuing relations over time through which norm violations can be regularly and reciprocally balanced. Such arguments persuade those who see law only in terms of its most active, coercive enforcement, its professional mobilization and discourse. Long term relations, traditions, and basic norms develop alongside legal norms and concepts, many of which recede from view but undergird the surface agreements. The ranchers whom Ellickson describes as managing their relations without law, nonetheless manage their relations within shared notions of property, similar to those we have discussed here.

and what concerns them.”¹¹⁶ The *legalfacts*¹¹⁷ of public space, the truth of who owns and who can use this space, for what and for how long, no longer command unremarked deference. Whether others defer to or contest the claims to the parking spots, the *legalfacts* of property rights, the city’s services, and law enforcement now demand collective reconfirmation of their relevance and perhaps legitimacy. This is the rule of law enacted and lived every day by Americans.¹¹⁸

Staking Claim

Breathes there the Chicagoan with soul so dead
Who never to himself has said
“This is my own, mine shoveled spot”?
And when he returned from travels afar
In his behemoth sport-ute car, has not asked,
“Where’s mine? Why, its still there between
the pylon and the old lawn chair.”
For him no minstrel raptures swell.
Despite his power and his pelf (look it up),
The wretch, concentrated all in self,
Shall forfeit fair renown and shall do down
to the vile dust from when he sprung.
Unwept, unhonor’d and unsung.

¹¹⁶ MAKING THINGS PUBLIC: ATMOSPHERES OF DEMOCRACY (Bruno Latour & Peter Weibel eds., 2005) pp 556-565.

¹¹⁷ “Legal objects, signs, forms, rules and decisions are understood, however, to be a special kind of fact, a legal fact. Perhaps we should collapse the distance between the words legal and fact to write *legalfact* to emphasize the procedures of law that are the grounds for constructing facts, that is *legalfacts*. In other words, jurisprudence recognizes at its core that its truths are created only through its particular processes and that the relationship between *legalfacts* and empirical facts is at best only approximate,” Silbey and Cavicchi, op. cit. p. 556.

¹¹⁸ Questions remain, of course. With this cultural analysis in place, perhaps it is time to do some sociology. Why in some neighborhoods in the same cities and not others, some streets in some neighborhoods and not others? Is it a function of density? Familiarity? Clear membership? Sutherland’s theory of differential association might be a useful start. Behavior is learned through association which can be measured by its density, priority, frequency, and duration. Sutherland, E.H. *Principles of Criminology*, 1947, pp. 5-7.

Charles Leroux with Sir Walter Scott¹¹⁹

¹¹⁹ Chicago Tribune, Monday January 10, 2005, section 5, p. 1.

