

THE PARADOXES OF PUBLIC SPACE

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Abstract. This paper deals with one particular purpose for public space, the role it plays in permitting popular public participation in in democratic governance, democratic governance in a very political sense. For the United States, it might be called “First Amendment Space”, after the provision in the U.S.A. Constituting establishing the rights of free speech and free assembly. In a broader sense, public space should also be available democratically and based on equality of rights for a full range of social interchanges, for recreation, sports, picnicking, hiking, running, sitting, chatting, simply enjoyment, by all people, equally. Such uses, carried out democratically, are in turn necessary for democratic governance, but in a different way. Let me call them “Social Spaces”. And they may be divided between Convening spaces, where convening for the purposes of political effectiveness may be planned, and Encounter Spaces, where chance meetings and discussion may be take place without prior planning/convening. “Infrastructural Spaces” are also social spaces but in a different sense, not directly political: spaces for transportation, streets, sidewalks, recreational areas, parks, hiking trails, bicycles partially. he term “Third Space” is sometimes in fashion in a similar sense, and often defined as somewhere between public and private¹. More on social spaces elsewhere. When public space is referred to here, it is in the sense of political public space, First Amendment space in the United States. Tahrir Square in Cairo, the Playa of Mothers in Buenos Aires, the Mall in Washington, D.C., Zuccotti Park in New York City, perhaps Central Park or Fifth Avenue, with its parades and marches, but also the fenced in space under the West Side highway at the time of the Republican Convention, and perhaps the indoor space of the Convention Center, as used for convening for discussions of alternate proposals for rebuilding after 9/11.

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**Three long-term paradoxes,
two intermediate-range proposals,
one short-range warning**

Paradox 1: the paradox of public space and democracy

To have truly democratic public spaces, you have to have a truly democratic society. But to have a truly democratic society, you have to have democratic public spaces.

The means and the end are inseparable: as we are witnessing today throughout the near east, a public space in a society that is not (yet, at least) democratic will not remain open for vibrant democratic discussion long. Only in a democratic society will the state’s use of tear gas be unthinkable. The effective use of public space is almost a sine qua non for the achievement of a democratic society, again as we have recently seen in the Near East.

¹ The term “third space” or its equivalent has been used in many different ways: spaces between home and work (Oldenburg 1989, 2001).

Sociologists sometimes use the term to describe neighborhood or community spaces that are not publicly owned nor privately exclusive. For a set of well-done examples, see the special issue of

Shelterforce, Hearts of the Neighborhood (2012). Edward Soja has used the term in what has been called post-modern fashion in *Thirdspace: Journeys to Los Angeles and Other Real-and-Imagined Places* (1996). Places of public accommodation, in civil rights law, has a similar intermediate meaning. Virtual space is a quite difference meaning of the same “third space” term.

The connection between political democracy (see economic democracy below) is most obvious in the ways in which the state regulates public space, and the decision-making process by which its regulations are agreed upon. The process as it now stands in the United States in a sense ignores confronting the relationship between democracy and public space. The regulation of public space is largely administrative, e.g. Park Department rules, with minimal informed public participation. For instance, I have tried to find the criteria by which the use of Bryant Park is determined by the Park Department, and have just gotten the run-around; the rules are just submit your application, and if it suits we'll let you know. Even more seriously, the provision of democratic public space is not seen as a formal function of government. The constitution proclaims a right of free assembly for the presentation of grievances; should it not be understood that that implies an affirmative obligation to make space available for such free assembling?

So:

Proposal 1: Each city should have a public democratic First Amendment spaces plan as part of its regular plan for the city's development and administration. That plan should include not only the desired extent, locations, and design features of public space in the city, but also the principles for the regulation and management of the uses of all public owned or controlled spaces permitting full exercise of democratic political (first amendment) rights, giving such rights priority.

Much of what is now public space is already owned by and planned for by cities: parks, plazas, sports facilities, waterfronts, streets for parades and street fairs, auditoriums in public schools. There should be a comprehensive plan regulating all such places and uses, taking into consideration a priority for the defined exercise of constitutional rights of assembly, and expanding such places if they are inadequate.

Paradox 2: the paradox of public space and equality

To have truly democratic public space, you cannot have gross inequalities of wealth. But to limit gross inequalities of wealth, you need to have truly democratic public spaces.

It is not a coincidence that when Zuccotti Park was put to a classic First Amendment use, it was done under the banner of Occupy Wall Street, taken as a symbol of grossly unequal wealth. Inequalities of wealth and democracy are in constant tension with each other. Our experience in the United States, as in the last election and recent Supreme Court rulings, is a classic example of that tension. A gross inequality in wealth results in a

gross inequality in political power, which in turn leads to a gross limitation of democracy. In order to address gross inequalities of wealth, you need true democracy, for which in turn (paradox one) you need truly public space in which citizens may assemble for the exercise of their democratic rights. But in turn, to have truly public space, you need to address gross inequalities of wealth. Not unexpectedly, our billionaire mayor in New York City whose firm is based on reporting on Wall Street's ups and downs, disagrees.

But even further gross inequalities of wealth lead to gross inequalities in the ownership of land and the buildings built on land. For the greatest restraint on the ability to assemble freely in public spaces is in practice the limited availability of such spaces (and the lack of planning for them, as above discussed). But stepping back, the biggest reason for the limited availability of such spaces is, simply and tautologically, the dominating presence of non-public spaces, that is, private spaces, and their control through a system of property rights in which economic wealth and power largely dictate what uses are in fact permitted and what are not.

So:

Proposal 2: The city should, based on the plan of Proposal 1, have a capital budget that provides for the acquisition, by eminent domain if necessary, of adequate public space to serve democratic political purposes,

Paradox 3: the paradox of public vs. private spaces

Certain types of private spaces are essential for the functioning of public spaces. But the privatization of public space also inhibits their public use.

On the one hand, some enhance public use. On the other hand, the existence of certain kinds of private space is essential for public spaces to best serve their desired functions.

Some commercial uses can serve to enhance the public use and enjoyment of a park, or other public space. The availability of food service is a classic case, and vendors are unobjectionable from almost any point of view. If it enhances other public uses, recreation, education, appreciation of nature, simply enjoyment, fine. Sidewalk cafes an obvious example, and even take into account one First Amendment right, although not the one we are here concerned with, limited commercial uses can actually facilitate peaceable assembly (fast food vendors at the Mall in Washington)².

² The other First Amendment right, freedom of speech, can come into play here too. Sidewalk displays and sales of art, or perhaps of books, are treated differently from sales of sunglasses or umbrellas in New York City.

Some private uses in fact enhance the purposes of First Amendment public space. For most political actions in fact start there. Democratic political action does not ultimately spring from organized political action, but democratic political action rests on a citizenry brought together in social, rather than political or commercial, forums, which are today not a subject of governmental action³.

On the other hand, permitting private uses of public space may limit their availability and usefulness. Bryant Park, on 42d street in New York City, behind the New York Public Library and five minutes from Times Square, one of the busiest places in the world, is clearly a public space that lends itself ideally for public events, including First Amendment types. But its use is controlled, by law, by a private corporation, the Bryant Park Corporation. The Corporation is open about its missions: they include “enhance[ing] the real estate values of its neighbors”⁴, and it is “privately funded and operates Bryant Park with private sector techniques and management methods”. It is open about its available uses of the space. In applying for a use, the applicant is presented with a questionnaire, which includes the question: “Is the event public or private?” but no detail is readily available at what private events would be considered. Nor is information given as to the criteria by which conflicting requests for use are judged.

Some purely commercial uses obviously preclude such a public space from performing its function as First Amendment space.; other commercial uses may enhance its effectiveness for political discussions and even assemblies. But others do not: Fashion shows, shooting movies that involving blocking off and limiting access to the space involved shows do not enhance the use and enjoyment of that space?

Putting public space to effective First Amendment thus use requires a calibrated relationship to private spaces and private uses. There pressures to see it as a possible money-maker, enabling it to become “self-supporting,” are understandable But it would be ironic if the maintenance of public space could only be provided for by its privatization, taking it out of public use.

³ The discussion above neglects an important aspect of public space, alluded to in the opening: democratic public space also involved equality of rights in its use for a full range of social interchanges, for recreation, sports, picnicking, hiking, running, sitting, chatting, simply enjoyment, by all people, equally. For such uses in turn promote the capacity and the desire of citizens to exercise their rights in all spheres, to address together issues of democracy and equality. Their importance adds to the challenges to both the design process and design results

⁴ <http://www.bryantpark.org/about-us/mission.html>.

So:

Proposal 3a: For democratic political uses, the private use of spaces, both publicly owned and privately owned, and their relation to each other should be carefully scrutinized, and made subject to direct local input or more depending on scale⁵, as proposal 1 suggested.

The concept of places of public accommodation is well known in the context of civil rights: there are permissible and impermissible uses of such places, and they are clearly subject to law. Some places of public accommodation: banquet halls, community rooms, lobbies and plazas, are open by law or zoning codes, and can reasonably be used for occasional public discussions, with discrimination prohibited. 60 Wall Street is a recent ideal example.

They might be made subject to open use subject to first amendment requirements, which include the preparation of regulations as now permitted governing reasonable time, description of place, and manner.

Would not a simple provision in the zoning code providing for bonuses for the provision of space specifically designed and managed for use as political public space, geared to the availability of such space in each neighborhood, be a useful possibility? But such possibilities are not even on the table today, not even for discussion. You would need a very self-confident, seasoned, committed democratic governments to do so, because the spaces requested might well be used to criticize the very government that permitted its use. They should be.

Perhaps it might be called a Plan for Communal spaces Perhaps the way in which city owned or leased spaces are used by community boards, in the city’s 59 community districts, could be an example. Or private adaptable communal spaces could be given real estate credit in any building providing them, conditional on their being publicized. Perhaps even temporary

⁵ Simpler and even more democratic forms of land ownership may simplify and further democratize the use of land. The suggestion of the Planners Network of the United Kingdom goes in that direction:

Sustainable places cannot be achieved without the public and community sector having a long term stake in land and development. We must learn the lessons of New Towns and Garden Cities, and successful community development trusts in the UK, where land is held in common ownership by local authorities or trusts. In these communities, the benefits of land value uplift and the income from developments on community owned land are recycled back into the community to spend on services, better maintenance of property, parks and playgrounds, and on building housing or workshops for local need. In this model, the community is the long term steward of the land, looking after it as an asset for present and future generations Draft Manifesto on Land Use Planning and Development (<http://pnuk.wikispaces.com/file/view/20121027pnukmanifesto.pdf>).

communal uses of empty store fronts, as targeted by No Longer Empty, might be models.

Public policy recognizes the problem in many ways: zoning imposes limits (but only hesitantly) is pro-active in promoting particular uses – bonuses for plazas, theaters, tax exemptions for certain uses, etc.. The proposal for zoning bonuses mentioned above would be a positive addition to that list. Making provision for public political use a requirement goes a step further, and directly limits the power of wealth reflected in private ownership to constrain the exercise of democratic rights of assembly and democratic political participation.

Proposal 3b: Affirmative inducements may be provided publicly for private property owners to permit or even encourage the use of private property for public First Amendment purposes.

Paradox 4: the social and convening and infrastructure uses of public space contradict each other

The use of public space for social purposes can interfere with its use for convening free, assemblies. But social spaces are necessary for the organization of convening assemblies.

You cannot have chairs and tables, such as facilitate social interaction and initial organizing, scattered around a space where a mass assembly of people is to be convened.

Proposal 4: Utilize the advantages of technology and good design to make space adaptable, as in the New York convention center assemblies on the planning of the World Trade Center site after 9/11, or the design of Time Square serving both social and emergency transportation needs., or bullarads and barriers see used both for security and places to eat lunch on.

Finally, and most critically:

Paradox 5: the best use of public space is illegal, and necessarily so

To get the attention necessary for fully democratic discussion, a disruption of normal routines, of expected occurrences, is optimal. But that means disregarding normal rules and regulations, and often for purposes critical of the institutions imposing such rules.

Unplanned, unpermitted use of public spaces by assemblies increases their visibility and their often desired disruptive capacity. But by the same token they contravene law and official regulations.

The most important democratic political use of public space is for the exercise of the First Amendment right of peaceable assembly for the redress of grievances, grievance addressed specifically to the government that

makes the public space available. But any government thus far known to man or woman would feel itself attacked by such assembling, and have a strong interest in restraining it. There is thus an inevitable tension arising from the clear incentive government has to restrict the use of space being used to criticize it. It is no coincidence that police departments use heavy-handed tactics in destroying Occupy encampments wherever they feel they lawfully can (toss books in dump trucks, destroy food, take away heaters, make arrests, use billy clubs).

Proposal 5: Accept the fact that it is so, and educate law enforcement and court officials to respect the motives of those breaching regulations on the use of space in how offenders are treated. Do the exact opposite of what is increasingly the common practice in the handling of such breaches through the criminal justice system.

These five paradoxes can perhaps be seen as instances of a larger vicious circle, an expansion of Paradox 1: “to achieve a free society, you need free individuals, but you can only have free individuals in a free society.”⁶ A vicious circle, but not a deadly one. It simply means that the two are inseparable, and one has to move on the two fronts simultaneously, in parallel. So specifically, in the context of this conference, it means that the effort to create democratic public space must be seen as part of the effort to achieve democracy itself. The two must go hand in hand.

Conclusions

And so a warning. It is ultimately the importance of democracy that makes achieving democratic public spaces so important, and that undergirds the argument that they be well designed. The availability of public space for democratic purposes should not be fetishized⁷, and the role of good physical design in its use should not lose sight of the greater purpose to be served: the promotion of democracy. The design process itself, as well as its results, can be a contribution to that goal. But formal legal and management arrangements are, in the first place, critical. Legalizing Zuccotti Park, for example, or any occupied site, is not a goal in itself; dealing directly with the inequalities of wealth and of undemocratic power, is.

The goal is democracy, not a particular form of public space, although it can be an important means to that end.

⁶ As formulated in depth by the Frankfurt School and I think most sharply by Herbert Marcuse.

⁷ See Blog #5, *The Purpose of the Occupation Movement and the Danger of Fetishizing Space* at <http://pmarcuse.wordpress.com>.

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