Street Law's Sites, Sights, and Media

Suzanne Bouclin
Faculty of Law
McGill University, Montreal

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ABSTRACT

In this dissertation, I deploy film studies' lexicon and concepts to imagine law cinematically and I advance a critical legal pluralist hypothesis to imagine film as law. The central element of this study is the rule-governed interactions between street-involved people and their interlocutors; these interactions I consider as one instantiation of a plurality of rule-governed interactions that constitute 'street law'. I organize my research around three themes. First, the *sites* of street law (where governance of and by street-involved people is constituted). Second, the *sights* of street law (how it is we perceive the multiple normative matrices that govern interactions on the street). Third, the *media* of street law (some of the modes through which such governance is constituted). I suggest that cinema provides a conceptual apparatus for grappling with street law's sites (spaces), sights (perspectives) and media (modes) which are currently not apprehended through orthodox and dominant symbolizations of street law. I endeavour to provide such conceptual apparatuses in three ways: I use concepts from cinema to think about the street law in a metaphorical register; I interpret specific film sequences as jurisgenerative; and I produce a non-linear, collaborative and explicitly interactive film to apprehend street law. Each of these attempts serves to further my broader project: cinematically symbolizing interactions between street-involved people and their interlocutors as governed by rules.

SOMMAIRE

Dans cette thèse j'exploite le discours et les théories des Études cinématographiques pour repenser le droit en termes cinématographiques et proposer une hypothèse de pluralisme juridique critique en vue d'imaginer le cinéma en tant que droit. La composante principale de cette étude est constituée d'interactions réglementées entre des personnes vivant en situation d'itinérance et leurs interlocuteurs-trices; je considère ces interactions comme étant une instanciation d'une pluralité d'interactions réglementées qui constituent le 'droit de la rue'. Ma recherche s'articule autour de trois axes: d'abord, les lieux du droit de la rue (où se constituent les gouvernances à laquelle sont assujetties les personnes vivant en situation d'itinérance et dont elles sont les créatrices); ensuite, les visualisations du droit de la rue (comment nous percevons les multiples matrices normatives qui régissent les interactions dans la rue); enfin, la médiation de ce droit (certaines modalités par lesquelles ces multiples gouvernances sont constituées). Je propose que le cinéma fournit un appareil conceptuel pour étudier les lieux (espaces), les visualisations (perspectives) et la médiation (modalités) qui ne sont pas couramment saisis par le biais des symbolisations orthodoxes et dominantes du droit de la rue. Je tente de fournir de tels appareils conceptuels de trois façons: j'utilise des concepts empruntés à la cinématographie pour repenser le droit de la rue en termes métaphoriques, j'interprète certaines séquences cinématographiques comme étant génératrices de normes et je réalise un film documentaire non-linéaire, collaboratif et explicitement interactif dans le but de symboliser le droit de la rue. Chacune de ces tentatives sert à faire avancer un projet plus vaste, celui de symboliser par le truchement du cinéma, les interactions entre les personnes vivant en situation d'itinérance et leurs interlocuteurs-trices telles qu'elles sont gouvernées par des règlements.

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INTRODUCTION

In this dissertation, I deploy film studies' lexicon and concepts to imagine law cinematically and I advance a critical legal pluralist hypothesis to imagine film as law.[1] The central element of this study is the governance of and by 'street-involved people'.[2] I engage with that question through two principal interests: critical legal scholarship and contemporary audiovisual culture. I organize my research around three themes. First, the *sites* of street law, or where governance of and by street-involved people is constituted. Second, the *sights* of street law, or how it is I propose to perceive the multiple normative matrices that govern interactions on the street. Third, the *media* of street law, or some of the modes through which such governance is constituted. My focus is on rule-governed interactions between street-involved people and their interlocutors as one instantiation of a plurality of rule-governed interactions that constitute street law.

My research is consequently located within broader discussions around questions that occupy legal scholarship, such as an interrogation of law's ontology (what is law)[3], its

[1] I elaborate what constitutes such a hypothesis in Chapter One, *infra* 1.1.3 ("Critical Legal Pluralism").
[2] I define and develop this term in Chapter One, *infra* 1.2.1 ("Street-Involved People").
[3] I will not provide a conspectus of scholars who have struggled with law's ontology. I will say that the contemporary story usually begins with two different views and theoretical approaches - natural law and positive law – which I oversimplify as follows. Natural law is the intersection of law and morality; proponents generally believe in a universality of forms of 'human flourishing' and of basic requirements for a good life. Lon Fuller, *The Morality of Law* (New Haven: Yale University Press, 1964) [hereinafter, Fuller (Morality)]. Positive law is a social fact that exists separately from morality. Valid law can be identified and distinguished from invalid law by reference to its source; in terms of analysis, there is a clear separation between law that *is* and law that *ought* to be: H.L.A. Hart, *The Concept of Law* (Oxford: Clarendon, 1961). But see Agamben's discussion of the relationship between the ontological realm (being) and the epistemological realm (knowing) in law: Giorgio Agamben, *What is an Apparatus?* (Palo Alto, CA: Stanford University Press, 2009); and *The Signature of All Things* (Cambridge: MIT Press, 2009).

substance (of what does law consist),[4] and its function (what does law do and how does it relate to power).[5] My aim is to contribute to more methodological[6] and epistemological[7]

[4] Several perspectives reject the conventional positivist view that law is simply comprised of rules. To Dworkin, law-makers draw on 'non-rule' (political and moral) standards. Like literature, law is an 'interpretative concept' and judges are creative beings who attempt to find its best possible interpretation: Ronald Dworkin, *Law's Empire* (London: Collins, 1986) [hereinafter, Dworkin (Empire)]. But see Hutchinson who argues against foundational interpretation methods for law and for whom judges engage in "rhetorical justification:" Alan Hutchinson, *Its All in the Game: A Non-foundationalist Account of Law and Adjudication* (Urbana: Duke University Press, 2000). White takes issue with the hermeneutic impulse to present law as the "perfect narrative" and as "exclusively textual and ethical:" James Boyd White, *Justice as Translation: An Essay in Cultural and Legal Criticism* (Chicago: University of Chicago Press, 1994) [hereinafter, White (Translation)].

[5] On the one hand, Fuller's functional conception of law suggests that rules must satisfy a number of principles (of which he describes eight) in order to perform a normative function: Fuller (Morality), *supra* note 3 at 39. On the other, Socio-Legal and Critical Legal Studies' scholars grapple with law as a site where power relations are negotiated, reproduced and contested. To instrumentalist socio-legal accounts, law is a machine designed and powered to perform legal work. It reflects dominant class interests and conceals. It denies 'what is going on in the world' from various marginalized groups' perspectives. For an overview, see: John Henry Merryman, "Comparative Law Scholarship" (1998) 21 Hastings International and Comparative Law Review 771. Constitutive theorists provide critical descriptions of *a priori* structures that shape law's subjects: Alan Hunt, "Law as a Constitutive Mode of Regulation", *Explorations in Law and Society* (New York: Routledge, 1993) 310. Compare Jean-Luc Nancy's concept of *abandonment* whereby it is the 'other law' that constitutes 'the law': *Being Singular Plural* (Stanford: Stanford University Press, 2001). On the question of power, Cover argues that laws, statutes, judgments, administrative decisions all impact people directly and "legal interpretation takes place in a field of pain and death:" Robert M. Cover, "Violence and the Word" (1983) 95 Yale Law Journal 1601. In his reading of Cover, White reminds us that while this view was acknowledged by early positivists, Hart and Kelson both underplayed it. He adds that writers from the hermeneutic tradition plainly ignored it: James Boyd White (*Tranlsation)*, *ibid.* at 201. To more explicitly postmodern approaches, law's function in society reveals skepticism about formalism, essentialism, monism and any other foundational ideas about truth, self and reality. For a critical overview, see: Anne Barron, "(Legal) Reason and its 'Others': Recent Developments in Legal Theory" in James Penner, David Schiff & Richard Nobles, eds., *Introduction to Jurisprudence and Legal Theory: Commentary and Materials* (Oxford: Oxford University Press, 2002) 1035. For a critical introduction to CLS: Robert Gordon, "Some Critical Theories of Law and their Critics" in David Kairys, ed., *The Politics of Law: A Progressive Critique* (New York: Pantheon Books, 1998) 641. As to CLS's complicated relationship with feminism(s): Katharine Bartlett, "Feminist Legal Methods" (1990) 103 Harvard Law Review 550.

[6] To some writers, legal methodology asks whether law should uncover facts or suggest values; and correspondingly, should legal scholars describe or proscribe law. If one accepts the distinction between descriptive and prescriptive approaches to law, descriptive *methods* are directed toward facts: they endeavour to explain a particular doctrine, understand how legal systems operate, and assess what consequences flow from law. Normative *theories* evaluate the ethical principles that inform law and suggest how law should be. For instance, some theorists of 'autopoiesis' distinguish their approach from empirical research in law (and vice versa): Peter Kennealy Firenze, "Taking About Autopoiesis - Order From Noise?" in Gunther Teubner, ed., *Autopoietic Law: A New Approach to Law and Society* (Berlin: de Gruyter, 1987) 349. Any assumed distinction between descriptive and normative approaches to law unravels when we consider how normative theories actually rely on factual accounts to produce meaning and how descriptive accounts are always embedded in the perceivers' ethical convictions. Thus, some critical researcher at the intersection of law and society emphasizes how it is possible (and necessary) to be empirical and theoretical, which in their view, means emphasizing everyday social interactions as law: Susan Silbey & Austin Sarat, "Critical Traditions in Law and Society Research" (1987) 21 Law and Society Review 165. More recently: Douglas Vicks, "Interdisciplinarity and the Discipline of Law" (2004) 31:2 Journal of Law and Society 163.

discussions. Namely: what is legal knowledge? How is it constituted? How does it circulate? How is law embodied and performed? These questions inform three specific areas of inquiry. First, how might we foster conditions through which interactions on the street can better meet the exigencies of those who must negotiate particular forms of street law on a daily and nightly basis? Second, what are the shared life conditions which street-involved people face (in varying degrees and durations) that we will, as a society, consider as vitiating our contemporary understanding of agency, autonomy, and the ability to be make meaningful life choices? Third, what are the alternative normative structures to which we may look for more ethical ways to structure relationships between street-involved people and their interlocutors (whether they emerge from the state or from other normative communities)? These more localized questions in turn give shape to the more immediate aim of my research: I endeavour to cinematically express some of the *sites, sights* and *media* through which street-involved people govern and are governed.

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[7] For instance, some legal constructivists begin from the view that law is an autonomous mode of knowledge production with its own unique role in relation to other forms of knowledge production as well as in relation to social power and governance: Gunther Teubner, "How Law Thinks: Toward a Constructivist Epistemology of Law" (1989) 23 Law and Society Review 727. Constructivist epistemologies are sometimes challenged for their reductive view of human capacity and agency and for reifying law as an entity that exists beyond human interactions. However other scholars emphasize how law is already embedded within and embedding other modes of meaning-making. Desmond Manderson reads Levinas in ways that suggest the necessary interplay between law and ethics: *Proximity: Levinas and the Soul of Law* (Montreal: McGill-Queen's University Press, 2006). Finally, much of the work that can be identified as 'critical legal pluralist,' as I shall elaborate, favours an ethos or way of thinking about law rather than developing legal theory *per se*: Macdonald, Roderick A. "L'hypothèse du pluralisme juridique dans les sociétés démocratiques avancées" (2003) 33 Revue de droit de l'Université de Sherbrooke 133 [hereinafter, Macdonald (Hypothèse)]. See also: Margaret Davies, "The Ethos of Pluralism" (2005) 4 Sydney Law Review 27 [hereinafter, Davies (Ethos)] .

STREET LAW SITES

By *sites* I refer to three overlapping social-emotional-temporal-spatial spaces in and through which street law is generated: the city, the community, and the self. One of my assumptions in organizing this research is that in any zone of normative production, there exist multiple normative forms (including institutional forms) and multiple modes of rationality (including modes of legitimation).[8] In this dissertation, I hold up three such zones of normative production: the *city* (Montreal), the *community* (street-involved people and their interlocutors) and the *self* (each normative agent in her singularity). In any of these normative sites, street law can be expressed canonically and in formal texts. It can also be embodied in more inferential and implicit ways through relationships and the values and interaction which give them structure. In each of these three jurisgenerative sites, I engage with both the orthodox and the more abstract symbolizations of street law.

To begin, the *city* has become one of the fundamental metaphors for contemporary human existence and relationships.[9] In this dissertation, I consider the city less in terms of the dominant legal understandings of it as a static material entity upon which formal law's definitions are imposed (e.g., a city is a city insofar as it is a creature of statute). Rather the city is event, process, cluster of networks, striated entity that is never fixed; it is a conduit for discursive and symbolic flows.[10]

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[8] For an elaboration of this view in the furtherance of a critical legal pluralist hypothesis, see: Roderick A. Macdonald, "Critical Legal Pluralism as a Construction of Normativity and the Emergence of Law" in Andrée Lajoie *et al.*, eds., *Théories et émergence du droit : pluralisme, surdétermination et effectivité* (Montreal: Éditions Thémis, 1998) 11-27 at 22 [herainafter, (Emergence)].

[9] Iain Chambers, "Cities Without Maps", *Migrancy, Culture, Identity* (London: Routledge, 1994) 92.

[10] The scholarship in this area is voluminous. On the city as communications system: Ronald Abler, "What Makes Cities Important" (1970) March / April Bell Telephone Magazine 10. On the city as more than a place in

In terms of *community*, I do not focus solely on external sources (e.g., legislation, precedent, and the official and unofficial definitional, spatial and moral practices they embody) from which the 'street community' emerges or the particular legal subjectivities attributed to some of its members (e.g., vagrant, hobo and aggressive panhandler).[11] Instead, I shift the optic to interactions through which we can consider a plurality of modes of street-involvement that does not transform the 'street community' into a fixed, substantial or exclusive identity. For my purposes, the street community is not limited to individuals who are street-involved; it includes everyone that is in "being with" other street law constituents; it includes anyone whose "abandonment" and "exposure" to another might generate conditions that preserve the "I" (in all its agency[12] and autonomy[13]) as well as those of mutual responsibilities.[14] Finally, I agree with Cover that law is a "force" in the sense that it is a

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which we live but as a space that engages our ethics, our sense of justice, and how we relate to difference and learn do communicate with one another: Richard Sennett, "The Civitas of Seeing" (1989) 5:4 Places 82. On information and communication as the material through which social processes and organizations are constituted: Manuel Castells, "European Cities, the Informational Society and the Global Economy" (1994) 204 New Left Review 18. I return to the scholarship around cities in Chapter Two, and especially *infra* 2.1.2 ("Law, Cinema, City").

[11] See for instance William Chambliss' seminal historical work around the development of vagrancy laws as instruments of class power that furthered the elite's economic interests and needs: "A Sociological Analysis of the Law of Vagrancy" (1964) 12 Social Problems 67. Adler argues against such classical Marxist readings that overlook, in his estimation, the "tangled, confused, and essentially noncriminal orientation of vagrancy statutes" which essentially targets anyone who threatens social order: Jeffrey Adler, "A Historical Analysis of the Law of Vagrancy" (1989) 27 Criminology 209. I discuss the legislative regulation of street-involved people in Chapter Two (especially 2.3.3 "Close Up" in addition to 2.3.4 "*HomelessNation* as Tracking Shot").

[12] What the concept of 'agency' means has been the subject of lengthy debate. In feminist philosophy and jurisprudence, a theory of women's agency presupposes, for instance, women's capacity to make individualized choices and to act in accordance with those choices. On the distinction between feminist and liberal understandings of agency: Kathryn Abrams, "Sex War Redux: Agency and Coercion in Feminist Legal Theory" (1995) 95 Columbia Law Review 304.The etymology of the term – from the medieval Latin *agentia, facultas agenda* – suggests that agency is the state or the faculty of an agent to act: *The Oxford English Dictionary* 2nd ed., *s.v*. "agency."

[13] 'Autonomy' is also a highly contested concept; at its root, *autos* is the Greek for self, while *nomos* is law or rule; autonomy, accordingly, refers to the making of own rules: Gerald Dworkin, *Theory and Practice of Autonomy* (Cambridge: Cambridge University Press, 1988) at p. 13. See also: *The Oxford English Dictionary* 2nd ed., *s.v*. "autonomy."

[14] My view of 'community' draws on Fuller's morality of duty and morality of aspiration. He argues that within a 'functioning community' that is held together by mutual interests, drafting moral codes is relatively easy. Where

"resource in signification that enables us to submit, rejoice, struggle, pervert, mock, disgrace, humiliate or dignify."[15] To this end, rather than conceptualize street law as always already externally imposed on street-involved people (who accordingly are passive legal subjects/objects of governance), I turn my gaze to the creative jurisgenerative capacity of the *self.*

In terms of the *self,* all street users define acceptable behaviour and interact in ways that captivate fluid, competing, always emerging, and multiple selves.[16] Our selves-in-process constantly shift. That is, we may feel bound to webs of multiple, sometimes conflicting legal regimes that reflect, reinforce, implement, and constitute shared and personal normative standards. These regimes may be attributed to various social groups to which we belong, whether families, clubs, communities, etc. They may emerge from our own

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there are no 'rational principles' for establishing who is within the community, the morality of duty - which presupposes explicit or tacit reciprocity - cannot be relied upon to resolve conflict. The morality of aspiration is, as a consequence, what guides our ability to determine who is our 'other' and who is our 'neighbour'. However, it is also informed by Young's skepticism vis-à-vis such idealized conceptualizations of community (she deploys 'social group' as the relational outcome of interactions, meaning and affinities through which people identify with each other); Godbout's relational view of the gift as constituting community (people from any social environment participate in the 'modern gift' system by donating time, energy, resources, advice, and money – whether explicitly or anonymously); and Nancy's metaphysical view of community (community is not necessarily about commmon values or consensus; it is the experience of difference, exteriority, outwardness that occur through our encounters with 'others'). See respectively: Fuller (Morality), *supra* note 3; Jean-Luc Nancy, *The Inoperative Community* (Minneapolis: University of Minnesota Press, 1991); Jacques Godbout, *The World of Gifts*, trans. by Donald Winkler (Montreal: McGill-Queens University Press, 1998) [hereinafter (Gifts)]; Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990) [hereinafter (Justice)].

[15]Robert Cover, "Nomos and Narrative" in Martha Minow, Michael Ryan & Austin Sarat, eds., *Narrative, Violence and the Law: The Essays of Robert Cover* (Ann Arbour: University of Michigan Press 1992) 95-172 at 100 [hereinafter (Nomos)].

[16] My conceptualization of emerging selves relies on Levinas' view that the self is not substance but process: Emmanuel Levinas, *Time and the Other*, trans. by Richard A. Cohen (Pittsburgh, PA: Duquesne University Press, 1987) [hereinafter, Levinas (Time)]. I am also deeply indebted to feminist insights on how our senses of self vary with our shifiting location on varying axes of advantage and disadvantage, see for instance: Emily Grabham, *et al., Intersectionality and Beyond: Law, Power and the Politics of Location* (London & Sydney: Routledge / Cavendish 2008). For the view that selves are lived, embodied, narrativized and performed: James Holstein & Jaber Gubrium, *The Self We Live By: Narrative Identity in a Postmodern World* (New York: Oxford University Press, 2000) [hereinafter, Holstein & Gubrium]. Finally, that individuals respond to, monitor, evaluate and create law as *agents* rather than *subjects*: Macdonald, (Hypothèse) *supra* note 7 at 143-44.

normative locations along axes of race, class, gender, age, ethnicity, sexuality, culture, geography which morph throughout our everyday lives. They may also develop through our interaction with institutions, whether churches, prisons, schools, self-regulating bodies, corporations, etc. Street law emerges through these myriad relationships: individuals in interaction are the irreducible site of street law.

STREET LAW SIGHTS

By *sights,* I refer to perspectives on, or visions of, street law. The *paradigms* (whether as a question of law, charity, public safety, risk management, economics, or morality for instance) and *subject positions* (whether those instantiated in formal and explicit regulatory instruments designed to regulate conduct in urban spaces, those performed by people most affected by street law's demands, those imagined by filmmakers who use art to suggest new meanings about regulation and governance, and my perspective as a researcher which is shaped and reflected by all these *sights* of street law) through which we view social phenomena will effect whether, and if so, how we believe such phenomena should be regulated. And yet, no single analytic provides a complete view of the complexity by which human beings psychically, physically, and socially negotiate the relations of power, shared commitments, and personal expectations which I refer to as street law. While I endeavour to apprehend street law from multiple vantage points (from various *subject positions*) I do so within an ethos of critical legal pluralism. As a result, each perspective I suggest is a

simultaneous, on-going, and incomplete mode of apprehending what counts as street law and by whom it is generated, enforced, and embodied.

STREET LAW MEDIA

Finally, by *media* I mean two things. On one level, I refer to the media I deploy to articulate my hypothesis of street law. I argue that street law can be expressed through multiple forms, upon two of which I focus: the written monograph with which my reader is currently interacting and the explicitly interactive, non-linear, web-based experimental documentary film available at: www.filmaslaw.com.[17] On another level, given law's irreducible plurality – fluid normative expectations and commitments, shifting interpretations, myriad jurisgenerative sites, and plurality of normative agents – street law is difficult to apprehend. Consequently, what I advance as media through which to perceive street law should also be as plural and pluralist as possible. To this end, I propose three conceptual apparatuses - which I call street law's media - for apprehending street law.

Firstly, I deploy concepts from cinema to think about street law in a metaphorical register. This endeavour is grounded in empirical research on street-involved people's various normative engagements and the multiple legalities they navigate.[18] Secondly, I

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[17] The transposition that I argue occurs between these two media will be elaborated in Chapter One, *infra* 1.3.2 ("Ambidextrous Practices").

[18] After receiving ethics approval by McGill University's institutional review board, I conducted twenty semi-structured interviews in Montreal over a period of three years; I also conducted an additional five informal and unstructured interviews. See "Appendix: Ethics Application &Templates." Of these, fourteen interviews were with street-involved people. I did not ask them 'demographic questions' such as where they may be located along vectors of class, race, gender, sexuality, and cultural background. For a review of the literature on such demographics, see *infra* 1.2.1 ("Street-Involved People"). Research participants are not necessarily representative of 'street-involved people' or of 'anti-poverty activists' for that matter. Yet I believe that there are sufficient similarities in these individuals' interpretations and understandings of their everyday interactions. To

interpret specific film sequences as normative spaces. The main assumption upon which this undertaking is founded is that interactions between street-involved people and their interlocutors that occur in and through film are one of the ways in which street law is constituted. Thirdly, I produce a non-linear, collaborative and explicitly interactive film to apprehend street law. This endeavour is my personal expression of street law.

With these overarching themes in mind, below is a summary of the aim and function of each subsequent chapter in relation to my broader project: the endeavour to cinematically symbolize interactions between street-involved people and their interlocutors as governed by rules.

CHAPTER BREAKDOWN

Chapter One "Establishing Shot: Assumptions, Concepts and Methods" is a map for subsequent chapters. It begins with a discussion of how a critical legal pluralist attitude functions as a framing device for my project. I begin with a review of how legal pluralism

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this end, though limited, these interviews can suggest some broader patterns about how street-involved people govern and are governed. Based on the transcripts of our interviews and my on-going interactions with participants who are 'street-involved', I can say that of this group, four were women (of which three were under 35 and one in her mid-40s, three of whom had French as a first language; one of whom identified as being of first nations' descent, another as being first generation Quebecoise; one had just moved into social housing; two had or were pursuing part-time studies); of the men (four were under thirty, three between 30 and 40, one in his mid-40s and two over 50; two identified as being from racialized groups; three lived in shared or social housing; three were enrolled in career development programs; one had permanently left the street and was with full-time employment). I also interviewed four service-providers, four anti-poverty activists, and three academics (from Geography, Law, and Social Work). Some of these interviews were video recorded and selected footage was used to produce the non-linear interactive documentary that is the subject of Chapter Four: "Film as Law as Film." I recruited participants through my work with a mobile legal clinic offering legal information and support services to the street community (*Clinique Droits Devant*) and my time as a volunteer with *Le Bon Dieu dans la rue* (an organization serving youth living on, or at-risk of living on the streets), le *Réseau d'aide aux personnes seules et itinérantes de Montréal* (RAPSIM) and *HomelessNation* (a website 'for and by' the street community). Finally, I draw extensively on the multiple informal conversations I have had in my daily interactions on the street with multiple street-users and with various street law constituents at conferences, rallies, and parliamentary commissions all grappling with the complexities of street-involvement and the appropriate means, methods, and visions for the governance of interactions on the street as imagined through rules.

irritates centralist and monist approaches to law. I then go onto to discuss some of the key insights of *critical* legal pluralist endeavours that either describe or suggest alternative normative sites, modes, and instruments that are at times overlooked within classical pluralist understandings of street law. This critical legal pluralist ethos is like the epidermis to my dissertation: it gives shape to the world I constitute here, but is necessarily malleable, sensitive to flux. Furthermore, I will draw attention to how boundaries blur and relinquish as is appropriate and necessary. In Part Two of that same chapter, I locate my research within scholarly discussion around four concepts which will be deployed and potentially re-imagined throughout my dissertation.[19] These concepts are: *street-involved people, cinematic, governance, and street law.* In Part Three, I explain what I refer to as the 'ambidextrous practices' through which my research is performed. I also engage with methodological questions, namely the challenges 'transdisciplinary' scholarship may pose. These challenges, I argue, are foregrounded through, but are also the rationality behind, my research which is produced in two different registers: one realized in written text, the other in audiovisuals.

Chapters Two, Three and Four rely on three different media to apprehend some of street law's sites and sights: the metaphoric register, cinema as a source of street law, and a collaborative artistic production, respectively. Chapter Two "Cinematic Legal Metaphors" expresses street law through cinematic metaphors.[20] I foreground street law that is expressed in formal and explicit regulation of street-involved people as well as the

[19] I do not, as a result, provide a synoptic view of scholarly literature around questions such as the 'problem' of street-involvement or even how it has been addressed, tempered or heightened through law.

[20] As will hopefully be made plain in the next chapters, cinematic metaphors do not refer to the metaphors intentionally introduced by filmmakers in their oeuvre. For work in this area drawn from cognitive psychology, see: Trevor Whittock, *Metaphor and Film* (Cambridge: Cambridge University Press, 1990).

alternative (often informal and implicit) normativities generated by street-involved people and their advocates. I do so through four concepts from cinema: the Aerial Viewpoint, the `Shot/Reverse Sequence, the Close-up and the Tracking Shot.[21] I argue that some of the metaphors, such as an Aerial Viewpoint of the city of Montreal and a Shot/Reverse Sequence between street-involved people and formal legal actors (people who derive their authority from the state) work well to highlight how street law can be an externally-wielded force directed at the most vulnerable members of society. However, unlike more 'revanchist' metaphors[22] which may reinforce the view that law's 'subjects' are passive victims of dominant interests, I claim that cinema's concepts can also invite attention to a plurality of street law's sources, its agents, its interpreters and its institutions. I re-imagine interactions through a Close-up and a Tracking Shot in an attempt to grapple with the possibility of moral perceptions of street-involved people by their interlocutors. In part, these viewpoints are intended to recognize and respect street-involved people – whether by drawing on the stories they circulate about law, or how they embody, live and perform their complex normative lives. In addition, the Close-up and Tracking Shot encourage non-street-

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[21] I provide four case studies of the generation of street law through rule-governed interactions. Case-study researchers select strategies and techniques for gathering data and for analyzing and interpreting what emerges. In grounded theory, case-study research follows three phases: a descriptive, a theoretical-heuristic / theory-development, and theory testing phase: Barney Glaser & Anselm Strauss, *The Discovery of Grounded Theory* (London: Weidenfeld & Nicolson, 1967). While I do not adhere to any strict conventions of grounded theory *per se*, these case studies can be considered phenomenological, in the sense that they emphasize participants' experiences. My perceptions of participants' normative commitments, expectations, interpretations, and creation of street law does not begin from the belief that they engage in mechanical response to the external world but rather that their actions are meaningful incarnations of their lived realities. Maurice Merleau-Ponty, *Phenomenology of Perception* (London: Routledge, 1962).

[22] As I will elaborate in Chapter Two, Neil Smith has coined the term 'revanchist city:' *The New Urban Frontier: Gentrification and the Revanchist City* (London: Routledge, 1996) [hereinafter, Smith (Revanchist)]. He uses the term to refer to the shifts in political, economic and social practices in the United States from redistribution policies (from the wealthy to the less affluent) to revanchist policies against minority groups including the poor, the working poor, immigrants, feminists, environmentalists, anti-war activists and racialized groups on behalf of the elite. I use the term as short-form for the overlapping metaphors of the city as 'panopticon,' 'divided', 'punitive' and 'post-justice' which have been used to conceptualize governance in and through urban spaces.

involved people to consider their roles as constituents of street law and the normative expectations, commitments and interpretations they reflect, embody, reinforce, and create in their multiple networks of interactions on the street.

In Chapter Three "Cinematic Street Law", I explore the law–film relation and the ways in which interactions between street-involved people and their interlocutors have been symbolized in and through film. I argue that discursive formations that circulate in cinema can, at times, reproduce and reflect those understandings of street-involved people which are already performed through formal legal doctrine. Other discursive formations can inform and shape the basis of alternatives to such beliefs. Within the broader context of legal scholarship at the nexus of law and film, I discuss five ways we can and do think cinematically about street law: film law, law *in* film, law *and* film, cinematic street law, legal cinematics. In each of these explorations, I suggest how film is law and in the context of this dissertation, how film is street law. I discuss a few cinematic moments that gesture towards different visions of street law from the ones instantiated in more entrenched, formalized and institutionalized law. My concern in this chapter is not with the accuracy of the representations made of street-involved people. I argue that street law is constituted through the interactions between these fictional characters and their real/imagined others with whom they share multiple and overlapping legal constellations.

In Chapter Four, "Film as Law as Film," I present the '*Korsakow System*'[23] as a metaphor for critical pluralist hypotheses of law. The Korsakow software, I argue, fosters

[23] The '*Korsakow System'* is software designed by Florian Thalhofer as a graduate research project. It facilitates the creation of artwork (usually audiovisual in nature) that is interactive, nonlinear, and web-based. I elaborate on my own deployment of the *Korsakow System* in Chapter 4, "Film as Law as Film," especially *infra* 4.1 ("The *Korsakow* Film"). See also: www.*Korsakow*.org.

interactions as governed by rules; these rule-governed interactions permit *vusers* (viewers/users) to chart their own narrative paths according to their expectations, aesthetic preferences and normative assumptions. I then describe the process through which I produced a non-linear, digital, web-based, experimental documentary about street law. I conclude that the film is a medium of street law insofar as it negotiates multiple normative interactions: first, those between myself and the collected footage I order and define; second, those between street-involved people and their interlocutors that occur within the film's diegesis; third, those that occur among the multiple collaborators who represent, evaluate, contest and construct the artifact; fourth, those between various jurisgenerative agents and the film. Through these multiple interactions, the Korsakow film takes on a life of its own and is itself constitutive of and constituted through street law.

By way of conclusion, I revisit the sites, sights and media of governance of and by street-involved people to develop a critical legal hypothesis of street law, and of law more generally. I suggest additional questions that emerge when we wrestle with our normative expectations of and responsibilities towards our real and imagined others within a pluralist ethos.

CHAPTER ONE: ESTABLISHING SHOT: ASSUMPTIONS, CONCEPTS AND METHODS

In filmmaking, an establishing shot – whether a long take or a series of juxtapositions – conveys information that permits audiences to infer spatial and temporal relationships between characters and their surroundings, anchors subsequent actions, and provides diegetic context.[24] Like other frames and devices we use to organize and represent our lived worlds, values and beliefs, establishing shots contain and order information to be apprehended. They also, paradoxically perhaps, always suggest what exists beyond their spatial, temporal and metaphorical confines, beyond the perspectives to which they give shape. We continually create mental establishing shots. Through such perspectives, ideologies and theoretical frameworks, we attach meaning to social phenomena; these meanings in turn reflect and guide our assumptions, perceptions, interpretations and interactions of and with people, things, and events. What I propose as an establishing shot for my dissertation is a discussion of some of the assumptions, concepts and methods that

[24] The establishing shot is usually the first of a standard shot sequence. It is often a long take (an uninterrupted shot) but filmmakers and theorists influenced by the work of Lev Kuleshov argue that juxtaposition (a series of shots) does the work of the establishing shot by prompting audiences to infer a spatial whole on the basis of perceiving some components of the space: See generally: "The Kuleshov Effect" in Maria Pramaggiore & Tom Wallis, *Film: A Critical Introduction* (London: Laurence King Publishing Ltd., 2006) at 162 [hereinafter, Pramaggiore & Wallis]. I use diegesis in the following as it has functioned in literary and film studies (the universe in which a story takes place), rather than Plato's use of the term to develop an account of narrative as a linguistic activity. In *Republic* (Book 3), Plato distinguishes *haple diegesis* (in which a speaker narrates directly without dialogue, i.e., in her own voice) from *mimesis* (in which the speaker narrates indirectly, i.e., through other characters). Plato is skeptical of the latter imitative narrative as it is merely a reproduction of the appearance of the real. In the early 1950s, the term *diegesis* is reintroduced in the context of theories of and about film by way of Etienne Souriau and his daughter Anne Souriau as *diégégèse* (the place of the film-signifier) with *diégétique* (the place of the signified). See generally: Etienne Souriau and Anne Souriau, *Vocabulaire d'esthétique* (Paris: Presse universitaire de France, 1990); Gérard Genette, *Narrative Discourse Revisited*, trans. Jane E. Lewin (Ithaca, New York: Cornell University Press, 1988).

guide, inform, shape and reflect my interpretation of the interactions that constitute street law at the level of the city, the community, and the self.

In Part One, I discuss what I consider some of the assumptions that guide critical legal pluralism(s). The pluralist ethos in which I navigate favours aesthetics of fluidity, ambiguity, participation, and situatedness over stability, objectivity, order, and unity. To this end, it cannot be considered a static or fixed frame. Rather, my critical legal pluralist hypothesis is like an epidermis. Insofar as it gives shape to my thoughts, it is also necessarily malleable, sensitive to flux, and will blur and relinquish boundaries as appropriate and necessary.[25] Part Two is a conceptual map to the chapters that follow. Rather than a synoptic view of scholarly debates around the broader questions with which I wrangle, I explain my understanding of the key concepts upon which I rely and as I interpret them through my critical legal pluralist hypothesis. In Part Three, I outline the methods and methodological questions that structure my project. I discuss some of the challenges inherent to transdisciplinary scholarship. Finally, I elaborate the rationalities that guide my research which is produced in two different registers (one realized in written text, the other through audiovisuals).

[25] On modernist aesthetics in law and the possibilities of a pluralist aesthetic, see: Roderick A. Macdonald, "Metaphors of Multiplicity: Civil Society, Regimes, and Legal Pluralism" (1998) 15 Arizona Journal of International and Comparative Law 69 [hereinafter, Macdonald, (Multiplicity)]; Desmond Manderson, *Songs Without Music: Aesthetic Dimensions of Law and Justice* (Berkeley: University of California Press, 2000) [hereinafter, Manderson (Songs)]. To Davies, pluralism is both an ethical and epistemological preference; normatively, it promotes “a more inclusive concept of law” while empirically, it “captures the multiple normative engagements within contemporary society:” Margaret Davies, "Feminism and the Flat Law Theory" (2008) 16 Feminist Legal Studies 281 at 288 [hereinafter, Davies (Flat)]

1.1 CRITICAL ASSUMPTIONS

In critical surveys of legal pluralist projects, there is often an arc traced from the research assumptions and practices of *classical* legal pluralism to what has more recently been performed as the hypothesis of *critical* legal pluralism.[26] In what follows, I begin with a review of how legal pluralism shatters centralist and monist approaches to law. I then go on to discuss some of the key insights of *critical* legal pluralist endeavours that either describe or suggest alternative normative sites, modes, and instruments that are at times overlooked within classical pluralist appreciation of street law.

1.1.2 LEGAL PLURALISM

Legal pluralism is a set of assumptions and research practices organized around the fact that there are multiple forms of legal ordering within the same socio-spatial arena.[27]

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[26] Critical scholarship currently distinguishes essentialist from non-essentialist legal pluralisms; structural or formal from radical pluralisms; and positivistic from post-modern pluralisms. See respectively, Brian Tamanaha, "A Non-Essentialist Version of Legal Pluralism" (2000) 27 Journal of Law and Society 296 [hereinafter, Tamanaha (Essentialist)]; Macdonald (Emergence) *supra* note 8; Emmanuel Melissaris, *Ubiquitous Law: Legal Theory and the Space for Legal Pluralism* (London: Ashgate, 2009).

[27] In his earlier work, Jacques Vanderlinden described legal pluralism as « l'existence, au sein d'une société déterminée de mécanismes juridiques différents s'appliquant à des situations identiques » : Jaques Vanderlinden, "Le pluralisme juridique: essai de synthèse" in John Gilissen, ed., *Le Pluralisme Juridique* (Bruxelles: Éditions de l'Université de Bruxelles, 1971) 19 at 19. Since then, Harry Arthurs has referred to legal pluralism as including those situations where a "distinctive subsystem of local and special law" relate to centralized, institutionally administered law: Harry Arthurs, "Special Courts, Special Law: Legal Pluralism in Nineteenth Century England" in Gerry R. Rubin & David Sugarman, eds., *Law, Economy and Society, 1750-1914* (Abingdon: Professional Books, 1984) at 383. In Sally Engle Merry's words legal pluralism is "a situation in which two or more legal systems coexist in the same social field" (taking legal system in the broad sense to include state-supported institutions and actors - courts, judges - as well as "nonlegal forms of normative ordering"): "Legal Pluralism" (1988) 22:5 Law & Society Review 869 at 871 [hereinafter, Merry (Pluralism)]. John Griffiths distinguishes 'soft' from 'strong' legal pluralism. Whereas the former reinforces the myth of legal centralism (law as "an exclusive, systematic and unified hierarchical ordering of normative propositions" which emanates from the State), the latter is the "state of affairs" in which the same behaviour is governed through

Early legal pluralism posed a challenge to the *monist* view of law, namely that there is a single source of legal authority in each socio-political unit. While some writers highlighted how norm-generation has always occurred outside the confines of the nation-state,[28] the vast majority of scholarship emphasized the persistence of indigenous modes of social ordering within Western colonial states.[29]

Since this earlier work, scholars advancing legal pluralist frameworks have critically re-evaluated their approaches. First, the hierarchical model - emphasizing colonial and imperial relations or the domination of one normative system by another - has been displaced for a view that there are multiple 'semi-autonomous' legal systems that operate within the same

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"more than one legal order" and where "more than one 'legal order'" can be observed: John Griffiths, "What is Legal Pluralism?" (1986) 24 Journal of Legal Pluralism 1 at 2 and 38. Finally, to Sally Falk Moore 'legal pluralism' includes at least, the relation between the state and other normative sites, administrative diversity and multi-directional governance within states, inter-state dialogue and competition for jurisdiction, the ways in which states internally and externally weave with non-governmental, jurisgenerative semi-autonomous social fields and rely or contest these social fields' implementation of state-based norms: Sally Falk Moore, "Certainties Undone: Fifty Turbulent Years of Legal Anthropology, 1949 - 1999" (2001) 7 Journal of Royal Anthropology Institute 95 at 107.

[28] This scholarship favoured the frameworks and methodologies of sociology to anthropology. Ehrlich, for instance, studied the 'living law' of the guilds that created their own rules long before the rise of the nation state. He found that even when created by the State, the living law 'is preponderantly, as to its content, limited to an association:" Eugen Ehrlich, *Fundamental Principles of the Sociology of Law* (New York: Russell & Russell, 1936) at 81. The concept of institutional legal pluralism can be brought back to Montesquieu who wrote that the public and civil laws of any nation are simply instances in which the law of human reason applies: Charles L. de Montesquieu, "Book I: Of Laws in General" in Anne Cohler, Basia Miller & Harold Stone, eds., *The Spirit of Laws* (Cambridge: Cambridge University Press, 1989). See generally: Rebecca Kingston, *Montesquieu and His Legacy* (New York: SUNY Press, 2009). For a more recent empirical account of the interaction and mutual influence between state law and informal governance: Stewart Macaulay, "Images of Law in Everyday Life: The Lessons of School, Entertainment and Spectator Sports" (1987) 21 Law and Society Review 185.

[29] See for instance: Bronislaw Malinowski, *Crime and Custom in Savage Society* (New York: Harcourt, Brace, 1926) (through a functionalist lens, he emphasizes the importance of reciprocal relations in social life). See also: Leopold Pospisil, *The Anthropology of Law: A Comparative Theory of Law* (New York: Harper & Row, 1971). For a critical discussion of early efforts that adopt a 'classical' legal pluralism, see: Merry (Pluralism), *supra* note 27 at 869-72. Vanderlinden reflects on legal pluralist scholarship since the publication of his seminal text: Jacques Vanderlinden, "Return to Legal Pluralism: Twenty Years Later" (1989) 28 Journal of Legal Pluralism and Unofficial Law 149. For a more recent version of such an approach see: Irene Watson, "Indigenous People's law-ways: Survival against the colonial state" (1997) 8 Australian Feminist Law Journal 39.

field.[30] While they have their own internal logic, their own rules and symbols, their own administrative and enforcement mechanisms, normative fields are not in a unidirectional relation of influence -- in the sense that one is entirely productive of or produced by another. Rather, they are mutually constitutive of one another.[31] Further, scholars developed a more expansive view of 'the legal system' which embraces 'unofficial' normative regimes present in *all* societies, including advanced industrial and plural societies.[32] With this broader view of law and legality, legal pluralism stretched beyond its critique of *monism* to explicitly reject *centralism*, or the belief that the state is the primary basis of legal, social and political organization.[33] The legal pluralist project has, accordingly, become an effort to describe modes of social regulation that rely on the "symbols of law" but which operate in its "shadows".[34] In so doing, some scholarship has tended toward an overly romantic view of 'people's law' as implicitly more egalitarian than the norms which emanate from 'the State.'[35]

While de-centering formal and institutional state-law in favour of other normative sites has been a focal point for much innovative and critical thinking in law, more recent legal

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[30] Sally Falk Moore, "Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study" (1973) 7 Law & Society Review 719. While each generates its own rules, each normative site is also "set in a larger social matrix" and thus "vulnerable to rules and decisions and other forces [including the State] emanating from the larger world by which it is surrounded" at 55.

[31] Peter Fitzpatrick, "Law and Societies" (1984) 22:1 Osgoode Hall Law Journal 115. Fitzpatrick argues elsewhere that 'combined law' emerges through the interaction of multiple – whether formal or informal – legal orders: Peter Fitzpatrick, "Legal Plurality and Underdevelopment" in David Sugarman, ed., *Legality, Ideology and the State* (London: Academic Press, 1983) 59. On the ways in which private ordering within a car dealership and state-law interact: Stewart Macaulay, "Private Government" in Leon Lipson & Stanton Wheeler, eds., *Law and Social Sciences* (New York: Russell Sage Foundation 1986).

[32] Merry (Pluralism), *supra* note 27 at 872. In Marc Galanter's words, "just as health is not found primarily in hospitals knowledge in schools, so justice is not primarily to be found in official justice-dispensing institutions:" Marc Galanter, "Justice in Many Rooms: Courts, Private Ordering and Indigenous Law" (1981) 19 Journal of Legal Pluralism 35 at 37.

[33] Griffiths, *supra* note 27 at 2.

[34] Merry (Pluralism), *supra* note 27 at 874.

[35] For a conspectus of the legal pluralist work in the eighties with an eye toward that which may have been uncritically celebratory of 'unofficial' law (pointing to Galanter as an exception), see: Mitra Sharafi, "Justice in Many Rooms Since Galanter: De-Romanticizing Legal Pluralism Through the Cultural Defence" (2008) 71 Law and Contemporary Problems 139.

pluralist hypotheses highlight how 'social scientific' research has nevertheless left untouched other complementary tenets of modernist conceptions of law and legal thinking.[36] Thus, what have been referred to as 'critical,'[37] or 'radical'[38] or sometimes 'postmodern'[39] legal pluralism(s) attempt to further uproot a number of overlapping essentialist interpretive biases[40] reproduced in earlier pluralist endeavours. These include: *monism* (there is a single and centralized legal order in each socio-political unit which is governed through the principle of internal coherence),[41] *centralism* (all law emerges from the political State),[42] and *positivism* (law is a social fact that is born from authorized law-makers and legal institutions).[43]

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[36] Tamanaha (Essentialist), *supra* note 26 at 296. He argues that 'essentialist' legal pluralism has not lived up to its bold and transformative potential.

[37] Martha Marie Kleinhans & Roderick A. Macdonald, "What is a *Critical* Legal Pluralism" (1998) 12 Canadian Journal of Law and Society / Revue canadienne droit et société 25.

[38] Melissaris draws on three frameworks - Teubner's systems theory, Sousa-Santos' intertwined legalities and Cover's jurisgenerative communities - to 'radicalize' legal pluralism: Emmanuel Melissaris, "The More the Merrier? A New Take on Legal Pluralism" (2004) 13:1 Social & Legal Studies 57.

[39] To Belley, legal pluralism is a fundamental concept of postmodern legal theory: Jean-Buy Belley, "Le Droit comme terra incognita : Conquérir et construire le pluralisme juridique" (1997) 12 Canadian Journal of Law and Society / Revue canadienne droit et société 1. See also: Boaventura de Sousa Santos, "Law: A Map of Misreading. Toward a Postmodern Conception of Law" (1987) 14:3 Journal of Law and Society 279 [hereinafter, Sousa Santos (Map)].

[40] Nancy's writing is helpful in developing an essence*less* view of social relations: *(*Being), *supra* note 5.

[41] On the internal heterogeneity of normative fields, see: Boaventura de Sousa Santos, *Toward a New Legal Common Sense*, 2nd ed. Butterworths, 2002) [hereinafter, Sousa Santos (Common Sense)]; Macdonald (Multiplicity) *supra* note 25; William Twinning, *Globalization and Legal Theory* (London: Butterworths, 2000).

[42] Brian Tamanaha, "The Folly of the 'Social Scientific' Concept of Legal Pluralism" (1993) 20:2 Journal of Law and Society 192. Roderick A. Macdonald, "Here, There ... and Everywhere: Theorizing Legal Pluralism; Theorizing Jacques Vanderlinden" in Nicholas Kasirer, ed., *Étudier et enseigner le droit: hier, aujourd'hui et demain - Études offertes à Jacques Vanderlinden* (Montreal: Éditions Yvon Blais, 2006) 381 [hereinafter, Macdonald (Everywhere)].

[43] To Cover lawyer-made rules and institutions form a small part of our normative universes: (Nomos) *supra* note 15. Alan Hunt develops a constitutive theory of law to explain how law is imbricated with social practices while at the same time is itself the product of negotiation and struggle with social relations: (Constitutive), supra note 5 at 310.

As I will discuss, these critical legal pluralisms add dimensions of analysis which may be overlooked or even reinforced in traditional or socio-legal legal pluralism[44] explained in terms of assumptions about law's *verticality* (that there is hierarchical order of legal sources)[45], *prescriptivism* (law is made up of externally-imposed rules or other normative standards that exist outside of the individuals whose actions it is believed to govern)[46], *chirographism* (favoring textual and written legal forms), [47] *logocentricism* (privileging the linguistic communication and linguistic signifiers over the signified),[48] *ocularcentricism* (privileging sight over other sensory modalities),[49] *linearity* (temporal evolutionary

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[44] Macdonald shows how traditional legal pluralism points to a plurality of law (whether numerically, spatially and analytically) in contradistinction to more monist, centralist and positivist views of law. It misses, he cautions, other dimensions of law such as its inter-subjective aspects: Roderick A. Macdonald, "Unitary Law Re-form, Pluralistic Law Re-Substance: Illuminating Social Change" (2007) 67:4 Louisiana Law Review 1113 [hereinafter, Macdonald (Illuminating)]. Similarly, Sousa Santos urges us to beyond our "abyssal thinking" and proposes a "non-derivate" mode, a "radical break" with modern conceptualizations based on the recognition of the "plurality of heterogeneous knowledges ….and on the sustained and dynamic interconnections between them without compromising their autonomy:" Boaventura de Sousa Santos, "Beyond Abyssal Thinking: From Global Lines to Ecologies of Knowledges" (2007) XXX:1 Review 1.

[45] Davies (Flat), *supra* note 25.

[46] To Fuller, law's prescriptions are always already embedded in history, stories, desires, and interpretations: Lon Fuller, *The Law in Quest of Itself* (Chicago: Foundation Press, 1940). See also: (Nomos), *supra* note 15. More recently, Macdonald and Sandomierski illustrate how interactional norms are legal norms and legal norms are interactional: Roderick A Macdonald & David Sandomierski, "Against Nomopolies" (2006) 57:4 Northern Ireland Legal Quarterly 610.

[47] This, of course, has long been a concern within the literary tradition. Walter Ong referred to this particular bias - the "chirographic" and "typographic" as particularly insidious: Walter Ong, *Orality and Literacy: The Technologizing of the Word* (London: Methuen, 1982). Daniel Chandler calls the belief that speech should be relegated to the status of the written word's handmaiden as "graphocentricism:" Daniel Chandler, *Semiotics: The Basics* (New York & London: Routledge, 2002). Macdonald has recently argued this point specifically in relation to law: Roderick A. Macdonald, "Custom Made: An Argument for a Non-Chirographic Critical Legal Pluralism" (forthcoming) Canadian Journal of Law and Society / Revue canadienne droit et société [herainfater, Macdonald (Custom Made)].

[48] Jacques Derrida, *Of Grammatology*, trans. by Gayatri Chakravorty Spivak (Baltimore, Maryland: Johns Hopkins University Press, 1998).

[49] See generally: Paul Stoller, *Sensous Scholarship* (Philadelphia University of Pennsylvania Press, 1997). Stoller demonstrates how the fusion of the 'intelligible' and the 'sensible' can be deployed in scholarly practices and representations. For an overview of some of legal scholars' interrogation of sight, see: Lionel Bently, "Introduction" in Lionel Bently & Leo Flynn, eds., *Law and the Senses: Sensational Jurisprudence* (London: Pluto Press, 1996) 1. The field of legal anthropology has been particularly instructive in reconsidering vision as privileged site of knowledge. David Howes has pointed out that the challenges posed to dominant dichotomous thinking remain disembodied and within the realm of the visual; he argues for interest in *intersensorial* ways we constitute knowledge and how culture mediates sensations of smell, touch, taste and hearing in addition to

'progress')[50] *instrumentalism* (state-based law is the instrument of social control *par excellence* and we must remain vigilant of its impacts),[51] and *territoriality* (law is territorially fixed in a particular space).[52]

That being said, my summary below of the radical potential of critical legal pluralism should not be taken to suggest that everyone dwelling within its ethos will necessarily challenge each of the tenets conventionally associated with Western common law, nor will they do so in a similar manner.

1.1.3 Critical Legal Pluralism

Critical legal pluralism grapples with all law as *irreducibly plural*[53] and *polycentric;*[54] law is apprehended *multisensorily*[55]; law's *subjects* are reconceptualized as *agents*[56]; laws'

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sight: David Howes, "Introduction: Empire of the Senses" in David Howes, ed., *Empire of the Senses: The Sensual Culture Reader* (Oxford and New York: Berg, 2005).

[50] Gordon provides a critical overview of the propositions that compose the singular view of historical change and its relationship to law: Robert Gordon, "Critical Legal Histories" (1984) 36:1/2 Stanford Law Review 57.

[51] As Merry writes, "in industrial societies, despite the apparent autonomy of nonjudicial spheres, the legal system stands in relation of superior power to other systems of regulation as the ultimate source of coercive power": Merry (Pluralism), *supra* note 27 at 874. See also: Richard L. Abel, *The Politics of Informal Justice* (New York: Academic Press, 1982). More recently, see: Richard Cotterrell, *Spectres of Transnationalism: Changing Terrains of Sociology of Law* (London: Queen Mary University, School of Law, 2009) at 4.

[52] There is also a large body of legal scholarship located at the intersection of law, space and power which interrogates how law both shapes and is inflected by the spatialization of social life: Wesley Pue, "Wrestling with Law (Geographical) Specificity vs. (Legal) Abstraction" (1990) 11:6 Urban Geography 566; Nick Blomley, "Property, Pluralism and the Gentrification Frontier" (1997) 12 Canadian Journal of Law and Society / Revue canadienne droit et société 187; Kirsten Anker, "The Truth in Painting" (2005) 9 Law Text Culture 91; Andreas Philippopoulos-Mihalopoulos, "Introduction: In the Lawscape" in Andreas Philippopoulos-Mihalopoulos, ed., *Law and the City* (London: Routledge-Cavendish, 2007) 1. Others deploy cartographic metaphors is to *map out* law. For a discussion on whether maps *of* law are ever possible: Maarten Bavnick & Gordon Woodman, "Can there be Maps of Law?" in Franz Von Benda Beckmann, Keebet Von Benda Beckmann & Anne Griffiths, eds., *Spatializing Law: An Anthropological Geography of Law in Society* (Surrey, England: Ashgate, 2009) 195. Boaventura de Sousa Santos suggests three topoi or sites of subjectivity that hold the promise of a 'new conception' of law and distinguishes *geocentric* and *egocentric* projections of legalities: Sousa Santos (Map), *supra* note 39. Feminist and critical race theorists extend the intersection metaphor to complexify entrenched understandings of legal subjectivity and the legal constitution of subjectivity: Kimberlé W. Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color" (1991) 43:6 Stanford Law Review 1282; Grabham, *supra* note 16; Gayle MacDonald, Rachel Osborne & Charles Smith, eds., *Feminism, Law, Inclusion: Intersectionality in Action* (Toronto: Sumach Press, 2005).

processes are *dynamic*; and law's effects are *symbolic.*[57] Put even more succinctly, law is an on-going process of imagining and expressing interactions between humans as being guided by future-oriented rules.[58] Legal inquiry should be directed to the psycho-spatio-temporal interactions that occur "where rules are meant to achieve governance."[59] To help better

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[53] Davies, (Ethos) *supra* note 7.

[54] *Polycentrism* (as opposed to monocentricism) suggests the overlap of multiple normative *forms* in multiple normative universes. See for instance and attempt direct legal pluralist discourse away from monism: Hanne Peterson & Henrik Zahle, eds., *Legal Polycentricity: Consequences of Pluralism in Law* (Aldershot: Dartmouth Publishing Company, 1995). Compare Macdonald who acknowledges that a polycentric view of law is a theoretical underpinning of radical legal pluralism but who concedes that radical legal pluralism "cannot even be polycentrist" because that metaphor implies a center (and therefore a periphery) to a legal regime: Macdonald (Everywhere), *supra* note 42 at 406.

[55] See for instance: Bently & Flynn, *supra* note 49. I elaborate how we experience law multisensorily in Chapter Two, *infra* 2.1.1 ("Beyond Visuality").

[56] See for instance: Roderick A. Macdonald, *Background Document: The Governance of Human Agency* (Ottawa: Government of Canada, 2002) at 24-25 [hereinafter, Macdonald (Governance)]; and Kleinhans & Macdonald, *supra* note 37.

[57] See generally: Macdonald (Illuminating), *supra* note 44. What Davies refers to 'flat law' falls within the ethos of critical legal pluralism and includes guiding concepts such as: inclusiveness, incoherence, fluidity of identity, layered space, participation, anarchy and situatedness: Davies (Ethos), *supra* note 7; Davies (Flat), *supra* note 25. To be sure, critical legal pluralism(s) draw on, critically engage with, and refine hypotheses from various other disciplines and theoretical frameworks, including feminist and critical-race theories, social, cultural and political theories, anthropology, music and fine arts. For a legal pluralism informed by cultural studies, For instance, see: Ian Duncanson, "Cultural Studies Encounters Legal Pluralism: Certain Objects of Order, Law and Culture" (1997) 12 Canadian Journal of Law and Society / Revue canadienne droit et société 115: cultural studies invites legal scholars to consider the extent to which the ordering and disciplining practices "can be understood only by a form of intellectual cosmopolitanism which fails to respect the frontiers some would draw between legality and culture" at 117. For a specifically feminist vision of legal pluralism: Ambreena S. Manji, "Imagining Women's 'Legal World:' Towards a Feminist Theory of Legal Pluralism in Africa" (1999) 8 Social & Legal Studies 435.

[58] This formulation draws extensively on Roderick Macdonald's work and that of Lon Fuller, by extension. To Fuller, law's purposive enterprise is "subjecting human conduct to the governance of rules": Fuller (Morality), *supra* note 3 at 106. Macdonald and Sandomierski write from this claim to suggest a critical pluralist hypothesis of law as "the endeavour of *symbolizing* human interactions as governed by rules:" Macdonald & Sandomierski, *supra* note 46 at ftn 16. Macdonald elaborates this thesis in other work: law is not a body of knowledge but an *intention* ("it demands that we commit ourselves towards its achievement"); law emerges from human perception and reflection; law is performative ("law imagines action" – whether speech or movement); law is an interaction between two or more subjects (it lies within "the relationship more than the field within which the relationship is built); intentions and behaviours "refer to a point of reference external to the act or the intention"; rules pre-exist the human behaviour that is being symbolized: Macdonald (Everywhere), *supra* note 42 at 394-95.

[59] Macdonald (Governance), *supra* note 56 at 14.

grasp the nature of such a project, what follows is a greater elaboration of some of the pivotal ideas and beliefs that inform the new pluralist ethos in law.[60]

First, whereas early legal pluralist efforts emphasized the *confrontations* between two different normative orders (whether intra- or extra-State based), critical legal pluralism assumes that acceptable behaviour within the same embodied space will be governed in *manifold legal fields* (sites), multiple legal *forms* (modes), and variegated legal *devices* (instruments).[61] Critical legal pluralist scholars show skepticism about instrumental theories of law, that is, the view that state law is a tool used by legal actors – whether judges, lawyers, or interest groups - to achieve particular ends such as induce particular behaviour through rewards or sanctions.[62] Instead, there is a move away from a non-dialectic view of law (i.e. that legal texts and practices determine subjectivities, that legal subjects passively accept that external definition as inscribed in legal texts) to a dialectic view of law (i.e. subjects co-construct meaning through their various exchanges in a plurality of sites, modes and

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[60] Reflecting much of the general skepticism about 'meta narratives' in other disciplines, critical legal pluralists posit an 'ethos' or as "a set of values, an attitude or an aesthetic emphasis" rather than a theory *per se*: Davies (Ethos), *supra* note 7 at 6. See also: Desmond Manderson, "Beyond the Provincial: Space, Aesthetics, and Modernist Legal Theory" (1996) 20 Melbourne University Law Review 1048 [hereinafter, Manderson (Provincial)]. But compare a critical stance vis-à-vis the complete 'end' of theory, see: Daphne Palai & Will Corral, *Theory's Empire: An Anthology of Dissent* (New York: Columbia University Press, 2005).

[61] The state, consequently, is not the exclusive (or even the primary) site of governance; legislation is not the exclusive mode of governance; and regulatory and criminal sanctions are not the exclusive governing instruments: Macdonald (Governance), *supra* note 56 at 2. Each of these points is elaborated in Chapter Two. For instance, *infra* 2.3.1. ("Street Law in Aerial Viewpoint"), I discuss how interactions with police may not be the most direct mode of regulation experienced by street-involved people. *Infra* 2.3.3. ("Street Law as Close-up"), I elaborate it is the assessments we make of our others rather than the existence of anti-panhandling legislation that most directly governs interactions between people who panhandle and their interlocutors. In "Street Law as Tracking Shot," I discuss how the virtual space constituted by and through *HomelessNation* functions as an instrument of street law. Further, in other chapters, I explore what I consider to be more implicit and more meaningful sites of street law, namely, cinema in Chapter Three ("Cinematic Street Law") and creativity itself in Chapter Four ("Film as Law as Film").

[62] Instrumentalists might, for instance, consider how state law ensures that particular individuals or groups are subjected to obligatory commands or how particular groups have been denied access to the protections that state law can afford: Martin L. Friedland, ed., *Sanctions and Rewards in the Legal System: A Multidisciplinary Approach* (Toronto: University of Toronto Press, 1989). For a critique of instrumentalism in law: Macdonald (Emergence) *supra* note 8.

instruments). However, to take a dialectic (and dialogic) view is not to say that power is of no concern for legal pluralists. Rather, power is understood as fluid and distributed differently within multiple and overlapping normative regimes. As I consider later, through the Aerial Viewpoint (Chapter Two), these shifting dynamics of power and resistance "are central to tracing trajectories of normative interaction.[63]

Second, within each of these multiple zones and moments of jurisgeneration, there exist plural scales of normativity.[64] Even if imagined in conventionalist terms (as rules emanating from the state and expressed in legislation), law is "irreducibly plural."[65] Zones or moments of normative interaction exist within and through overlapping, at times redundant, unfixed, liminal, interstitial spaces for personal, communal and societal networks.[66] Every normative entity is in continual interaction and flux, always contesting, appropriating, and influencing each other's rules, decision-making processes, traditions, and institutions. It is therefore impossible to map out with any certainty the trajectories of these interactions; we can only develop a sense of their tendencies, flows, and rhythms.[67] The implicit contingency and plurality of normative regimes should not, however, evoke anxiety or fear because of lack of continuity or certainty; rather, such a plurality may advance conditions of more meaningful communication, fairness and creativity.[68]

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[63] Macdonald (Emergence) *supra* note 8 at 20.
[64] Macdonald (Illuminating), *supra* note 44. Chapter Three "Cinematic Street Law" is organized around the belief that films are jurisgenerative and comprised of and comprising a plurality of normative orders.
[65] Davies (Ethos), *supra* note 7 at 29.
[66] Robert Cover, "The Uses of Jurisdictional Redundancy: Interest, Ideology and Innovation" (1980) 22 William & Mary Law Review 639 [hereinafter, Cover (Uses)]; Macdonald (Emergence) *supra* note 8.
[67] Macdonald (Emergence), *ibid.,* at 22.
[68] Cover (Uses), *supra* note 66.

Third, a critical legal pluralist ethos favours relationships in which compliance occurs through personal commitments arrived at without coercion or inducement.[69] As noted, the instrumental view of law does not fully account for our affective responses as relational beings: it is through our relationships that we constitute and circulate norms.[70] Law is a human activity and part of what makes us human. It is "neither possible nor comprehensible" to understand outside of "the networks of relationships" that we comprise and in which we all take part.[71]

We are always – though to varying degrees and in shifting contexts - actively engaging in law-making enterprises as legal *agents*.[72] Judges, lawyers, and other formally and institutionally recognized administrators do not possess a monopoly over the interpretation and generation of norms.[73] Moreover, it is often the norm-generating communities to which we belong that influence our beliefs and actions in ways that are more profound and immediate than any 'official' state-based rules. One critical legal pluralist endeavour may then be to look at how social actors negotiate and create their own normative

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[69] Macdonald (Governance), *supra* note 56 at 19.

[70] For instance, to Weber, there are at least four rationalities that govern an individual's social action: the instrumental/practical (our relationships with objects and other beings related to and calculated in terms of means, ends, and alternatives); value- based/theoretical (intrinsic ethical, moral, aesthetic, religious beliefs guide a sense of obligation or duty to act); affective/substantive (action is determined by an individual's feelings, emotions, pressures in a particular moment, situation, or interaction); and traditional/formal (our behaviour is in part learned habituation and develops through organization): Max Weber, "The Nature of Social Action" in W.G. Runciman, ed., *Weber: Selections in Translation* (Cambridge: University Press, 1991). See more recently, Macdonald and Sandomierski who argue that legal norms, whatever their form, site or the instruments that give them expression, are "imagined ... lived ... followed ... modified [and] ... rejected by human beings": Macdonald & Sandomierski, *supra* note 46 at 616.

[71] Jennifer Nedelsky, "Reconceiving Rights and Constitutionalism" (2008) 7 Journal of Human Rights 139 at 150 [hereinafter, Nedelsky (Rights)].

[72] Margaret Davies, "Pluralism and Legal Philosophy" (2006) 57 Northern Ireland Legal Quarterly 577; and Manderson (Provincial), *supra* note 60. To speak of agency, in the legal pluralist sense, is not to claim that our self-conceptions ever exist independently of the social structures within which they are embedded. Rather, the question of agency is always one of its relativity, its potential and its limitations. See for instance: Kleinhans & Macdonald, *supra* note 37.

[73] Macdonald & Sandomierski, *supra* note 46.

commitments through interactions (internalization). Another is to look at the ways in which they shape and inform the internalizing processes that generate norms (appropriation).[74] Internalizing processes include the consolidation of affective responses such as guilt, disgust, and fear or a desire to feel self-actualized. They may also be more cognitive responses such as a learned sense of obligation or shifts in 'legal consciousness' that alter our common sense approaches to thinking and talking about law.[75] For instance, we might consider the rules that define acceptable behaviour and which emerge from interactions - between 'norm entrepreneurs' (individuals, affiliations, states etc.) - who engage in persuasion and other practices to influence and ultimately shift our individual expectations.[76]

From this perspective, dissenting or non-conforming behaviour (whether through ignorance, carelessness, selfishness, context-specific acquiescence, passive or active resistance) may be an attempt to articulate a different image of normativity.[77] It is therefore imperative that we pay attention to law's more implicit and inferential instantiations.[78] It is

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[74] According to cultural psychologist Lev Vygotsky, a child will learn cultural habits of mind (words, speech patterns, and other symbolic knowledge) through interaction; the knowledge she acquires through interactions (especially with adults) represents the shared knowledge of the culture to which she belongs. The process of internalization is when a child gains mastery of the skills she has learned through these interactions. Appropriation occurs when the child utilizes these tools to her own devices and for her own purposes. See generally: Lev S. Vygotsky, *Mind in Society* (Cambridge, Harvard University Press: 1978).

[75] The literature on legal consciousness is rich. Beginning perhaps with Eugen Ehlich's living law in which he suggest a methodology for its study to Engle Merry, who defines law as "a complex repertoire of meanings and categories understood differently by people depending on their experience with and knowledge of the law": Eugene Ehrlich, "Das lebende Recht der Völker der Bukovina" (The Living Law of the Peoples in the Bukovina", 1 (1912) Recht Und Wirtschaft 273 and Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness Among Working-Class Americans* (Chicago: University of Chicago Press 1990) at 5. See also: Patricia Ewick & Susan Silbey, *The Common Place of Law: Stories of Everyday Life* (Chicago: University Press, 1998). More recently, Paul Schiff Berman has grappled with legal consciousness in the field of international law and how getting a better grasp of these internalized processes can give us a sense of how international law can be effective without 'teeth' or coercive sanctions: Paul Schiff Berman, "Seeing Beyond the Limits of International Law" (2006) 84:5 Texas Law Review 1265.

[76] For a critical review of various legal pluralist approaches: Paul Schiff Berman, "The New Legal Pluralism" (2009) 5 Annual Review of Law and Social Sciences 225 [hereinafter, Berman (Legal Pluralism)].

[77] Macdonald (Illuminating), *supra* note 44.

[78] Implicit law has been taken to mean the power-conferring rules that exist by virtue of the rule of recognition implicit in official law-making practices: Hart, *supra* note 3. It has also been understood as the general principles

through the imaginary, symbolic realm, the non-institutional, non-formulaic (or implicit and inferential) expressions of normativity, the pre-existing, received categories of law and legal knowledge and the interpretive practices that give them shape, that we will ignite the "tacit engine of legal change."[79] It is through the appropriation of symbolic and inferential expression of law that people construct their own law, their own regimes of governance.[80] I return to this point in Chapters Two ("Cinematic Legal Metaphors," especially the subsections devoted to the Close-Up and Tracking Shot),[81] Three ("Cinematic Street Law"), and Four ("Film as Law as Film").

A fourth assumption that informs critical legal pluralism is that we define acceptable behaviour and interact in ways that captivate our fluid, competing, and multiple notions of

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that are not explicitly enacted and yet recognized through the interpretive practices of the judiciary: Ronald Dworkin (Empire), *supra* note 4. However, Lon Fuller's conceptualization of implicit law departs from these accounts as he argues that law is most fundamentally informed and shaped by informal social practices. Lon Fuller, "Human Interaction and the Law" (1969) 14 American Journal of Jurisprudence 1. Postema provides a very helpful critical and constructive exposé of Fuller's account of implicit law: Gerald J. Postema, "Implicit Law" (1994) 13:3 Law and Philosophy 361. Working within and expanding the Fullerian framework, Macdonald offers the following definition of implicit law: "the normativity flowing from the reciprocal adjustment of expectations arising out of human interaction in the myriad social locations where this interaction occurs"; the normativity will flow whether "any official legal institution picks it up" or "whether any such institution even acknowledges its existence:" Macdonald (Illuminating), *supra* note 44 at 1131. Macdonald provides a heuristic through which norms can be understood along two axes. The first refers to normative *sites,* which can be explicit or implicit; the second refers to normative *modes* (how a norm is articulated), which can be formulaic or inferential: Roderick A. Macdonald, "Vers la reconnaissance d'une normativité implicite et inférentielle" (1986) VXIII Sociologie et sociétés 46. Whereas legislation is a prototypically explicit and formal norm, general principles tend to be inferential and unwritten. Whereas precedent is considered explicit and inferential, customary practices tend to be implicit but formal. See also: Roderick A. Macdonald, "Les vieilles gardes: hypothèses sur l'émergence des normes, l'internormativité" in Jean-Guy Belley, ed., *Le Droit Soluble: Contributions québécoises à l'étude de l'internormativité* (Paris: Librairie générale de droit et de jurisprudence, 1996) 233.

[79] Macdonald (Illuminating), *supra* note 44 at 1154; Roderick A. Macdonald & Jason MacLean, "No Toilets in Park" (2005) 50 McGill Law Journal 721.

[80] One's 'own law' remains within the relational understanding of autonomy as advanced by Nedelsky: (Rights), *supra* note 71. It is not used in the liberalist (Rawlsian) sense that every individual citizen has her own 'comprehensive doctrine' – their own views of the 'good life' – of right and evil – and tolerates her fellow citizens' equally reasonable views: John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1999).

[81] See *infra* 2.3.2. ("Street Law Through Shot/Reverse").

self. The self, as Levinas reminds us, is not a substance; it is a process.[82] Our selves-in-process shift and vary through our interactions, our morphing locations along axes of race, class, gender, age, ethnicity, sexuality, culture, geography, and materialize in "myriad nooks and crannies of everyday life".[83] We are socio-spatial, self-monitoring, self-reflexive creatures, always in formation, always in the process of becoming. As such, our normative commitments vary depending on our various configurations of self which are shaped and informed by our personal motivations, bonds to others, institutional affiliations, and identity markers (whether attributed to us by others or self-attributed).[84] Each of these aspects of our selves, the plurality of identities by which we live are variably ascribed by ourselves and also prescribed by others.[85]

As I elaborate in Chapters Two[86] and Three[87] individuals may feel bound to a web of multiple, sometimes conflicting legal regimes that reflect, reinforce, implement, and constitute

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[82] Being is a continual presence; it is in being through the face-to-face encounter (the "rupture of phenomenology") that we are get a sense of our responsibility to and for our 'other': Levinas (Time), *supra* note 16 at 104. And consequently, of our 'Other's' judgment: the 'Other' presents herself "from a dimension of height, a dimension of transcendence" whereby she can present herself "as stranger without opposing me as obstacle of enemy:" Emmanuel Levinas, *Totality and Infinity: An Essay on Exteriority* trans. by Alphonso Lingis (Pittsburghh Duquesne University Press, 1969).

[83] Holstein & Gubrium, *supra* note 16 at 215.

[84] Macdonald (Hypothèse) *supra* note 7 at 143. Critiques of a coherent, fixed, core or authentic 'self' abound. From various feminist perspectives, the boundaries between public and private, personal and the political, subject / object, and correspondingly of self / other have been blurred. Kristeva transposes the classical psychoanalytic conception of the self into an explicitly gendered discursive frame of analysis: Julia Kristeva, *Desire in Language: A Semiotic Approach to Literature and Art* (New York: Columbia University Press, 1980). Smith argues against the postmodernist approaches that found their critique on an individuated consciousness constituted wholly within discourse: Dorothy Smith, *Writing the Social: Critique, Theory and Investigations* (Toronto: University of Toronto Press, 1999). To Butler, gender identity is ascribed and constituted through the cultural forms that articulate them: Judith Butler, *Gender Troubles: Feminism and the Subversion of Identity* (London: Routledge, 1990). On the agential self as 'romanticized', see: Kenneth Gergen, *The Saturated Self: Dilemmas of Identity in Contemporary Life* (London: Sage, 1991). Finally, for a critical engagement with narrative theories and an emphasis on the performative and discursive features of the constitution of self: Derek Edwards, *Discourse and Cognition* (London: Sage, 1997).

[85] Our 'self' which is "more properly articulated in the plural, as 'selves'" is a "project of everyday life" or the network of stories we perform in our multiple social interactions and contexts: Holstein & Gubrium, *supra* note 16 at 13.

[86] *Infra* 2.3.2 ("Street Law Through Shot/Reverse").

shared and personal normative standards. These regimes may be attributed to various social groups to which we belong, whether families, clubs, communities, etc. They may emerge from our own normative locations along axes of race, class, gender, age, ethnicity, sexuality, culture, geography which morph throughout our everyday lives. They may also develop through our interaction with institutions, whether churches, prisons, schools, self-regulating bodies, corporations, etc. Street law emerges through these myriad relationships: individuals in interaction are the irreducible site of street law.

Fifth, as I explore throughout this dissertation, in each of these configurations of self, we constitute law as interpretive legal *agents* (as agential subjects) rather than simply as its *targets* (as objectified subjects). Legal pluralism destabilizes the belief that there is a primary, eternal legal interpreter (such as the 'judge') who can provide measured, objective and true interpretations of rules that exist beyond the individuals to whom they apply. Rather, the assumption is that we all mediate, interpret, harness, and make law and consequently perform, embody, and enact plural legal subjectivities (such as the negotiator, the law-maker, and the interpreter). We navigate our relationship to law, we make interpretive choices as to how we imagine or want to imagine law. Moreover, our navigation through life is not simply informed by law; it informs law, and in many respects, even comprises it.[88]

Finally, critical legal pluralism favours human creativity. It is an optimistic view of human interactions that conceives law as a framework for self-directed behaviour and the pursuit of individual or shared purposes. To this end, critical legal pluralism encourages a world-view of law (whether or not state-based) as flexible enough to accommodate multiple

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[87] See: *infra 3.*5.1 ("Law and Film") and 3.5.2 ("Cinematic Law").
[88] To the question, 'What is the law', Macdonald answers "whatever the person posing the question wants it to be": Macdonald (Illuminating), *supra* note 44 at 1140.

visions of the conditions that would further justice and alternative conceptions of the institutions through which those conditions may be fostered.[89] As I argue through my discussion of the *Korsakow System* (Chapter Four), governance, including formally and textually enacted rules, can be facilitative and constitutive rather than command-based. Law should point to abstract standards that help us recognize the responsibilities we share for (and to) each other. Law should suggest how we may attend to those duties with the understanding that people have the "capacity to divine what is expected of them."[90] This view begins with the assumption that people can live ethically, that they can and do show regard and care for each other. And so it also invites individuals to take responsibility for the forms and outcomes of legal processes in order to ensure that institutions – though themselves a source of articulation, negotiation and experiences of normativity - exist in the periphery of their daily lives and are limited to the rare moments when people act egregiously or irresponsibly.[91]

Taken together, these insights of critical legal pluralism suggest that the struggle to effect change (whether conceived in terms of values such as more meaningful relationships and justice for street-involved people or in terms of more direct aims such as the halting of regulative regimes that target the urban poor) must engage with law's plural, interpenetrating, interacting modes, forms, instruments and registers and correspondingly, the inter-subjective and agential possibilities that law can facilitate.

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[89] Macdonald (Governance), *supra* note 56 at 24.
[90] *Ibid.*
[91] *Ibid.*

1.2 Conceptual Map

Having discussed an ethos of critical legal pluralism which informs and gives shape to my research, I will now provide a conceptual map by way of a few conceptual signposts that surface and resurface throughout this dissertation. I then move to my methodological approaches[92] and various attempts at apprehending street law (Chapters Two, Three and Four). My research began in four broad strokes through four concepts that I wanted to work through: street-involved people, the cinematic, governance, and street law. Each of these is a symbolization of complex processes, interactions and practices which cannot be reduced to the words that I nonetheless use to describe them. Consequently, what I provide below are definitions-in-process. They have enabled me to structure my dissertation but their meanings have been un-iterated and re-iterated throughout the following chapters. It is by sketching out these concepts in an attempt to transcend them that the broader inquiry of my dissertation will be conveyed. Through these concepts, the story I hope to relay is that street law, which is constituted through, among other things, the governance of and by street-involved people, can be symbolized cinematically.

1.2.1 Street-Involved People

The legal agents who are the focus of my research are people to whom I refer as "street-involved." Defining, labeling and categorizing are ways in which we make sense of the world; inclusion and exclusion of information can fall toward binary oppositions (such as

[92] *Infra.* 1.3 ("Transdisciplinarity and Ambidexterity").

is and is not). Usually, street-involved people are defined in opposition to people who are *not* street-involved. Alternatively, we can consider how all legal agents cross and disrupt the distinction between street and non-street through their actions, interactions, beliefs and relationships. Many anti-poverty organizations are materially and spatially grounded on the street and are (at least to some degree) staffed by people who have at one point in their lives been street-involved. Interactions between 'staff' and 'clients' are therefore informed, but never entirely determined, by territorial boundaries such as being *on (*or *off*) the street.

Calgary's *Youth Recovery Coalition*, for instance, runs according to two potentially chaotic but nonetheless implicitly anti-definitional operational guidelines: a 'no boundary' rule (literally and figuratively)[93] and an unwritten policy that favours hiring youth who have lived on the street.[94] These practices favour the possibility of shared appreciation despite each individual's complex normative lives, the matrix of competing desires, expectations, habits, and values that guide his or her behaviour.

Nevertheless, I use the term "street-involved people" in ways that suggest that there exists an outside (or an opposite), namely people who are *not* street-involved. Such binaries are always embedded in power relations; yet, I use this particular opposition for heuristic as well as pragmatic purposes. In grappling with experiences from the perspective of being 'street-involved,' we can consider the taken-for-granted and very real differences that exist

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[93] By 'no boundary' organizers mean first that hugs are permitted and even encouraged and second, staff and volunteers will 'cross the line' to help their constituents. Amanda (one of the founding members and volunteers) explained to me that "if someone needs meth, we'll find it for them, whatever it takes." (Interview with Amanda on file with author).

[94] Amanda refers to herself as a "veggie burger with bacon" as she embodies both being on the street (having lived from street-level income generation) and off the street (now a university student and projects coordinator at the Coalition). See also: Youth Recovery Coalition, "Who we are", online: <http://www.youthrecoverycoalition.com/ >. Their guidelines suggest more meaningful ways to develop and sustain relationships organized around and in relation to other street users that blur the binary opposition between 'people on the street' and people 'from away' (Interview with Amanda, on file with author).

between those who do and do not generate income through interactions on the street. Difference, as Pierre Legrand reminds us, is "polymorphous" and need not be interpreted in a "divisive and impoverishing" manner.[95] Rather, it can be deployed as an affirmation of being; the act of "differentiation" provides us with a "vital capacity for action by enabling one to resist the erosion of boundaries between subjects, by allowing one to elude misrecognition or banishment, by permitting one to avoid violent confusions."[96]

With this conceptualization of difference in the foreground, a street-involved person for the purposes of this dissertation is an individual among the assemblage of people, who unlike people who are *not* street-involved, are homeless or precariously housed, and who engage in non–recognized, devalued, or prohibited income-generation and survival tactics on and through the 'street.'[97] Contrary to Orwell's assessment that there is a "sharp line between those who merely cadge and those who attempt to give some value for money,"[98] each person's approach to income generation and survival varies moment by moment, shifts with their narratives of selfhood, as anyone else's: fragmented, rhizomatic, situational, often inconsistent, and importantly, interactive.[99] Street-involved people, in spite of the figure that

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[95] Legrand is speaking in the context of comparative law and is critical of the quest for commonality founded on vague understandings of "the ontic" (or factual, real) "sameness of people:" Pierre Legrand, "The Same and the Different" in Pierre Legrand & Roderick Munday, eds., *Comparative Legal Studies: Traditions and Transitions* (Cambridge: Cambridge University Press, 2003) 240 at 258.

[96] *Ibid.* at 240.

[97] The income-generating and otherwise life-sustaining activities span a broad range including entertaining and busking, asking for change, transactioning around the sale of sex, holding doors, squeegeeing car windows, collecting empty cans and bottles, creating pavement art, engaging in licensed or unlicensed street trading and vending, and selling prescription and illegal drugs. This work may be their only source of income but more often than not, it is an additional source of income (as paid employment or receipt of some form of social assistance is generally insufficient to cover their basic needs). Others – usually people most in need of explicit and formal interventions by care workers because of addiction or other health concerns - engage in petty theft: Interviews with Eric, Karine, Marco, Michel, Richard, Samir (on file with author).

[98] George Orwell, *Down and Out in Paris and London* (London: Penguin Books, 2003) at 171.

[99] For a discussion on the narrative strategies we all employ, see: Jasmina Sermjin, Patrick Devlieger & Gerrit Loots, "The Narrative Construction of Self" (2008) 14:4 Qualitative Inquiry 632. For an exploration of how

recurs in much popular culture and scholarship around homelessness, are not merely 'derelict' older white men. Urban first nations' people at risk of, or currently experiencing, socio-economic marginalization, for instance, still have less access than their non-native counterparts to safe, stable, and long-term transition housing and related supports necessary to achieve more meaningful self-determinacy.[100] Single women (including single women with children) and youth are the fastest growing segments of the street-community.[101] Street-involved women face unique challenges in terms of maintaining sexual and reproductive health, being at risk of physical and sexual violence, and childcare responsibilities.[102] Street-involvement is not, furthermore, merely an urban phenomenon: street-involved people also move in, out, within and through rural spaces.[103]

Moreover, given the trend in most urban centers to evict people from public spaces at the same time as the growth in the 'shelter industry,'[104] many street-involved people do not necessarily *inhabit* the street—at least, not in the Bourdieusian sense of acquiring

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narrative operates in law, see: Martha Minow, "Stories in law" in Peter Brook & Paul Gewirtz, eds., *Law's Stories: Narrative and Rhetoric in the Law* (New Haven & London: Yale University Press, 1996) 2.

[100] The government of Canada launched the Urban Aboriginal Strategy in 1998 to address on-going socio-economic disparity between Aboriginal and non-Aboriginal people in urban centers, and among other things, the disproportionate number of homeless first nations people in urban centers across the country: Government of Canada, *Gathering Strength: Canada's Aboriginal Action Plan* (Ottawa: 1997). According to Statistics Canada, in 2001, forty-nine percent of population identifying aboriginal resided in urban centers. Compared to non-aboriginal counterparts, First Nations people in urban areas have lower levels of formal and accredited education, higher unemployment rates, and lower individual and family incomes. Longitudinal research indicates that aboriginal people make up between twenty and fifty percent of the urban street-involved population: Katherine Graham & Evelyn Peter, *Aboriginal Communities and Urban Sustainability* (Ottawa: Canadian Policy Research Networks, 2003).

[101] Angela Cheung & Stephen Hwang, "Risk of Death Among Homeless Women: A Cohort Study and Review of the Literature" (2004) 170:8 Canadian Medical Association Journal 1243.

[102] For instance, empirical research across jurisdictions in Canada has found that generally speaking women have lower rates of substance abuse than men, but have higher rates of depression. Single women are more likely to have serious health problems than women accompanied by children: *Ibid.*

[103] See generally: Cheryl Forchuk, *et al.,* "Gaining Ground, Losing Ground: The Paradoxes of Rural Homelessness" (2010) 42:2 Canadian Journal of Nursing Research 138.

[104] I use this term to refer to what others may call the 'shelter system,' or the assemblage of services and service providers that are funded by government, religious groups or other means to offer lodging to street-involved people.

dispositions “functioning on the practical level as categories of perception and assessment.”[105] While some street-involved people who ‘rough sleep’ derive a certain status in relation to other street-involved people who opt for shelters, they do not necessarily live in and through the street as a way of legitimizing their status or for overtly political purposes.

These popular myths about street-involvement set aside, it remains that the everyday and everynight negotiations and life-sustaining tactics of street-involved people are explicitly and implicitly regulated. As a result, street-involved people experience judicialization[106] and criminalization in ways that are generally uncommon for the vast majority of people whose race and class affords them access to more social power.[107] Indeed, people who are not street-involved tend to experience ‘the law’ and the formal, institutionalized criminal law especially, in ways that are more easily recognizable as ‘mediated’ (through popular culture and news for instance).[108]

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[105] Bourdieu develops his concept *habitus* as part of a theory of human action within fields of social constraint. *Habitus* is the system through which individuals struggle for social distinction; it is adopted through socialization, education, disposition, imitation, and evaluation; it is performed through the body, and especially through unconscious routines: Pierre Bourdieu, *The Logic of Practice* (Cambridge: University Press, 1990) [hereinafer, Bourideu (Practice)]. I use it here in the sense that for people that I consider to be street-involved, living on the street is not an identity marker nor is it necessarily the achievement of a conscious decision. Consider also Henri Lefebvre who emphasizes rhythms, the diverse temporalities of the street as a social space, meaning that the street is not a space that is necessarily appropriated in political ways: Henri Lefebvre, *Rhythmanalysis: Space, Time and Everyday Life* (London: Continuum, 2004).

[106] The term refers to the processes through which they are brought into the penal system but not necessarily by way of criminal regulation, but through provincial legislation regulating ‘safe streets’ and by-laws regulating the solicitation of alms for instance.

[107] There is a significant body of interdisciplinary work on the ‘criminalization’ of street-involvement and homelessness, but a seminal text remains: Lorne Sossin, "The Criminalization and Administration of the Homeless" (1996) 22 New York University Review of Law & Social Change 623. More recently: Diane Crocker & Val Marie Johnson, eds., *Poverty, Regulation and Social Justice* (Halfiax & Winnipeg: Fernwood Publishing, 2010). Unsurprisingly, it is a similar assemblage of people who make up incarcerated populations in Canada: Gillian Balfour & Elizabeth Comack, eds., *Criminalizing Women* (Halifax: Fernwood Publishing, 2006); Michael Jackson, *Justice Behind the Walls: Human Rights in Canadian Prisons* (Vancouver: Douglas & McIntyre 2002).

[108] I adopt Sarah Kember and Joanna Zylinska’s view that mediation is not a “translational or transparent layer … between independently existing entities” (such as the viewer and a film or a legal subject and the law); rather, it is a “complex and hybrid process” which is both limiting and productive. These processes usually occur simultaneously: Sarah Kember & Joanna Zylinska, "Creative Media Between Invention and Critique, Or What's Still at Stake in Performativity" (2010) 6 Culture Machine 1 at 2.

For the purposes of this dissertation, street-involved people are members of an amorphous and heterogeneous group that nonetheless shares similar socio-cultural and economic challenges: extreme poverty, unemployment or lack of a living wage[109], debt, little or insufficient access to required social programs, and unstable housing.[110]

Often these features of street-involvement are in direct relation to, or are at least compounded by, other features of their particular forms of racialization, intellectual disabilities, physical disabilities, abuse (whether physical, emotional, sexual or economic), addiction and other chronic health concerns.[111] Usually, these lived conditions are further exacerbated by or lead to increased experiences of marginalization, stress, and anxiety, and experiences of violence;[112] these experiences stem in part from the complex network of

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[109] Most street-involved people hold some form of employment – whether recognized work or not. In fact, a recent study in Saskatoon found that 75% of adult shelter users held full-time employment but were still unable to make ends meet: Nicola S. Chopin & J. Stephen Wormith, *Count of Saskatoon's Homeless Population:Research Findings* (Saskatoon: University of Saskatchewan Community-University Institute for Social Research 2008).

[110] As noted earlier, street-involved people are not necessarily 'homeless.' Some live in shared rental arrangements (that may or may not meet health and safety standards); others may squat or couch-surf (Interview with Yann on file with author). Of the street-involved people I have interviewed many have found that despite potential harassment by police, injury, exposure to extreme weather conditions, staying in temporary or transitional housing (such as hostels, rooming houses and emergency shelters) often renders them more vulnerable to: long term health concerns (high rates of tuberculosis, hepatitis B, HIV and AIDS); illness from mattresses with mould and bed bugs; scrutiny and judgment by staff and volunteers for consumption of alcohol or drug use (often for men); patronizing and controlling practices by staff and volunteers (often for women); and general annoyances with other shelter users (Interviews with France and Yann on file with author). That said there remain significant number of street-involved people who are without permanent shelter and who 'rough sleep' (on benches, in alley ways) or who erect temporary shelters (out of cardboard and other material). In *Victoria (City)* v. *Adams* (2008) B.C.L.R. 4th 116 (B.C.S.C.) at para 148, Justice Ross held that the municipal prohibition against erecting a temporary abode was overbroad and arbitrary and violated homeless people's right to life, liberty and security of the person (and violated section 7 of the *Charter of Rights and Freedoms*).

[111] The Colour of Poverty Campaign, *Understanding the Racialization of Poverty in Ontario* (Toronto: BestStart 2007). Stephen Hwang, *Health Care Utilization Among Homeless People* (Toronto: Centre for Research in Inner City Health, 2010).

[112] A history of mental illness or the chronic use of prescription drugs, painkillers and illegal substances places people at greater risk of becoming street-involved. A familiar argument is that with the well-intentioned but poorly executed deinstitutionalization, mental health patients began in the 1960s and 1970s, the community and the help sector was relied upon to care for these vulnerable populations. The rapid flow of mental health patients out of hospitals and into the community, however, was accompanied by a slow growth of community mental health services. With little access to resources and few long-term, holistic care models in place, many people with co-occurring mental health, substance use and stress-related concerns were left to their own

policies, practices, and decisions made by individuals advancing a view of risk and individual responsibility in relation to the question of poverty.[113]

1.2.2 CINEMATIC

In this dissertation, I engage with the jurisgenerative capacities of street-involved people through conceptual apparatuses borrowed from film studies, which I refer to as "cinematic" concepts. I outline below a few overlapping questions that occupy film theorists and filmmakers and which provide the foundation for my understanding of the cinematic artefact itself, its reception, its production, and the meanings it can generate.

First, 'cinema' is one of the defining technological and aesthetic audiovisual forms of our current cultural moment.[114] Within film studies,[115] cinema is often used to refer to a set

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devices: Patricia Sealy & Paul Whitehead, "Forty Years of Deinstitutionalization of Psychiatric Services in Canada: An Empirical Assessment" (2004) 9 Canadian Journal of Psychiatry 249. Further, street-involved people experience stress and anxiety around meeting their daily survival needs and are at a higher risk of experiencing physical violence; these conditions in turn increase mental health problems and the use of coping substances: Tim Riordan, *Exploring the Circle: Mental illness, Homelessness and the Criminal Justice System in Canada* (Ottawa: Library of Parliament, 2004). Finally, experiences of violence – whether at the hand of relative strangers or at the hands of people with whom they form relationships - are higher among street-involved people than for people who are permanently housed: Margo Pierce, "Hate Wave: Attacking Homeless People", online: (2010) Streetvibes Newspaper: http://streetvibes.wordpress.com/2010/07/01/hate-wave-attacking-homeless-people/>.

[113] I use risk here as discussed in Beck's works meaning "the modern approach to foresee and control the future consequences of human action:" Ulrich Beck, *World Risk Society* (Malden, Polity Press: 1999) at 3.

[114] As Rodowick argues, cinema is the "mature audiovisual culture of the twentieth century:" D.N. Rodowick, *The Virtual Life of Film* (Cambridge, Mass.: Harvard University Press, 2007) at 189.

[115] Film Studies is a diverse and contested area of inquiry and debate. *Film* is shorthand for *filmstrip*, the base and emulsion layers that make up the material onto which light rays are focused and which is processed in chemicals to produce film images. See generally, *The Oxford English Dictionary* 2nd ed., *s.v*. "cinema," "film," "film strip" and "movie." Given the technological and aesthetic shift away from analogue to digital media, it may be more accurate to speak of communications, cultural and media studies and to engage with multiple cinematic spatio-temporal media in terms of their artistic, entertainment, and normative dimensions. For a discussion of the 'fate' of cinema studies, see: Rodowick, *ibid*.

of cultural, technological, aesthetic, and economic institutions,[116] whereas film refers to both analog media and the 'new' digital media that are "imagined from the cinematic metaphor."[117] Cinema, then, includes digital technologies, television, video, film, and other audiovisual cultural artifacts "whose broad and indiscernible outlines we are only just beginning to distinguish."[118]

Second, film is not simply mimetic; it cannot be reduced to pure representation or reflection of social phenomena. Film theorists have speculated about the relationship between art, ideology and social orders. In contradistinction to earlier arguments that the film reel 'captures the real,' others put forth an account of the camera as a vehicle for ideology. Accordingly, in the hands of a particular filmmaker, film can convey meaning, guide and manage cognitive and emotional responses. Put differently, filmmakers deploy rhetorical and cinematic techniques to summons worldviews into being and to encourage critical thought. In the 1970s, some leftist film theorists argued that film is essentially an ideological state apparatus and an instrument for subjugation through which spectators are

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[116] Metz for instance draws a distinction between film, the signifying text and the object of film semiology and cinema, the multi-dimensional socio-cultural institution including the pre-, post-, and filmic events, such as the studio system, a film's circulation, and the physical space of the theatre: Christian Metz, *Film Language: A Semiotics of the Cinema* (Chicago: University of Chicago Press, 1974).

[117] As new media technologies (computer-generated images, digital cinematography, animation, and independently-generated sound) replace or at least displace chemical processing and optical printing, post-production differentiates *film* from other more photographic or indexical media. Indeed, few if any films today are produced without using animation and computer processing. For a critical discussion on filmic and digital media specificity in light of these technological shifts, see: Rodowick, *supra* note 114 at 12. Rodowick denies what he calls the myth that analog recording of the 'real' world is dangerously being replaced by empty "digital simulation" of lived reality. According to this story, the digital is coded as future-oriented with special-effects and spectacular representations whereas the analog conserves the present and expresses truthful and authentic experiences: *Ibid.* at 4. However, he argues that different processes allow for different kinds of symbolization as well as new concepts of *materiality*: "Unlike analogical representation, which have as their basis a transformation of substance isomorphic with an originating image, virtual representations derive all their powers from numerical manipulation … the transformation of matter in the electronic and digital arts takes place on a different atomic register and in a different conceptual domain. Whereas analog media record traces of events … digital media produce tokens of numbers: the constructive tools of Euclidian geometry are replaced by the computational tools of Cartesian geometry:" *Ibid.* at 9.

[118] *Ibid.* at viii. Drawing on this definition, I use film, video and cinema interchangeably.

constituted and positioned in unified ways.[119] Cinema can be considered an instrumental medium used by social actors who generate truth-claims by directing the gaze (first person) toward other social actors and phenomena (third person);[120] for my purposes, however, film mediates in a different matter.

That is to say, cinema shapes and reflects the social world and invites a perspective that exists in relation to the first person (the 'I'/'eye', the camera's gaze, the author's intention, the insider perspective), the second person (the 'thou', the object of perception) and, importantly, the third person (the audience's reception, the outsider's perspective). As medium, cinema provides and embodies a second and sometimes third order of perception. Through the experience of viewing, active audiences oscillate between subjective and objective perspectives, between conceding to, and critically reflecting upon, an image.[121] Audiences do not perceive what occurs in a film's world, according to Deleuze, "without simultaneously being reflected in a transcendental subject which thinks it and in which it thinks itself."[122]

Film has the potential to create its own movements (rhythms which cannot be reduced to techniques or stagnant images) and temporalities (durations which are not limited to a specific frame, a kind of shot, or a moment in producing).[123] Consequently, when we perceive cinematically then, we mediate at least two points of view on ourselves:

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[119] Metz, *supra* note 116.
[120] I will return to this point in Chapter Two in my discussion of *Copwatch* ("Shot/Reverse") and *HomelessNation* ("Tracking Shot").
[121] Gilles Deleuze, *Cinema One: The Movement-Image* (London: Athlone, 1986) [hereinafter, Deleuze (Cinema One); Laura Marks, *The Skin of the Film: Intercultural Cinema, Embodiment and the Senses* (Durham and London: Duke University Press, 2000).
[122] *Ibid* at p. 73.
[123] *Id.*

first, a "hither-and-thither of the spirit," and second, a "being with."[124] Cinema, for my purposes, is a multimodal (analogue or digital for instance), spatio-temporal medium that circulates and constitutes images[125] from a perspective that is neither subjective nor objective, nor propositional, but a "free indirect subjective" with its own consciousness and self-consciousness.[126]

Finally, there is a well-worn debate between constructionist and realist film scholars about the ontology of film, or what gives cinema its *cinematicity*. More recent accounts in the shifting terrain of cinema studies have abandoned the quest to determine film's ontology, mainly because questions of media specificity neglect the normativities at play in designating aesthetic rules for truly 'cinematic' film.[127] Yet, the question of what is cinematic remains.

To Rancière, cinema, like any other art, is not something "whose processes can be deduced from the specificity of its material and technical apparatuses"; rather, like painting and literature, "cinema is the name of an art whose meaning cuts across the borders between the arts."[128] Working within Rancière's reading of Deleuze, and departing from it somewhat, cinematicity refers, for my purposes, to a mode of thought, a form of theorizing

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[124] *Ibid.* at 74.

[125] By image I probably mean 'image-based' because I am not equipped to respond to the ontological conundrum posed by Rodowick who claims that 'new' media are forms "without image in the sense that what appears on electronic and digital screens does not fully conform to the criteria by which in the past we have come to recognize something as a created, aesthetic image:" *supra* note 114 at 94.

[126] Deleuze (Cinema One), *supra* note 121 at 74.

[127] As Noel Carroll and Jinhee Choi note, the 'ontologist' finds the kind of filmmaking she deems cinematic "inherent in the nature of cinema" because, she has in essence "put it there." Thus, a desire to discover film's specificities is no longer viewed as the best way to grapple with what is a 'cinematic' film: Noel Carroll & Jinhee Choi, "Introduction to Part II" in Noel Carrol & Jinhee Choi, eds., *Philosophy of Film and Motion Pictures: An Anthology* (Victoria: Blackwell Publishing, 2006) 51 at 53. Rancière writes that the aesthetic regime follows a basic law, "to graft one's art onto preexisting art and render its operations almost indiscernible from the prose of everyday stories and images"; the mainstream film industry then is simply "the most radical form of this law:" Jacques Rancière, *Film Fables*, trans. by Emiliano Battista (Oxford & New York: Berg Publishers, 2006) [hereinafter, Rancière (Film Fables)]. For a critical review of the debate around media specificity: Rodowick, *supra* note 114.

[128] Rancière (Film Fables), *ibid.* at 4.

that imagines cinema to be neither pure artifact nor pure artifice but rather a creative force in itself generating thought. Cinematographic images are, therefore, two things at once.

Films are the cinematic artifact as well as the "operations of an art that restores to the events of the world the power they had been deprived of by the opaque screen of the human brain."[129] In accordance with this view, in this dissertation, the cinematic, such as in 'cinematic legal metaphors' or 'cinematic street law,' refers to a mode of thinking, theorizing, and understanding our legal world-building in a *cinematic* register.

My aim is not to establish how my work in law is uniquely cinematic. Rather, one of my main claims, as will become more evident with each subsequent chapter, is that we already can and already do think cinematically about law and legally about cinema. I develop that claim by examining how we constitute 'street law' – that is the governance of and by street-involved people – among other ways, cinematically and through our interaction with cinema. Before moving to the concept of street law, however, I elaborate what I mean by 'governance.'

1.2.3 GOVERNANCE

In governance studies,[130] there are generally three overlapping conceptual frames for understanding how we govern and are governed: direct governance, governance at a

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[129] *Ibid.* at 9. Note that Rancière is critical of what he conceives as the lack of political potential in Deleuze's focus on the 'becoming imperceptible.' However, as Katherine Wolf argues, Deleuze's concept of the i*mperceptible* may well be akin to Rancière's *politics* as it refers to that which *must* be perceived but cannot be due to the circumscription of the sense experience in the *sensus communis*: Katharine Wolfe, "From Aesthetics to Politics: Rancière, Kant and Deleuze", online: (2006) Contemporary Aesthetics <http://www.contempaesthetics.org/newvolume/pages/article.php?articleID=382>.

[130] Attention to governance is considered a paradigmatic moment, a shift in critical socio-legal scholarship toward understanding how people are constituted and subjected through their everyday lives: Hunt (Constitutive), *supra* note 5.

distance and something in between.[131] Direct governance refers to practices that structure the field of action and restrict discretionary exercise by law's subjects. It is expressed visibly, formally and officially (especially through legislation and precedent); it takes the form of prohibitions or externalized commands.[132] Resistance to such governance is often imagined in terms of formal and official law reform or through acts of civil disobedience. Direct governance is not, however, inherently oppressive; it can be productive and relational, such as through the provision of services and resources by an external institution acting in response to the needs of individual legal subjects.[133]

Governing at a distance is often used as shorthand for neo-liberal practices, processes and regimes by which political power, expertise, and self-governance intersect and are embodied in a form of internalized normative inculcation.[134] Through their interactions with the state-based governance, individuals internalize rules, self-regulate, or constrain their behaviour – whether in line with or in resistance to the normative expectations

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[131] Cooper explores the nuances of each mode and suggests the final form of governance as 'mid-way:' Davina Cooper, *Governing Out of Order: Space, Law and the Politics of Belonging* (London: Rivers Oram Press, 1998) [hereinafter, Cooper (Out of Order)]. Building on these concepts, Davina Cooper suggests a framework that is based on "governing to excess" or "governing out of order." From this perspective, governance fosters the conditions in which legal subjects can contest assumed boundaries based on multiple premises, including political reality, political responsibility, political clarity, and political innovation: *Ibid.* at 167.

[132] *Ibid.* at 13 and 17. Michel Foucault, "The Subject and Power" (1982) 8 Summer Critical Inquiry 777.

[133] Cooper (Out of Order), *supra* note 131.

[134] To Rose this mode of governance corresponds with the shift away from direct control through state apparatuses and actors (codes, courts, police) to control "within a broader field of rationalities and technologies for the conduct of conduct": Nikolas Rose, "Government and Control" (2000) 40 British Journal of Criminology 321 at 324. The concept 'governance at a distance' was developed by Rose and Miller who draw on Michel Foucault's neologism 'governmentality' (which is "not a matter of imposing laws on men, but rather of disposing things … to employ tactics rather than laws, and if need be to use the laws themselves as tactics) and Bruno Latour's theory of technologies that foster 'action at a distance:' Michel Foucault, "Governmentality" in Graham Burchell, Colin Gordon & Petter Miller, eds., *The Foucault Effect: Studies in Governmentality* (Chicago: University of Chicago Press, 1991) 87 [hereinafter, Foucault (Governmentality)]. Bruno Latour, "Drawing Things Together " in Micheal Lynch & Steve Woolgar, eds., *Representation in Scientific Practice* (London: MIT Press, 1990) 19.

generated through expert knowledge.[135] Formal law is merely one of many tactics deployed to arrange populations.[136] The rules to which subjects adhere are accordingly of a general nature and "do not appear to originate anywhere in particular."[137] Subjects may engage in resistance to governance or "counter-politics."[138] However, they may also deploy more meaningful counter-tactics that are located within the realm of the 'technologies of self.'[139] Namely, they effect "by their own means … operations on their own bodies and souls, thoughts, conduct," transform themselves, and ultimately attain a measure of happiness.[140] The image of care of the self opens conceptual space to contemplate how we are governed as subjects of law, but also how we engage in the production of our own subjectivities through discourses and practices that are embedded in our daily lives.[141]

Finally, mid-way governing occurs through entities that attempt to map and configure the actions of their subjects but regulation occurs in personalized, individualized, visible, yet indirect ways.[142] The governed subject is aware of the tactics relied upon by the governing body and so she will not internalize its normative expectations. As a result, the governing

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[135] But see Valverde who points out that the domination by experts is "limited" and that it would be more meaningful for scholars to "abandon the unidirectional models provided by 'professionalization' and 'medicalization'" as there are multiple and non-systematic reasons "why popular and hybrid knowledges continue to flourish in many fields." These knowledges may compete directly or indirectly with expertise, and with varying degrees of success: Mariana Valverde, *Law's Dream of a Common Promise* (Princeton: Princeton University Press, 2003) at 3.

[136] Foucault (Governmentality), *supra* note 134 at 95. For a critical account of the "thinness" of Foucault's analysis of governmentality and a reworking of his thesis to discuss the government and rationalities of 'tolerance,' see: Wendy Brown, "Tolerance as Governmentality: Faltering Universalism, State Legitimacy, and State Violence" *supra* note 170 at 78.

[137] Cooper (Out of Order), *supra* note 131 at 101.

[138] Colin Gordon, "Governmental Rationality: An Introduction" in Burchell *et al, supra* note 132 at 5.

[139] Foucault (Governmentality), *supra* note 134.

[140] Michel Foucault, "Technologies of the Self: A Seminar with Michel Foucault" in Luther H. Martin, Huck Gutman & Patrick H Hutton, eds., *Technologies of the Self* (Amherst: University of Massachusetts Press, 1988) 16 at 18.

[141] For a critical review of government in the context of anti-poverty strategies, see: Joe Hermer, "Diverted Giving on the Winchester High Street" in Hartley Dean, ed., *Begging Questions: Street-Level Economic Activity and Social Policy Failure* (Bristol: Polity Press, 1999) 203.

[142] Cooper (Out of Order), *supra* note 131 at 101.

body will deploy less explicit strategies to generate its desired outcomes.[143] The concept of mid-way governing helps highlight that in any system of governance, there are always ruptures in formal, hierarchical relations.

Taken together, these three approaches to governance – direct, at a distance, and mid-way – highlight how in any scheme of governance, there is a plurality of authoritative entities, operations and applications which are not limited to state bodies; hat each of these normative sites is embedded in, and circulates, a range of ideological perspectives; that these perspectives, which while not necessarily visible, nonetheless operate as an elaboration of norms and other means of organizing social power; that each of these perspectives also emerges, to a degree, from the plurality of legal identities embodied by the legal subjects that in turn navigate and constitute multiple and often conflicting governance schemes; that these normative subjects are produced through shifting power relations; and that almost every area of social life, including our most personal and our most broadly social relationships, engage questions of governance.

While these understandings of governance inform my work, that I deploy in this dissertation moves beyond the realm of institutional governance and governable *subjects*' resistance to multiple modes of governance.[144] Instead, I favour a view of governance as facilitative and which includes caring relationships between legal *agents.* Governance is an on-going process of assessing and managing expectations and behaviours in ways that recognize and advance human *agency*.[145] As social beings, we always enjoy a measure of

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[143] *Id.*
[144] Or, as Cooper puts it, how the policies and activities are generated by multiple governing institutions and how legal subjects contest and reconstruct these policies as 'excessive:' Cooper (Out of Order), *supra* note 131 at 7.
[145] Macdonald (Governance), *supra* note 56.

decision-making power, we are always capable of making choices – though they may at times be infinitesimal – which occur within various economic, political, cultural or otherwise normative contexts and within institutions and structures that may constrain or promote conditions of choice. As human beings, Roderick Macdonald explains, we simultaneously perform and express our agency through self-governing behaviour as well as through our intentional or involuntary participation in governance structures "that we share with others and that channel the occasions for exercising that human agency."[146]

Most people will agree that interactions between strangers on the street require some form of governance. However, the 'target' of governance (the dimension of everyday life that requires some form of regulation), the appropriate bodies for governing interactions on the street and the means by which we wish to achieve that governance will shift depending on individual and collective beliefs. For our purposes, how and by what means street-involved people govern and are governed through their interactions with their interlocutors will necessarily be inflected by individual and collective beliefs about the material conditions of urban economic and social marginalization. These in turn will also be influenced by the kinds of relationships we want to facilitate among human beings, namely, in regard to the maintenance of our sense of selves, the giving of ourselves, and our relations to our 'others'.

My attempt in this dissertation is to further such a pragmatic and relational conception of governance. I do look critically at direct governance, as others have before me, to call into question the current explicit and formal legal practices that are experienced by street-involved people as oppressive. However, the ultimate aim of my research is not to develop a normative theory as 'the solution' to oppressive regimes of governance directed at street-

[146] *Ibid.* at 8.

involved people.[147] Rather, my approach to governance is more tentative. I invite street law constituents to consider what Tully calls "the practices and problematisations in which we find ourselves"[148] when we interact with others on the street. To this end, I do not propose to provide a 'thick description' of formal and explicit governance as experienced by street-involved people.[149] I do describe, however, some of the modes in which street-involved people govern (and are governed). I also use the language and concepts of cinema to move away from inherited ways of describing street law (be they explicitly enacted or inherently repressive). I attempt to re-describe it in a vocabulary that engages with governances' facilitative and relational potential that reside in multiple forms and modes governance. This new vocabulary requires conceptualizing governance both *of* and *by* street-involved people. My understanding of governance is that it can be part of a broader project that helps affirm street-involved people's self-understanding and their interlocutors' self-understanding as legal subjects struggling within contingent conditions of governance. Governance when conceptualized as facilitative can also help street-involved people and their interlocutors relate to one another as legal agents who can govern themselves differently than they currently do.[150]

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[147] Jim Tully, "Political Philosophy as a Critical Activity" (2002) 30 Political Theory 533.
[148] *Ibid.* at 534.
[149] To Clifford Geertz, the cultural study of law is *not* practice, nor should it suggest legal reforms. Instead, it is a theoretical exercise, a way of producing knowledge. This knowledge is produced through descriptions which "elaborate the structure of the imaginative possibilities within which a world of social meanings appears:" *Local Knowledges: Further Essays in Interpretive Anthropology* (New York: Basic Books, 1983) at 35.
[150] Tully, *supra* note 147 at 534.

1.2.4 STREET LAW

Street law consists of on-going processes of imagining and expressing interactions between people in a shared socio-spatial-temporal entity (the 'street') as governed by rules.[151] Street law occurs through interactions on the street between multiple legal agents embodying multiple, overlapping and sometimes competing subjectivities at once (e.g., pedestrians, consumers, public transportation officials, sanitation and construction workers, cyclists) and between legal agents and things (e.g., bank machines, parking meters, bus shelters, crosswalks, sidewalks, wheelchairs, baby carriages) as various street users navigate intersecting and sometimes conflicting orders of street law (e.g., normative frameworks regarding etiquette, the flow of pedestrian traffic, appropriate interactions).

Consequently, street law is not an autonomous body of rules and principles contained within a single institutional framework (such as the state); nor is its interpretation the sole province of institutional actors (such as the police).[152] Rather, it is "*real* law" as Reisman puts it: street law is "found in all human relations, from the simplest, briefest encounter between two people to the most inclusive and permanent type of interaction."[153] With this broader understanding of street law, I turn my attention to the mode of street law that is this dissertation's object of inquiry. My focus is on rule-governed interactions between street-involved people and their interlocutors as one example of a plurality of rule-governed interactions that constitute what I call street law. As rule-governed behaviour that is primarily

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[151] I derive this definition in large part from the work of Roderick Macdonald. See subsection 1.1.2. ("Critical Legal Pluralism").

[152] My point is not, however, to deny that police power and its deployment is a fundamental technology of governance. For an insightful interdisciplinary account of the scope and function of police as governing forces in urban spaces, see: Markus Dubber & Mariana Valverde, eds., *Police and the Liberal State* (Stanford: Stanford University Press, 2008).

[153] W. Michael Reisman, *Law in Brief Encounters* (New Haven & London: Yale University Press, 1999) at 2.

organized through face-to-face interactions, street law foregrounds questions of subjectivity, responsibility, and reciprocity. Street law (broadly conceived) and for the purposes of this dissertation, the governance of and by street-involved people, engages questions of the *gift*.

Gift-giving has been, and continues to be, an integral part of human relations.[154] Gift-giving serves numerous functions that engage multiple normative sites (whether social, economic, religious, aesthetic or legal). Gifts may stand in for non-tangible affective responses that are oriented towards others and are generally altruistic, such as respect, care, nurturing, friendship and love.[155] They may also, whether consciously or not, be deployed in ways that manipulate, demean, and even destroy others.[156] Gift exchanges can uphold bonds, a sense of belonging and loyalty between individuals, thereby constituting community (whether in the more idealistic sense or by generating connections necessary to

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[154] For an ethnographic and cultural study of the historical process of gift-giving and receiving in early modern France and its resonance today, see: Natalie Zemon Davis, *The Gift in Sixteenth-Century France* (Madison: University of Wisconsin Press, 2000). Davis builds from but ultimately argues against Mauss' linear narrative of the downgrading of gift relations to market exchanges.

[155] Cixous interprets gift relations through gender. To her, the quintessential gift is maternal love. While gratitude may destroy the gift, she argues that the gift is constituted through the relation between feminine and masculine economies. The latter refers to the Hegelian desire to possess and appropriate the other and organizes relationships around the possession of private property and the law of return. These economies are not fixed in biology. Rather, they correspond to different ways of being in regard to the preservation of self, the giving of oneself, and the relation to the other. She explains that while there can never be a free gift in the sense of giving something for nothing, "all difference lies in the why and how of the gift, in the values that the gesture of giving affirms, causes to circulate" - the nature of profit the giver draws from the gift and the uses to which she puts it. Consequently, the gift (contra Derrida), while at times demanding and difficult, is not impossible: Hélène Cixous, "Apprenticeship and Alienation: Clarice Lispector and Maurice Blanchot", *Readings: The Poetics of Blanchot, Joyce, Kafka, Kleist, Lispector and Tsvetayeva* (Minneapolis: University of Minnesota Press, 1991) 74 at 84.

[156] Emerson established the framework for gift theory: to study the gift is to interrogate the relationships between giftor and giftee. He believed that an unreciprocated gift leaves the giftee feeling indebted and frustrated by the encroachment upon her or his exercise of agency: Ralph Waldo Emerson, "Gifts", *Essays: Second Edition* (Boston James Osgoode & Company, 1874) 155. Anyone, Emerson cautions, can "receive anything from love ... but not from anyone who assumes to bestow." He adds that in gifts, the "waters" should be "at level," thus enabling gifts to pass from both parties in dynamic relation: at 159. To Bourdieu, however, gift-giving results in symbolic domination when it involves the "allocation of material goods" which is needed by the recipients. In bestowing gifts, the donor "transforms his or her status in the relationship from the dominant to the generous" and in accepting, the recipient "acquiesces" to the established social order: Bourdieu (Logic), *supra* note 105 at 127-28.

engage people in collective violence against 'others'). They can also annihilate such bonds (when used excessively, or to manipulative ends).[157]

Theorizing gift relations stems back at least as far as themes brought up by Nietzsche,[158] who in *The Voluntary Beggar* claims that there is an art to gift-giving and that indebtedness can make the receiver feel vengeful.[159] However, it is with Mauss' reflection on the norms that govern pre-modern 'giving and receiving,' and importantly, 'giving in return,' that the exchange of gifts became a framework for theorizing complex socio-economic arrangements and, more recently, for generating guidelines for ethical relationships.[160] The norm of reciprocity, according to Mauss, is the governing principle of gift exchanges. As a hybrid of generosity and self-interest, the concept often remains heavily weighted with assumptions about rational actors and a contractarian view of law. To some of Mauss' anti-utilitarian interlocutor, for a true gift to exist, there can *never* be reciprocity. The gift relation dies the moment there is debt, gratitude, restitution or counter-gift.[161]

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[157] Aafke Komter, "Gifts and Social Relations, The Mechanisms of Reciprocity", online: (2007) Revue du MAUSS permanente <http://www.journaldumauss.net/spip.php?article17>.

[158] Indeed, Pacora's genealogy of gift makes connections between contemporary conceptions of gift and Aristotle's distinction between *agoras* and *oikos*: Vincent Pecora, *Households of the Soul* (Baltimore: Johns Hopkins University Press, 1997).

[159] Friedrich Nietzsche, "The Voluntary Beggar", *Thus Spoke Zarathustra: A Book for None and All* (New York: Penguin, 1974) 268. In other work, he imagines economies in which gifts can be bestowed without expectation of return. He distinguishes between two economies that give rise to different conceptualizations of justice: in slave economy, there can be no forgiveness of debt by the creditor; whereas in the noble economy, interactions are governed "not by pity, but prompted more by an urge begotten by excess of power:" Friedrich Nietzsche, *On the Genealogy of Morals*, trans. by Keith Ansell-Pearson (Cambridge: University Press, 1994) at 259-60.

[160] Mauss argues that the gift "engages, links magically, religiously, morally, juridically" its giver and its receiver; ultimately the giver holds "power over the one who accepts it." To dismantle such hierarchies, we must struggle for equitable distribution of wealth: Marcel Mauss, *The Gift:The Form and Reasons for Exchange in Archaic Societies*, trans. by W.D. Halls (London & New York Routledge, 1990). For an introduction to gift literature, see: Mark Osteen, ed., *The Question of the Gift: Essays Across Disciplines* (New York: Routledge, 2002); Alan Schrift, ed., *The Logic of the Gift: Toward an Ethic of Generosity* (London & New York: Routledge, 1997). The former is a collection of contemporary gift theorizing from Mauss, Emerson and Beneviste through deconstructionist reappraisals. The latter presents more recent interventions and new work on gift exchange.

[161] Jacques Derrida, *Given Time: 1. Counterfeit Money* (Chicago & London: The University of Chicago Press, 1992). Similarly, in 'Of hospitality,' he elaborates that for the act of inviting someone into our home to be hospitality, it must be without expectation that they will either confer to our norms or provide reciprocation of the

To others such as Cixous and Godbout, calculation and reciprocity are not central to the gift. Gift-giving plays with freedom and obligation in ways that eschew common sense understandings of behaviour as either free (calculated, instrumental, rational) or as determined (stemming from unilateral obedience to externally imposed rules). Instead, respect, dignity, forgiveness, love, and compassion are the values and aspects of human relationships most fostered through gifts. Accordingly, the gift exchange is an inter-subjective event and the norms that govern it are often implicit, uncertain, unarticulated and unarticulatable.[162] It is this understanding of the complexities of how gift-giving is governed which I argue can be deployed to challenge orthodox understandings of street law.

Joe Hermer has suggested as much in relation to one particular interaction that is constitutive of street law: panhandling (the request for spare change from a relative stranger).[163] He persuasively argues that imagining these street-level interactions as gift encounters is a means of "testing the constitutional soundness of anti-begging legislation" and especially of exposing the normative and discriminatory application of such street law. The gift helps us understand how particular street-involved people are governed (for Hermer, 'beggars').[164] Its richness as a conceptual framework, however, is that it also brings us

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hospitable act": Jacques Derrida, *Of Hospitality*, trans. by Rachel Bowlby (Stanford: Stanford University Press, 2000). Bataille argues for the overhaul of utilitarian rationalities which provide the basis for a "restrictive economy." He favours a "general economy" based on the non-productive excess and waste that animates the potlatch: Georges Bataille, *The Accused Share: An Essay on General Economy, Volume 1: Consumption*, trans. by Robert Hurley (New York: Zone Books, 1988). More recently still, Aafke Komter has argued that gifts reflect a multi-faceted and multi-purpose *symbolic* utility that transcends both utilitarianism and anti-utilitarianism: *supra* note 157.

[162] Cixous (Alienation), *supra* note 155 at 74; Godbout (Gifts) *supra* note 14; and Jacques Godbout, "Homo Donator versus Homo Oeconomicus" in Antoon Vandevelde, ed., *Gifts and Interests* (Leuven: Peeters, Bondgenotenlaan, 2000) 23.

[163] Joe Hermer, "Gift Encounters: Conceptualizing the Elements of Begging Conduct" (2001) 56 University of Miami Law Review 77 [hereinafter Hermer (Gift Encounters)].

[164] *Ibid.* at 79.

beyond the realm of street law as formal, written, and externally imposed on street-involved people.

Despite a well-founded assumption that explicit and formalized street law (such as municipal by-laws regulating pedestrians, provincial legislation regulating vehicular traffic, and criminal law provisions against vagrancy-type behaviour)[165] are highly visible and palpable in the lives of street-involved people,[166] that mode of street law should not, by virtue of its source alone (the State), be afforded more scrutiny than other sites, forms and instruments.[167]

Rather than a structure that exists entirely outside the street-involved community, street law is generated and develops as an on-going and open-ended process and is constituted through the *interactions* that occur between multiple (irreducibly plural) legal subjects/agents. The conceptualization of street law – as a matrix of gift interactions –

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[165] I say 'vagrancy-type' offences because in theory, vagrancy has been decriminalized in Canada since 1972. While the history of vagrancy law stems as far back as the middle Ages in England, in Canada, the offence of vagrancy was codified in the *Criminal Code of Canada*, S.C. 1892, c. 29. Section 207 of that legislation defines who will be considered "loose, idle or disorderly" and section 208 which provides that the crime of vagrancy can be fined or imprisoned "with or without hard labour" for a term no longer than six months: *Ledwith v. Roberts*, [1937] 1 K.B. 232 (C.A.); *R. v. Munroe* (1983), 5 C.C.C. (3rd) 217 (O.C.A.). According to Constance Backhouse, however, there are earlier instantiations of vagrancy legislation, such as Nova Scotia's *An Act to amend and make more effectual the laws relating to rogues, vagabonds, and other idle and disorderly persons, and houses of correction*: Constance Backhouse, "Nineteenth-Century Canadian Prostitution Law: Reflections of a Discriminatory Society" (1985) 18 Histoire Sociale – Social History 387. Nevertheless, under the *Criminal Code*, vagrancy was considered a status offense insofar as the crime attached to individuals for 'being' loose, idle or disorderly rather than the doing anything specifically referred to in the Code's provisions. The *Code* was amended in the 1950s to shift focus away from 'being vagrant' to engaging in particular acts: *Criminal Code of Canada* S.C. 1953-54, c. 51. Nevertheless, as noted by the Supreme Court in *Heywood*, these provisions nonetheless related to the status of the accused rather than the nature of the acts committed by that person: *R* v. *Heywood* [1994] 3 S.C.R. 361. In that decision, the Court determined that the vagrancy provisions offended section 7 of the *Charter* for being overbroad and they could not be saved under section 1. In 1972, the federal government removed vagrancy-related offences from the criminal code: *Criminal Law Amendment Act*, S.C. 1972, c. 13, s. 12.

[166] I do nonetheless acknowledge and critically engage with many such modes and sites of street law in Chapter Two.

[167] To Anderson, for instance, we should favour critical inquiries into all exercises of political authority, not merely those which are state-based: Gavin Anderson, *Constitutional Rights After Globalization* (London: Hart Co., 2005) at 143. Macdonald adds that we should investigate all sites where rules are meant to govern interactions: Macdonald (Illuminating), *supra* note 44.

furthers the perspective that every street-user (whether or not they are street-involved) is a legal subject ("law-attending") *and* a legal agent ("law-creating").[168] While institutionally empowered actors (police officers and judges for instance) constitute street law, so do street-involved people and their other (more tacit, less explicit) everyday/everynight interlocutors.[169] Put differently, each of us is constituted and is constituting oneself as legal agent (some who apprehends, appraises, and instantiates street law) through our interactions on the street.[170]

Each of us constructs deploys and circulates discourses about these interactions; our engagement in these discursive moments is exemplified by a range of communicative activities and other iterations of those interactions: for example, having conversations, viewing cinematic depictions, listening to news reports, reading policy documents etc. As a consequence, within each street-user there are multiple, shifting, complicated normative commitments that are interpreted, tested, reinforced, nuanced, adjusted and/or destabilized through interactions with other street users. No street law entrepreneur can "switch on and off our basic (and plural) normative infrastructures such as language, cultural heritage, gender expectations, class background and ingrained notions of racial identity."[171]

Street-involved people may elicit a range of emotional and affective responses from their interlocutors. Each of these responses builds and assuages the tension between

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[168] Because we all simultaneously apprehend and create street law, we each make our own unique contribution to the circulation of stories and ideas about street law. This distinction between attending to and creating law is borrowed from: Roderick A. Macdonald & Clarisse Kehler Siebert, "Orchestrating Legal Multilingualism: 12 Études" in Jean-Claude Gémar & Nicholas Kasirer, eds., *Jurilinguistique: entre langues et droits / Jurilinguistic: Between Law and Language* (Montreal: Thémis, 2005) 377 at 385.

[169] I borrow the term from Dorothy Smith for whom our "everyday/everynight" worlds are those "we experience directly," those in which "we are located physically and socially;" they are necessarily local and always historically specific: *The Everyday World as Problematic: A Feminist Sociology* (Toronto: University of Toronto Press, 1987) at 90.

[170] For a rich discussion of how we all represent and evaluate space and law in the street, see: Nick Blomley, "How to Turn a Beggar into a Bus Stop: Law, Traffic and the 'Function of Place'" (2007) 44:9 Urban Studies 1697 [hereinafter, Blomley (Beggar)].

[171] Davies (Ethos), *supra* note 7 at 27.

repulsion and desire or law's regressive and productive potential. Importantly, we can have completely divergent responses to the same kind of interaction in any given moment. As Margaret Davies puts it, we respond to others "on the basis of the intersecting demands of our own ethical beliefs, our location in a social field, prevailing discourses about right and wrong and any number of more practical considerations."[172] For instance, to some street users (some of the time), the urban poor elicit affective responses stemming from fear of contagion (of disease, of poverty itself) disdain, distrust, disgust, and hatred.[173] These (momentary perhaps) responses form the basis of many (fixed) intrusive and visible formal and official (state-based) regulation of interactions on the street. Such regulation, as Wendy Brown notes, is different from *governance*: it is far more entangled in notions of disapproval and tolerance or conditional acceptance of behaviour which is considered undesirable or deviant. [174] As a result of such rigid responses to malleable and shifting affective responses, the capacities of other street law constituents (especially street-involved people) to resolve

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[172] *Ibid.* at 11.

[173] On paranoia as anticipatory and mimetic and therefore contagious: Eve Sedgwick, "Paranoid Reading and Reparative Reading: or, You're So Paranoid, You Probably Think This Introduction Is about Your" in Eve Sedgwick, ed., *Novel Gazing* (Durham: Duke University Press, 1997) 1-22 and 99-114. On shame as being, unlike other affects that tend to reinforce distinctions between subjects and objects, "an experience of the self by the self:" Eve Kosofsky Sedgwick & Adam Frank, "Shame in the Cybernetic Fold" in Eve Kosofsky Sedgwick, Adam Frank & Irving Alexander, eds., *Shame and its Sisters: A Silvan Tomkins Reader* (Durham: Duke University Press, 1995) 1 at 36. Martha Nussbaum has argued that disgust embodies "magical ideas" about contamination and especially "impossible aspirations to purity that are just not in line with human life as we know it:" *Hiding From Humanity: Disgust, Shame, and the Law* (Princeton, NJ: Princeton University Press, 2004) at 161.

[174] Wendy Brown, *Regulating Aversion: Tolerance in the Age of Identity and Empire* (Princeton: Princeton University Press, 2008). Similarly, to Douzinas, whereas *rules* are normative propositions that prescribe general and abstract measures of right and wrong and ascribe entitlements and duties to a broad category of legal subjects, regulations (regulatory practices) have a different *normalizing* effect. As "detailed, specific, and discretionary," they "change in accordance with the vagaries of the situation and the contingency of the administrative involvement; they distribute benefits, facilities and positions according to policy choices rather than entitlement; they construct small-scale institutions, they assign variable and changing roles to subjects, they plan local and micro-relations and they discipline people and agencies by arranging them along lines of normal behaviour:" Costas Douzinas, "Law and Justice in Postmodernity" in Steven Connor, ed., *The Cambridge Companion to Postmodernism* (Cambridge: Cambridge University Press, 2004) 196 at 197.

conflict, to represent, contest, uphold and generate law, and to promote conditions of reciprocity, agency, and care is devalued and even suppressed.

Rather than the 'risk' frameworks through which we can perceive street-involved people as threats (such as those that feature prominently in formal, explicitly enacted written instruments of governance), gift theory holds potential to engage what Jacques Godbout calls the "implicit and the unsaid" which "reign supreme" in interactions between strangers on the street.[175]

Within the framework of gift, street-involved people may be considered as individuals who embody the symptoms of breakdown in gift relationships. As noted above, while it is true that street-involvement is almost always a direct result of poverty, it is also profoundly associated with breakdown in heterogeneous close interpersonal relationships - whether through bereavement, loss of employment, abuse, or a lack of community support. The reconstitution of each of these kinds of relationships requires attentive, fluid, and plural other-regarding action toward street-involved people by their interlocutors who feel morally compelled to intervene.

Some of these responses will occur from what Nel Noddings refers to as natural caring - love, sympathy or compassion – whereas others will require ethical caring -more reasoned, deliberate acts that are required when these other impulses fail – whether out of annoyance, exhaustion, or frustration.[176] The affective responses that govern ethical care, such as guilt or shame, may be considered negative, yet as Elspeth Probyn has argued, they can also

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[175] Godbout (Gifts), *supra* note 14 at 4-5.

[176] According to Noddings' care theory, "ethical caring" is "subordinate to natural caring – relationships that require no moral effort but are sustained out of love, sympathy, compassion, generosity, good humor, and receptive attention." Ethical caring is consequently "required when, for whatever reason, natural caring fails:" Nel Noddings, "Caring as Relation and Virtue in Teaching" in Rebecca L. Walker & Philip J. Ivanhoe, eds., *Working Virtue: Virtue Ethics and Contemporary Moral Problems* (Oxford: Clarendon Press, 2007) 41 at 54.

inspire us to “feel proximity differently.”[177] These are the kinds of relationships that bend and stretch beyond the logic of contracts, of exchange, and of mutual obligation and bring us closer to the ethics of responsibility for one another.

1.3 TRANSDISCIPLINARITY AND AMBIDEXTERITY

Having provided a philosophical framework and conceptual map for my dissertation, in the next subsections, I discuss the methodological question of transdisciplinarity and the ambidextrous research practices through which I appraise the sites, sights, and media of street law.

1.3.1 TRANSDISCIPLINARITY

Transdisciplinarity raises a vexing and somewhat tautological question of the ‘discipline’. Disciplines are tools, methods, instances, procedures, concepts, and theories that strive to coherently account for social phenomena.[178] At their least interesting, disciplinary frameworks can be institutionalized and self-sustaining systems, processes and practices that promote the conditions where experts claim explanatory authority in relation to aspects of the social world.[179] Yet, as Rorty found, disciplines emerged from a desire to

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[177] Elspeth Probyn, *Blush: Faces of Shame* (Minneapolis: University Press, 2005) at 34. As with Sedgwick, her reading of shame draws heavily on Tomkins who argued that in shame we “wish to continue to look and to be looked at” and “also do not wish to do so:” Silvan Tomkins, "Shame - Humiliation and Contempt - Disgust" in Sedgwick *et al*, *supra* note 173 at 137.

[178] Julie Thompson Klein, *Interdisciplinarity: History, Theory and Practice* (Detroit: Wayne State University Press, 1990).

[179] On how truth claims amount to specialized and privileged forms of power-knowledge, see: Michel Foucault, *Discipline and Punish*, trans. by A.M. Sheridan Smith (London: Penguin, 1977) [hereinafter, Foucault (Discipline)]; Carol Smart, *Feminism and the Power of the Law* (London: Routledge, 1989). On the mutually

abandon confrontation for dialogue as "the determinant" of our beliefs and representational conventions.[180] Conversely, contemporary scholars in most disciplines have invited their colleagues to develop frameworks and modes of producing knowledge that challenge unyielding orthodoxies and established claims of authority.[181] They invite a blurring of boundaries, a transdisciplinarity, and irreverence toward common sense assumptions. Transdisciplinary methods invite different ways of seeing, or what some might call moral perception, because their pursuits move beyond the modes of apprehending and organizing knowledge that stymie our imaginations, our affective responses, and ultimately our ethical judgment.[182]

In his crosscutting of cinema and philosophy, Gilles Deleuze proposes that the "the encounter" between disciplines does not take place simply when "one begins to reflect on the other" but rather when "one discipline realizes that it has to resolve, for itself and by its own means, a problem similar to one confronted by the other."[183] Interdisciplinary practices should therefore begin from the premise that more meaningful knowledge is created when we acknowledge and still expand disciplinary boundaries, critically engage with established

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constitutive relationship between disciplinarity and professionalism in English common law, see: Brian Abel-Smith & Robert Stevens, *Lawyers and the Courts: A Sociological Study of the English Legal System* (London: Heinemann, 1967).

[180] Richard Rorty, *Philosophy and the Mirror of Nature* (Oxford: Blackwell, 1986) 163.

[181] As Robert Cover writes, often the "most profound determinants of our thought are those of which we are least conscious." He goes on to say that when these dimensions of knowledge construction are socially embedded and relative, we are "beset by the gravest anxiety and anger when we unwittingly come across a different and distinct epistemology:" Cover (Uses), *supra* note 66.

[182] For instance, Lawrence Blum's interdisciplinary project associates contemporary moral philosophy with a psychology of moral agency: Lawrence Blum, *Moral Perception and Particularity* (Cambridge: Cambridge University Press, 1994).

[183]Gilles Deleuze, "The Brain is the Screen: An Interview with Gilles Deleuze" in Gregory Flaxman, ed., *The Brain is the Screen: Deleuze and the Philosophy of Cinema* (Minneapolis: University of Minnesota Press, 2000) 365 at 367.

shared assumptions and ultimately recast and reformulate disciplines into something that 'belongs to no one.'[184]

Despite anxieties expressed by some legal theorists about law's absorption, appropriation and rejection *of* or *by* other disciplines, law, like any other specialized knowledge, is not a closed, self-sufficient, or autonomous field.[185] And yet, if we take it as true that interdisciplinary scholarship has become "an expected part of a serious scholar's work" in law, or that it is "more pervasive than ever" in law faculties, crossing disciplines is, for the most part, performed by maintaining intact the two source disciplines and drawing on other disciplines' methods and sources.[186] Critical scholars developing approaches to law that are found within, and at the interstices of, other disciplines, urge that such explorations

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[184] Roland Barthes, *The Rustle of Language*, trans. by Richard Howard (Berkeley: University of California Press, 1972) at 72.

[185] Teubner relies on the physiological/biological metaphor 'autopoiesis' to describe how law receives non-legal data and meaning, absorbs it, and ultimately transforms it into law. Law is an autonomous and self-sustaining "epistemic subject" that develops its own mode of thinking and constructs its own social reality: Gunther Teubner, ed., *Autopoietic Law: A New Approach to Law and Society* (New York: de Gruyter, 1987). To Stanley Fish, law's very sleight of hand is its capacity to create the conditions of its own existence: Stanley Fish, "The Law Wishes to Have a Formal Existence" in Alan Norrie, ed., *Closure or Critique: New Directions for Legal Theory* (Edinburgh Edinburgh University Press, 1993) 157. And, as Robert Van Krieken has argued, law's relationship to other disciplines is "organized around either (a) a displacement of alternative sources of explanatory authority or (b) the appropriation of the knowledge produced by the other disciplines in order to enhance that privileged position, without granting authority to other modes of knowledge production:" "Law's Autonomy in Action: Anthropology and History in Court" (2006) 15:4 Social & Legal Studies 574.

[186] To Balkin, because of its desire to form professionals, its belief in a teachable set of skills, and its lack of methodology, law is a weak academic discipline and susceptible to encroachment by other disciplines; however, because of its close ties to the profession, law can never be entirely absorbed by another discipline: Jack M. Balkin, "Interdisciplinarity as Colonization" (1996) 53 Washington and Lee Law Review 949 at 950. Feldman locates interdisciplinary work within the broader conversation about the theory / practice distinction in law. He argues that by drawing on other disciplines, legal scholars, "distance themselves ever further from the skills and concerns of practitioners:" Stephen M. Feldman, "Transformation of an Academic Discipline: Law Professors in the Past and Future (or Toy Story Too), The Law Professors as Academics and Teachers" (2004) 54:4 Journal of Legal Education 471 at 489. Feldman seems optimistic about transdisciplinarity in law and finds legal academics far more "creative and synthetic" than "mechanical" and yet fears that legal scholars trained in other disciplines will "have strong commitments to maintaining" the integrity of their own discipline instead of "encouraging interdisciplinary creativity:" at 494-95.

should transform, disrupt or undo initial categories, such as 'law,' 'film' and 'society'.[187] Some point to a lack of scholarly effort in law to create interdisciplinary legal artifacts that are explicitly organized through other forms of knowledge.[188] Scholarship should instead be produced from the starting point that any legal inquiry is already embedded in other theoretical frameworks and methods.

More recently, legal scholars, whether through cross-textual explanation, critical comparison, or performance, suggest a new field of transdisciplinary practices in law.[189] I locate my work in relation to these transdisciplinary projects. For instance, my research is in close dialogue with other scholarship at the nexus of law and film. As I elaborate in Chapter Three, there is a diverse and growing community of legal thinkers engaging with the doctrinal, pedagogical, jurisprudential, and epistemological relevance of film *to* law. Some map out how film practices are governed by explicit and formal law; others deploy film theory

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[187]Coombe argues that transdisciplinary efforts should not merely compare approaches but question disciplinary boundaries altogether: Rosemary Coombe, "Contingent Articulations: A Critical Cultural Studies of Law" in Austin Sarat & Kearns Thomas, eds., *Law in the Domains of Culture* (Ann Arbor: University of Michigan Press, 1998) 21 at 22 [hereinafter, Coombe (Contingent)].

[188] Roderick Macdonald, "Transdisciplinarity and Trust" in Margaret Somerville & David Rapport, eds., *Transdicsiplinarity: Recreating Integrated Knowledge* (Oxford: EOLSS Publishers, 2000) 61; Roderick Macdonald & Jonathan Widell, "Office Politics (Again)!" (2005) 20:2 Canadian Journal of Law and Society / Revue canadienne droit et société 1.

[189] On an interdisciplinary pedagogical exercise – the Shakespeare Moot - organized around the posture that Shakespeare's entire oeuvre, and only his oeuvre *is* law, is binding authority: Desmond Manderson & Paul Yachnin, "Love on Trial: Nature, Law and Same-Sex Marriage in the Court of Shakespeare" (2004) 49 McGill Law Journal 465. For a judgment performed through poetry: Roderick A. Macdonald, "Concurring Opinion" (2004) 49 McGill Law Journal 501. On the Nguarrara Canvas – a collaborative painting representing multiple areas of responsibility – which represents and performs law and shatters conventional, colonial and imperialist assumptions about land, identity and entitlement: Anker, *supra* note 52. Presenting twelve piano *études* to suggest difficulties that emerge in orchestrating legal multilingualism: Macdonald & Kehler Siebert, *supra* note 168. Arguing that the image of unity in marriage is more beautifully and effectively conveyed in F.R. Scott's poetry than in his legal writing, and, better still, in the pictorial accounts of Marian Dale Scott's artwork: Nicholas Kasirer, "The Dance is One" (2008) 20:2 Law and Literature 69. Using dream-like narratives to argue in favour of the use of images, sounds and stories in legal education: Desmond Manderson, "Desert Island: Ten Reveries on Inter-Disciplinary Pedagogy in Law" (2008) 2:1 Public Space: The Journal of Law and Social Justice 1. Finally, Lassonde argues that dance performances are new modes for appreciating embodied societal norms: Julie Lassonde, "Embodying Norms: A Personal Reflexion on my Interdisciplinary Artistic Practice" in Mark Harvey, ed., *Scopic Bodies* (Auckland: National Institute of Creative Arts and Industries, 2009) 4.

to ‘read’ particular films as legal texts; others grapple with how actors in institutional norm-generating sites (such as courtrooms) deploy cinematic media; still others work through the ‘cinematic law’ (the generic or stylistic rules and formal qualities that demand sufficient predictability with the right amount of variations and contingency in order to maintain audience’s interest). Some of this interdisciplinary work is instrumental in that it is motivated by the desire to *transform* one discipline (law) through knowledge from another ‘humanizing’ discipline (film). Cinema, accordingly, provides the methods to cast a critical gaze upon law from some outside perspective.[190] However, my ambidextrous approach both reflects and distinguishes itself from these other ways of engaging the law-film nexus.

On one level, I do not assume law and film to be entirely separate disciplines. I am embedded in law and in film studies. I am guided by the theoretical signposts of each. I deploy, consequently, legal and cinematic methods equally and interchangeably. [191]

The written and filmic articulations of my work, as I discuss below, are not two analogous ‘texts’ telling the same story in a different register. Rather, my attempt at learned dexterity is both rupturing and bonding: I begin from the view that law and film, as separate disciplines, are not simply ways of defining and defending modes of producing and circulating knowledge. Both are permeable “loci of creation, sensation, [and] substance”.[192] I also begin

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[190] I am opposed to the view that ‘other’ disciplines provide the standpoint from which the scholar can turn her mind to the ‘practical problems of law’ and develop and “objective conception of the law” as articulated in Richard Posner, *Frontiers of Legal Theory* (Cambridge: University Press, 2001).

[191] Trinh T. Minh-ha argues that artists must be “polyvalent” in their skills and roles to render the label ‘artist’ simplistic and the notion of being an artist as opposed to an academic as reductive as defining oneself according to a unitary and fixed subjectivity: Minh-Ha Trihn T, *When the Moon Waxes Red: Representation, Gender and Cultural Politics* (New York: Routledge, 1991) at 108. Paul de Man has referred to all such de-canonical translations as a form of “wandering” and “permanent exile:” Paul de Man, *Theory and History of Literature, Volume 33: The Resistance to Theory* (Minneapolis: University of Minnesotta 1986) at 92.

[192] For an expression of law as a sensory organ with an essential role for the community in which it functions: W. T. Eijsbouts, "Law, Limit, Life: Reflections on the Irish Legal System as a Sensory Organ" (1999) 24 The Irish Review 9 at 9.

from the view that the cinematic dimension of human experience already exists within law and the legal dimension of human experience already exists within film.[193] I argue that it is different to look at a normative order through film's lens rather than through law's gaze. Yet these sights are never entirely disconnected. As a result, I explore how two socio-cultural symbolisms – film and law – interact, whether as conflicting, complementary, mutually constitutive, or alternative normative modes and sites.

1.3.2 AMBIDEXTROUS PRACTICES

There are challenges to what I call ambidextrous research, for my purposes in law and film, as charges of dilettantism or lack of rigor directed at scholars working at their nexus seem to indicate.[194] Nevertheless, such scholarship can open up truly innovative and experimental possibilities. Indeed, as Macdonald and Siebert argue, the more exact our notion of what law should look and feel like, "the less we are able to see the tacit within formal texts or the implicit of informal law."[195] Instead, "[l]aw is lived when we choose to overcome convention and form" and quite simply "pay attention"[196] to the world around us. At its best, then, ambidexterity permits us to look and look again, demands creativity and

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[193] Here insight from law and aesthetics is helpful. See for instance: Costas Douzinas & Lynda Nead, "Law and Aesthetics" in Costas Douzinas & Lynda Nead, eds., *Law and the Image: The Authority of Art and the Aesthetics of Law* (Chicago: University of Chicago Press, 1999) 1-15. Manderson (Songs), *supra* note 25.

[194] For instance, some law-film thinkers are attempting to establish a consistent method of inquiry into 'law films.' There seems concern about film studies' encroachment on law's disciplinary boundaries. And so, they entreat others in the field to work from a canon – drawn overwhelmingly from the 'Western' Hollywood system – determined appropriate for legal study: Steve Greenfield, Guy Osborn & Peter Robson, *Film and the Law* (London & Sydney: Cavendish, 2001); and Guy Osborn, "Borders and Boundaries: Locating the Law in Film" (2001) 28:1 Journal of Law and Society 164. While I respect their innovation in the law-film field, I critically engage with their approach somewhat in Chapter Three "Cinematic Street Law," (especially *infra* 3.3 "Law in Film").

[195] Macdonald & Kehler Siebert, *supra* note 168 at 389.

[196] *Id*.

allows for ambiguity in that exercise. These spaces of creativity and ambiguity in turn can encourage collaboration and new modes of interaction— and ultimately, for my purposes, new models of law and new models of cinema.

As a doctoral project located at the nexus of law and film, it seems appropriate that my dissertation be exists in two modalities for apprehending street law: the written and the cinematic. I call this enterprise an 'ambidextrous' research practice.[197] I attempt to overcome the forms and conventions through which we imagine street law. My approach raises two questions. First, what is the significance of deploying two differently realized media? Second, how do they relate to one another?

Differently Realized Media

While not analogous texts, the two differently realized media I produce serve different purposes and engage differently with discursive and presentational modes of communication. Scholars have long grappled with the specificities of discursive (linguistic) and presentational (symbolic) forms of circulating information. Langer most elaborately draws a distinction between linguistic and presentational forms. According to her symbolic theory, the function of art is to represent the world in the non-discursive (presentational) mode rather than a discursive (linguistic) mode. All art is intrinsically expressive (non-discursive constructed expressions) and no work of art (not even literature) is linguistic because art carries no "conventional references;" presentational forms have no "conventional meaning."[198]

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[197] I use the term here as a learned dexterity in both conceptual modes, the ability to act "in two opposite directions" rather than in the negative sense of "double-dealing" (originally attributed to dishonesty in the legal profession): *The Oxford English Dictionary* 2nd ed., *s.v*. "dexterity."

[198] Susanne Langer, *Philosophy in a New Key: A Study of the Symbolism of Reason, Rite and Art,* 3rd ed. (Cambridge: Harvard University Press, 1954) at 32. In later work, Langer explains that art is a "symbol of

There are stories and concepts which may be more easily apprehended through linguistically oriented media while others may be more meaningfully apprehended through expressively oriented media. In any event, neither form of circulating knowledge is mutually exclusive and they carry equal weight in communication processes. We use different media – such as the written text or cinema – because each enables us to foreground some aspects of life and submerge others and thereby to tell different stories about the same phenomenon. In short, any symbolisms or symbols we use to instantiate law will combine linguistic and expressive attributes, though the scale may differ from utterance to utterance.[199]

This understanding is significant to my critical legal pluralist hypothesis of street law. Macdonald makes the cogent remark that law's forms are not "instrumentally normative" and therefore, there must be "alternative linguistic vehicles for enacting legal rules."[200] Further, as legal normativity is also expressed in non-linguistic forms, so too are there "non-linguistic symbolic discourse designed to suggest new legal practices."[201] Law is not only articulated linguistically; it takes on diverse and often fragmented symbolic modes; it is in itself, a

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feeling," meaning a device through which we can make an abstraction: *Feeling and Form: A Theory of Art Developed from Philosophy in a New Key* (London: Routledge and Kegan Paul, 1953) [hereinafter, Langer (Feeling)]. She argues that 'feeling' is not the subjective state of the artist but the "articulation and presentation" of ideas and concepts. It refers to a range of "movements" and "states" of human subjectivity – whether nameable or not. Art is a symbol, an abstraction (whether or not it is abstract) and it always expresses something beyond itself: esp. at 187. To Goffman, who writes from a sociological tradition, linguistic messages whether shared in type, by spoken word, or through images, are voluntary, calculated and intended. In contradistinction, expressive messages are incidental, spontaneous, and involuntary. However, he finds that every linguistic message carries expressive information, every expressive message carries linguistic information, and the "most concrete messages" combine linguistic and expressive elements: Erving Goffman, *Behaviour in Public Places: Notes on the Social Organization of Gatherings* (New York: Free Press, 1963) at 16.

[199]For a detailed historical exploration of how words began as icons and the imagistic link that words retain: Duncan Davies, Diana Bathurst & Robin Bathurst, *The Telling Image: The Changing Balance between Pictures and Words in a Technological Age* (Oxford: Clarendon Press, 1999). In the context of legal scholarship, this point has been explored in: Macdonald & Kehler Siebert, *supra* note 168.

[200] Roderick A. Macdonald, "Jamais deux sans trois ... Once Reform, Twice Commission, Thrice Law" (2007) 22:2 Canadian Journal of Law and Society / Revue canadienne droit et société 117 at 134 [hereinafter, Macdonald (Jamais deux)].

[201] *Id.*

hypothesis about the world and how to behave justly within in it.[202] Law requires multiple perspectives and understandings in order to unknot the complex of concerns that arise when we consider our responsibilities to each other.

Multiple modes of communication converge in any artifacts; it remains, nonetheless, that certain forms of symbolization will be more effective for some purposes than for others. These two modes of communication are not placed in hierarchical order. Scholars have argued against received ideas that words carry more meaning than images (which merely supply information) or, alternatively that images (which speak a universal language) carry more meaning than words.[203] Paradigmatic legal and cinematic theories (positivism in law and psychoanalysis in film) continue nevertheless to oppose the symbolic order of language to the imaginary order of the visual.

While words and images can communicate things differently, to entirely extricate the textual from film or the cinematic from text would be to return to a reductive and mythological distinction between the analytic, rational and theoretical (and thereby reliable) written or spoken word,[204] and the emotional, mediated, and intuitive (and thereby unreliable) image; or alternatively, the mechanical, indexical, and mimetic (and therefore truthful) audiovisual media and written texts are subject to the contingences of interpretation and are therefore

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[202] Roderick A. Macdonald, "Triangulating Social Law Reform" in Ysolde Gendreau, ed., *Dessiner la société par le droit / Mapping Society Through Law* (Montreal: Les Éditions Thémis, 2004) 118.
[203] *Infra* 2.1.1 ("Beyond Visuality").
[204] Historically, the courts have been suspicious of film as potentially deceptive medium whose truth-claims require explicit and 'live' authentication through testimony (the performance of memory). See for instance: Philip Auslander, *Liveness: Performance in a Mediatized Culture* (London & New York: Routledge, 1999). Auslander argues against claims that performance is a site of resistance because it operates beyond mass reproduction. To him, memory is a deep structure of legal language, both "a policed site and mechanism of regulation" and performed testimony that will reveal information about the ethical character of the parties through face-to-face confrontation: at 154. See also Schwartz' genealogy of the judicial decisions permitting visual evidence in the United States: Louis-George Schwartz, *Mechanical Witness: A History of Motion Picture Evidence in U.S. Courts* (Oxford: Oxford University Press, 2009).

unreliable. A less suspicious version of such a distinction is that we turn to different forms to express complex meanings. To Roland Barthes, for instance, the 'photographic paradox' can be reduced to the impossibility of communicating the meaning of a photograph through language.[205] To Blanchot, literature consists of "trying to speak" when "speaking becomes most difficult."[206]

The written and cinematic perspectives that I offer are two ways, among several, to perceive street law and to understand transformative legal practices regarding the governance of and by street-involved people. Each stands on its own as an attempt to embody the richness of its particular mode of communication and its media's forms, conventions, structures and rules. On one level, whereas the written narrative *names* relationships and interactions that constitute street law, the cinematic iteration *illustrates* them. On another, the written narrative illustrates through metaphor and through references to film while the cinematic narrative names through the voices of the street-involved people and through titles and intertitles that can "load" particular sequences with "a culture, a moral, and imagination".[207]

The written narrative is linear and carries a discursive role. It does so through expressive elements (mainly metaphor). Some parts of the written monograph of my dissertation are organized through an interactionist view of metaphor to suggest contingent meanings about street law. The metaphoric register is an endeavour to foreground sites of

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[205] Roland Barthes, *Camera Lucida: Reflections on Photography* (New York: Hill and Wang, 1981) at 12.
[206] Maurice Blanchot, "Kafka and Literature", *The Work of Fire* (Stanford: University Press, 1995) 12 at 17.
[207] Roland Barthes, *Image. Music. Text.* (New York: Hill & Wang, 1977) at 26.

street law to which dominant discourses about the governance of and by street-involved people may be less attentive.[208] Others draw directly on cinematic media as a source of law.

The cinematic narrative is non-linear, has an expressive role, but includes discursive elements (mainly technical and definitional practices). The cinematic instantiation is guided by the critical legal pluralist hypothesis which reminds us that law is not only instantiated in linguistic precepts generated from the state (such as statutes and case law) but that it takes on diverse and sometimes fragmented symbolic forms.[209] As normativity is not the exclusive domain of official written legal forms, the cinematic instantiation of my project is an attempt to gesture toward alternative conceptions and practices of governance of and by the street community.[210] In short, like other modes of story-telling, the written narrative, which is organized through metaphor (Chapter Two), cinematic modes of story-telling (Chapter Three) and analogy (Chapter Four), wants to 'show' (rather than 'tell') some shared experiences of governance through street law.[211] Correspondingly, like other modes of embodied media, the cinematic narrative aspires to engage *vusers* (viewers/users) to 'feel' in order to 'know' something about street law.[212]

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[208] Discourse is used here to mean social language which is authorized to inform us of how to speak and behave. To Foucault, discourse "is the thing for which and by which there is struggle, discourse is the power to be seized:" Michel Foucault, "The Order of Discourse" in Robert Young, ed., *Untying the Text: A Post-Structural Reader* (London: Routledge, 1981) at 53.

[209] Street law's *linguistic* instantiations are not limited to those that emerge from the state; law is also generated through, among other things, scholarly publications (such as those grappling with the law-film relation), formal codes of conduct (such as those of the *Panhandler's Union* in Ottawa), formal intake forms (recorded at drop-in centers), informal and unofficial records (end of shift notes taken by members of the *Dans la rue* crew in Montreal).

[210] On the potential of non-linguistic modes of law reform: Macdonald (Illuminating), *supra* note 44 at 1158.

[211] To Hayden White, story-telling is less one code among many to be deployed to endow experience with meaning but rather a "meta-code, a human universal on the basis of which transcultural messages about the nature of shared reality can be transmitted:" Hayden White, *The Content of the Form: Narrative Discourse and Historical Representation* (Baltimore: Johns Hopkins University Press, 1987) at 1.

[212] The term '*vuser*,' as I elaborate in Chapter Four ("Film as Law as Film") is a term employed by Bill Seaman to get at the process through which the viewer/user co-constitutes the endlessly possible interactive artistic experiences when they engage with interactive media: William Seaman, *Recombinant Poetics: Emergent*

Both written text and non-linear film are experimental and creative events and therefore have no "prescriptive procedure to be applied mechanically."[213] Both are an attempt at correcting the dominant modes of communication in law that marginalizes more embodied ways of knowing.[214] Nevertheless, as written words and cinematic images can be incongruent with complex lived experiences, both symbolizations articulate the governance by and of street-involved people in partial and limited ways. Consequently, each can highlight and aspire to transcend the other's partiality and limitations.

TRANSPOSITIONS

There are at least two ways of thinking about the relation between the two modes through which I instantiate my research. First, these differently realized media (the text, the film) might be considered as separate and supplementary in the sense that one documents, while the other shapes, street law. Accordingly, the written narrative could be considered a constative mode of representing street law, making truth-claims about it as an independent state of affairs.[215] Correspondingly, the filmic narrative would be a performative mode, constituting street law through creativity and representation rather than truth-claims.[216]

Meaning as Examined and Explored Within a Specific Generative Virtual Environment (Mauritus: VDM Verlay, 2010).

[213] Minh-Ha, *supra* note 191 at 26.

[214] Elizabeth Adjin-Tettey *et al.*, "Postcards from the Edge (Of Empire)" (2008) 5:38 Social and Legal Studies 8. I elaborate this point in Chapter Two (especially "Cinema as Embodied Perception").

[215] Constative utterances, according to J.L. Austin's ordinary language philosophy are descriptive; they report events or a state of affairs in such a way that one can determine whether or not they are true or false: J. L. Austin, "Performative-Constative," in *Philosophy of Language*, J. R. Searle, ed. (Oxford: Oxford University Press, 1971) 13-22 at 13.

[216] Performative utterances do not simply report or describe. The performative enacts what it names. It is constitutive (rather than reflective) when it is uttered according to a particular procedure, by a person with the authority to make the utterance, and by someone who does so with sincerity of conduct and in the correct manner: J.L. Austin, *How to Do Things with Words* (Oxford: Oxford University Press, 1980) at p. 57 [hereinafter, Austin (Words)] and (Performative), *ibid* at 14-15. In advancing the claim that memory is a cultural not merely

In an alternate version of the same story, the filmic narrative, abiding by the precepts of non-interventionist documentary, could be a constative mode of representation: the camera eye would capture the interactions that constitute street law. Consequently, the written narrative would organize and construct street law through its representation.[217] The distinct roles attributed to the constative and performative functions of communication, however, have long been collapsed. J.L. Austin, drew, but ultimately rejected his own performative-constative distinction; he argues that all languages, all utterances have performative and constative dimensions.[218]

I prefer a second way to think about how these different media relate to one another: they are performatives (distinct types of utterance that connect words with actions) in dynamic relation to the other. To speak of the dynamic rapport between these different modes of apprehending street law is not to deny that they serve different purposes. Again, the distinction should not serve to normalize a hierarchical position of words to images (and

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an individual faculty, Connerton relies on performatives that are not limited to verbal or inscribed utterances. Rather, they are embedded in gestures, movements, and postures and transmitted "in, and as, traditions": Paul Connerton, *How Societies Remember* (Cambridge: Cambridge University Press, 1989) at 5. Judith Butler argues against conservative appreciation of free speech (which conflates speech and actions) because they presume an unconstrained, agential, and sovereign subject. Performativity refers to the ways in which language produces that which it names. Yet language is never entirely social or entirely semantic: Judith Butler, *Excitable Speech: A Politics of the Performative* (New York: Routledge, 1997). On the deployment of performativity to argue that the use of theatre in teaching and learning law invites analysis of identity that is fluid, mutable, and shifting while at the same time illuminating how systemic factors place constraints on law's engagement with this conception of identity: Gillian Calder, "Embodied Law: Theatre of the Oppressed in the Law School Classroom" (2009) 1 Masks 1.

[217] Each of these stories favours particular conceptions of law and of art. Often, law is the symbol of unity, discipline and sobriety in relation to its playful and imaginative counter-part: art. See Douzinas and Nead argue against this separation of art and law: Douzinas & Need, "Law and Aesthetics" in Douzinas & Nead, *supra* note 193 at 1. In film studies, Nichols locates documentary film alongside law, science, economics and politics. But whereas these other disciplines are "discourses of sobriety" that seldom make recourse to fiction and have their own claims to the 'real,' documentary film can blur entertainment and knowledge in ways that open possibilities of new understandings. Bill Nichols, *Representing Reality: Issues and Concepts in Documentary* (Bloomington, Indiana: University Press, 1991).

[218] He calls these utterances speech acts, of which he distinguishes the meaningful, the conventional and the non-conventional: Austin (Words), *supra* note 216 at 150.

other related dichotomies like exterior and interior selves, intellect and emotion, mind and body, law and non-law). These artifacts did not emerge and cannot exist entirely independent of each other. The goal of my ambidextrous approach is not to compare two artifacts but to consider the relation that can occur at the encounter of these two differently realized, yet complementary, media that wrestle with the same social phenomenon.

Transposition is a more powerful metaphor than dialogue or intertextuality (the presence of utterances from other texts within a text); it stands in for the unstable processes through which multiple media commingle (a written text and a film for my purposes) and do not have to be posited as separate to be in a relationship. Transposition refers to how two sign systems are permutable and flexed into each other and how through our experiences of reading/viewing, subject positions shift as a result. Consequently, it brings about new associations and denotations for readers/viewers.[219] As will become more plain in Chapter Four ("Film as Law as Film"), my aim is to perform a transposition of one symbolism of law, through and onto another, to generate new understandings about street law.

1.4 Beyond Established Shots

With these assumptions, concepts, and methods in mind, the next Chapter is my first of three case studies on street law's *sites, sights* and *media* that help us move us beyond

[219] Working with and from Bakhtin's notion of dialogism, Julia Kristeva develops the concept of *transposition* as the unstable and dynamic processes through which differently realized 'sign systems' collide: Mikhail Bakhtin, *The Dialogic Imagination: Four Essays* (Austin: University of Texas Press, 1981); Julia Kristeva, *Revolution in Poetic Language* trans. by Thomas Gora, Alice Jardine & Leon Roudiez (New York: Columbia University Press, 1984). The conception is not new however. To Dilthey, transposition involves understanding: to understand a text, an act or an artifact we must relate to it from the realm of the mental life, introspection, and signification: Wilhelm Dilthey, "Transposition, Re-Creating and Re-Experiencing" in Rudolph Makkreel & Frithjof Rodi, eds., *Selected Works Volume III: The Formation of the Historical World in the Human Sciences* (Princeton: Princeton University Press, 2002) 234.

established understandings of street law. Throughout the following chapters, I begin from the view that law is about human relationships as facilitated by rules that develop through our interactions with one another. I do not grant official state-based street law a central place in my analysis. My point is not that law, as more conventionally conceived, (namely, state-based rules backed by threat of sanction that pre-exist the legal subject) is irrelevant to my broader project. In fact, in my enquiry into street law, I often juxtapose the more standard and conventional perspectives of law with the pluralist critique of that understanding. These two perspectives overlap and intersect but do not necessarily yield a synthesis.

We can think of law formally and explicitly. Simultaneously, we can think of law symbolically, abstractly, culturally, and as the result of interactions between people. Nevertheless, neither positivist nor pluralist understandings can fully *incorporate* the other. Yet, it is in grappling with their mutual influence on one another that rich understandings may emerge: it is so because formal law can bear the markers of, and emerge from, informal law just as informal law can reproduce official and explicitly enacted legal forms.[220]

In the next chapter, I deploy concepts from cinema to think about the street law – whether formal, informal, explicit or implicit - in a metaphorical register. This attempt is grounded in empirical research on street-involved people's various normative engagements and the multiple legalities they navigate.

[220] As Macdonald and Kehler Siebert put it, "implicit law is not the official absence of law; tacit law is not the absence of official law:" *supra* note 168 at 389.

CHAPTER TWO: CINEMATIC LEGAL METAPHORS

Quand je pense à quelque chose, en fait je pense à autre chose toujours.[221]

In this chapter I use metaphors taken from cinema to imagine law as navigated, interpreted and constructed by street-involved people.[222] These *sights* of street law, I argue, are different from the perspectives instantiated in legislation designed to classify and regulate street-involved people. They are also different from the perspectives instantiated in some critical leftist discourses which have emerged in response to such regulatory regimes. Cinematic legal metaphors provide insight into other modes of interactions and the normative commitments from which they are informed. To emphasize these normative sites may, I argue, displace skeptical and instrumentalist views of street law for other instantiations. These alternative ways of symbolizing relationships may hold the potential to sustain or further conditions of agency and autonomy for street-involved people.[223]

No analytic provides a complete view of the complexity by which human beings psychically, physically, and socially negotiate the relations of power, shared commitments, and personal expectations which I refer to as street law. I turn to cinema to apprehend street law from multiple vantage points and sometimes even, as Godard suggests, from somewhere else entirely. In this chapter, I develop metaphors that imagine street law from

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[221] Jean-Luc Godard, *Éloge de l'Amour* (2001).

[222] Recall, from Chapter One, that I use street law as shorthand for the multiple modes, sites and instruments through and by which street-involved people govern and are governed.

[223] Following Nedelsky, agency and autonomy include other psycho-social states, such as self-determination, comprehension, confidence, dignity, efficacy, respect and some degree of peace and security from oppressive power." Jennifer Nedelsky, "Reconceiving Autonomy: Sources, Thoughts, and Possibilities" (1989) 1:7 Yale Journal of Law and Feminism 7 at 12 [hereinafter, Nedelsky (Autonomy)].

various perspectives by drawing on the vocabulary and concepts from 'elsewhere:' cinema studies. I develop four perceptual frames that I call *cinematic legal metaphors*.

In Part One, I explain the interactionist view of metaphor that informs my understanding of cinema as a meaningful media/medium of street law. In the first instance, I argue that each metaphor functions in two ways simultaneously to provide new *sights* of street law: providing a perspective on the externally imposed and formally instantiated rules that attempt to govern street-involved people's uses of urban spaces and providing a perspective of the ways in which street-law is constituted through informal interactions and implicit values that inform interactions between street-involved people and their interlocutors. Importantly, even though I argue that these metaphors provide new *sights*, they cannot, by their very cinemacity, be limited to the visual register. Indeed, as I elaborate, it is by virtue of what makes them cinematic that they invite embodied responses to the oppressive governance *of* street-involved people while opening possibility for more ethical perception of the ways in which all street users are governed *by* their interactions with street-involved people.

In the second instance, I maintain that cinema has always had an intricate connection with the city. I also agree with recent scholarly attention to what Philippopoulos-Mihalopoulas calls "lawscapes"[224] – the myriad normative orders that comprise cities. Consequently, cinematic legal metaphors provide a meaningful alternative symbolic mode through which to grapple with law that is specific to particular normative *sites* - urban spaces and especially the city street.

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[224] Philippopoulos-Mihalopoulos, *supra* note 52 at 1.

In Part Two, I consider a cluster of metaphors taken collectively as 'revanchist'[225] symbolizations of how legal subjects are governed through law in city spaces. Metaphors such as the city as panoptic, punitive, divided, and beyond the realm of justice reflect and constitute urban spaces as a conflict zone between different rights bearers (such as the propertied and the unpropertied, the watchers and the watched, the panhandler and her other, the street and the non-street community). I go on to discuss how these conceptualizations have been used pragmatically by anti-poverty activists in Montreal to call out oppressive interactions between street-involved people and official state actors, practices, and policies.

In Part Three, I present four alternative metaphors for grappling with street law in the city of Montreal: Aerial Viewpoint, Shot/Reverse sequence, Close-up and Tracking Shot. I aver that these cinematic metaphors concurrently support and suggest alternative perspectives to the revanchist framing of the relationship between law and the city circulated by some anti-poverty activists. Namely, an Aerial Viewpoint of the city of Montreal and a Shot/Reverse sequence between street-involved people and formal legal actors both work well to highlight how street law can be an externally wielded force directed at the most vulnerable members of society. Unlike revanchist metaphors of those relationships, however (which have a regulatory force of their own and one that often reinforces law's 'subjects' as passive victims of dominant interests), the cinematic legal metaphors I deploy can also be recast to invite attention to a plurality of street law's administrators, interpreters and agents. Similarly, interactions between street-involved people and their interlocutors, perceived through a Close-up may favour law's objectifying gaze or open the possibility of more ethical

[225] Smith (Revanchist), *supra* note 22.

perceptions. While I argue that these three perspectives (Aerial Viewpoint, Shot/Reverse sequence, and Close-up) are necessary for a more nuanced understanding of street law, it is ultimately the Tracking Shot which holds the most potential for ethically perceiving the normative expectations, commitments and interpretations that street-involved people and their interlocutors reflect, embody, reinforce, and create in their multiple networks of interactions on the street.

2.1 METAPHORS FOR APPREHENDING LAW

In developing the four cinematic legal metaphors for street law, I work within an interactionist understanding of metaphor that consists of two parts. The topic (or the target) is that about which something is said. The vehicle (or the source) is the concept used to convey meaning about the topic or target.[226] The tension that exists between source and target or the constellation of meanings that are produced when cinema is understood as a source of law can only arise because there are sufficient similarities that already exist between these two modes of symbolization. The points of contact between law and cinema make up a considerable body of scholarship in the broad, diverse and rapidly growing field of often referred to as 'law and film.'[227]

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[226] See generally: Ivor Armstrong Richards, *The Philosophy of Rhetoric* (Oxford University Press, 1936) at 24; Max Black, *Models and Metaphors* (Ithaca, NY: Cornell University Press, 1962); George Lakoff & Mark Johnson, *Metaphors We Live By* (Chicago: University of Chicago Press, 1980).

[227] I attend to this literature in greater detail in Chapter Three ("Cinematic Street Law"). Nevertheless, a neophyte to the field would especially benefit from: Charles Musser, "Film Truth, Documentary, and the Law: Justice at the Margins" (1996) 30 University of San Fransisco Law Review 963; Austin Sarat, "Imagining the Law of the Father: Loss, Dread, and Mourning in *The Sweet Hereafter*" (2000) 34:1 Law and Society Review 3; Richard K. Sherwin, *When Law Goes Pop: The Vanishing Line Between Law and Popular Culture* (Chicago & London: University of Chicago Press, 2000); Edward Mussawir, "The Cinematics of Jurisprudence: Scenes of Law's Moving Image" (2005) 17 Cardozo Studies in Law and Literature 117; Jessica Silbey, "Videotaped Confessions and the Genre of Documentary" (2006) 16 Fordham Intellectual Property, Media & Entertainment Law Journal 789; Orit Kamir, *Framed: Women in Law and Film* (Durham and London: Duke University Press,

The cinematic metaphors are, as I elaborate, rich enough to encourage critical engagement with law, and, as the wealth of research at the nexus of law and film indicates, they are also "sufficiently transparent to be reasonably uncontroversial."[228] Further, as I note in Chapter One, the *cinematicity* of my cinematic legal metaphors is not limited to the formal features that distinguish film from other media. Instead, it is a mode of thinking and of generating new modes of perception. Similarly, the *legality* of my cinematic legal metaphors is not limited to rules enacted by a centralized state, to institutionally enshrined legal texts, or to judicial renderings. Instead, law is one of the ways human beings symbolize and embody how to ethically relate to one another. Accordingly, I can identify the topic 'street law' through the 'cinematic' vehicle as way of generating new modes of perceptions about human relationships.

Thinking about street law in the metaphoric register permits me to imagine new *sights* of street law. I can perceive from "the perspective of the rules operating on a collection of individuals" and foreground the perspective of the subject/agent "who finds herself already within the practice"[229] simultaneously. Each metaphor is intended to explicitly and implicitly stretch and bend taken-for-granted assumptions that inform and shape affective responses and moral judgments of street-involved people that emerge in the contemporary paradigmatic instances of 'anti-vagrancy' legislation. I use cinema's concepts to confront the limits of the dominant legal modes of understanding of street-involved people, their normative expectations and their competences in forging their own lives. Second, each metaphor is

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2006); Ruth Buchanan & Rebecca Johnson, "Strange Encounters: Exploring Law and Film in the Affective Register" (2009) 46 Studies in Law, Politics, and Society 33 [hereinafter, Buchanan & Johnson (Strange)].

[228] Max Black, "More About Metaphor" in Andrew Ortony, ed., *Metaphor and Thought* (Cambridge: Cambridge University Press, 1993) 19 at 20.

[229] Paul W Kahn, *The Cultural Study of Law: Reconstructing Legal Scholarship* (Chicago & London: University Chicago Press, 1999) at 45.

also a device through which I grapple with how agency and autonomy is articulated and performed by street-involved people despite the existence of these latter modes and instruments of street law. Cinema's concepts, are accordingly, positioned in this chapter as a way to provoke perspectives of street law as a human endeavour to symbolize meaningful relationships.

The cinematic legal metaphors I develop here serve these two functions for at least two reasons. First, they provide conceptual modes of apprehending street law that move us beyond one sensory register (the visual, and occasionally the aural/oral) to a more embodied (and hopefully moral) perception of our relationships to one and other. Second, given cinema's intricate connection with the city, cinematic legal metaphors also provide an alternative symbolic mode of grappling with governance that is specific to urban space (here the street).

2.1.1 Beyond Visuality

In this subsection I discuss how, in the face of popular and disciplinary associations that both law and film have in relation to *sight* (and more recently to *sound*), the cinematic legal metaphors I develop stretch beyond the realm of one sensory register. I argue that cinema has the potential to occasion and enhance embodied and therefore (potentially) moral perception of street law and its constituents.

In legal scholarship, there is increased recognition that the 'common sense' which undergirds legal thought and practice is culturally shaped through categorizations.[230] Contrary to many dominant tropes relied upon in such categorizations (the Cartesian

[230]Anthony Amsterdam & Jerome Bruner, *Minding the Law* (Harvard: University Press, 2000).

mind/body divide or the objectivity/subjectivity dyad and the corresponding faculties of reason and feeling), law is fundamentally embodied[231] and affective.[232] Briefly put, law is the messy stuff of human existence.[233]

Yet, in conventional understandings, if law's affective life and its corporeality is acknowledged, it is through the visual register (and, more recently the oral/aural register). Legal principles, categories, concepts are fields that are full of visual metaphors: we observe black letter law, read the body of a statute, attempt to square precedents; justice should be blind.[234] The use of visual legal metaphors often remains embedded in orthodox beliefs and practices about law that tend to prioritize sight as the locus of recognition, critique and

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[231] For instance, Nedelsky calls on legal pedagogues to pay attention to the 'education of affect' both in the classroom and in scholarship: Jennifer Nedelsky, "Embodied Diversity and the Challenges of Law" (1997) 42:9 McGill Law Journal 91 [hereinafter, Nedelsky (Embodied)]. Rick Mohr critiques the strict distinction between object and subject in his phenomenological approach to physical objects (physical and legal manifestations of personhood) that make us abstract subjects (legal persons). He argues that the signature brings us to another concept of personhood as it "carries with it the action and experience of the person making the commitment" thereby rupturing law's "mask and the abstraction" and its Cartesian myths: "Flesh and the Person" (2008) 29 Australian Feminist Law Journal 31 at 47. Gillian Calder advances embodied pedagogical practices in law through, among other methods, Theatre of the Oppressed: *supra* note 216.

[232] Scholarship in the 1980s developed methods and methodologies for anchoring feminist theories in women's emotional lives and their emotional labour: Arlie Hochschild, *The Managed Heart: Commercialization of Human Feeling* (Berkeley University Press, 1983); Alison Jaggar, "Love and Knowledge: Emotion in Feminist Epistemology" in Ann Garry & Marilyn Pearsall, eds., *Women, Knowledge, and Reality: Explorations in Feminist Philosophy* (New York: Routledge, 1996) 166-190. However, it is only within the last decade or so that we have witnessed what some call the 'affective turn' in feminist theory (emotion and affect as theoretical framework), see generally: Sara Ahmed, *The Cultural Politics of Emotion* (Edinburgh: University Press, 2004); Eve Kosofsky Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity* (Durham, NC: Duke University Press, 2003); Sedgwick *et al*, *supra* note 173. For work that struggles with the affective life of law, law's corporeality, and law's symbolic and affective force: Buchanan & Johnson (Strange), *supra* note 227.

[233] The concept of legal personhood (a category of person – whether or not corporeal – to which rights and responsibilities are bestowed) remains hollowed of humanity, of agential capacity, of flesh. See: Peter Goodrich, *Languages of Law: From Logics of Memory to Nomadic Masks* (London: Weidenfield & Nicolson, 1990); Valerie Kerruish, "Persons and Available Identities: Gender in Hegel's Philosophy of Law" (1996) 7:2 Law and Critique 153; and Mohr, *supra* note 231.

[234] In his survey of legal metaphors, Bernard J. Hibbitts found that while American legal discourse has drawn on expressions that evoke a range of sensory experiences such as 'free speech,' 'hard case' and 'bitter with the sweet,' sight has long remained the favoured metaphor: we 'look' at bodies, texts and structures, we observe, review, make claims 'in the eye of the law.' He discusses the shift toward aural metaphors of 'dialogue,' 'voice' and 'polyphony:' "Making Sense of Metaphors: Visuality, Aurality, and the Reconfiguration of American Legal Discourse" (1994) 16 Cardozo Law Review 229. See also: Martin Jay, "May Justice be Blind? The Challenge of Images to the Law" in Douzinas & Nead, *supra* note 193 at 19.

understanding.[235] Namely, law is assumed to value features often attributed to sight, especially objectivity, universality, and determinacy.[236] These features are in turn presumed to be in hierarchical relation to those values attributed to sound, smell, taste, and touch, namely polyphony, singularity and indeterminacy.[237]

Still within the visual realm, according to a familiar story, law and other disciplines have recently moved away from the model of 'reading' texts to explore new ways of 'seeing.'[238] The rhetorical or 'linguistic turn' taught us to attend to the ways in which legal meanings are constituted rather than discovered, unveiled, or unearthed. This insight gave us a heightened awareness of how legal language or verbal modes of representation are inextricable from other modes of knowing. It also warned against notions of mimesis and the related belief in objective, mechanical reproduction of reality. The 'visual turn' demands attention to the ways in which legal information is processed through *concepts* as enshrined in written texts as well as through *percepts* or sense-datum.[239] As Jay puts it, while 'texts' were the "master metaphor for post objectivist interpretations of many different phenomena," today we prefer "models of spectatorship and visuality, which refuse to be described entirely in linguistic terms."[240] Indeed, legal scholars writing at the nexus of law and film have pushed

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[235] To Hibbitts, Western law's visual metaphors and the written word are based in the beliefs and practices of people who have traditionally and who continue to hold considerable social power, namely: white upper-class protestant men: *Ibid.*

[236] Lionel Bently, "Introduction" in Bently & Flynn, *supra* note 49 at 1; and Hibbitts, *ibid.*

[237] William Ian Miller, *The Anatomy of Disgust* (Cambridge, Mass.: Harvard University Press, 1997).

[238] I rely here principally on two versions of this story: W.J.T. Mitchell, *What do Pictures Want? The Lines and Loves of Images* (Chicago: University of Chicago Press, 2005) at 9 [hereinafter, Mitchell (Pictures)]; and Martin Jay: "Vision in Context: Reflections and Refractions" in Teresa Brennan & Martin Jay, eds., *Vision in Context: Historical and Contemporary Perspectives on Sight* (New York: Routledge, 1996) 3 [hereinafter, Jay (Vision)].

[239] On the fetishisation of the written word in legal culture, see generally: Mohr, *supra* note 331. On its implications for legal pluralism: Macdonald (Custom Made), *supra* note 47.

[240] Jay (Vision), *supra* note 238 at 3. V*isuality* refers to the ways in which how, who, and what we 'see,' is culturally constructed, mediated by technologies, global networks, and new modes of circulation and interaction. It is often attributed to Foster: Hal Foster, *Vision and Visuality* (Seattle: Bay Press, 1988). The body of

us to consider how law both constitutes and is constituted through the visual. To some, there is a danger that such "image-based" modes of performing justice will effectively dispense with "actual facts and applicable case law."[241] To others, films invite us to see, hear and feel injustices and how the formal law inadequately addresses harms in actuality.[242]

Like scholars in other disciplines, legal thinkers have also begun to interrogate how prioritizing sights and vision (ocularcentricism) obscures other modes of knowing.[243] This is not to say, however, that all visual metaphors hold no potential to advance critical legal understandings. To be sure, thinking about law as a 'map of misreading', of legal subjectivity as 'intersectional', and normativity as 'soluble' has furthered two legal pluralist projects: unhinging our conception of law from the State and highlighting the variegated sites and

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scholarship that falls within the field of visuality studies is broad and diverse. The 'spectacle' is more than visual excess produced by mass-mediated technologies; it is a materialized worldview – a way of discerning the world that has 'become objective:' Guy Debord, *Society of the Spectacle* (London: Rebel Press, 2005). On surveillance society: Foucault (Discipline), *supra* note 179. For a trenchant critique of the patriarchal ideologies that underpin the 'neutral' gaze and visual 'pleasure' is suspect, especially given its alignment with voyeurism, narcissistic identification and the perpetuation of gendered relations: Laura Mulvey, "Visual Pleasure and Narrative Cinema" (1975) 16:3 Screen 6. For the claim that all vision is embodied and consequently can be reappropriated by a feminist gaze and situated knowledges: Donna Haraway, "Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective" (1988) 14:3 Feminist Studies 575. For a distinction between the feudal public realm which consisted of *showing* rather than debating and modernity's "refeudalization of the public sphere" with corporate dominated media, celebrity activism and politics, and consumer-based citizenship: Jurgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, trans. by T. Burger (Cambridge, Mass.: MIT Press, 1989). For a devastating challenge to Cartesian perspectivalism and a call for alternative modes of 'seeing:' Martin Jay, "Scopic Regimes of Modernity" in Hal Foster, ed., *Vision and Visuality: Discussions in Contemporary Culture 2* (Chicago: University of Chicago Press, 1988) 3. Finally, the claim that much of what we take as the 'visual' is an *effect* of other modes and relations of power: Jonathan Crary, *Techniques of the Observer: On Vision and Modernity in the 19th Century* (Cambridge, Mass.: MIT Press, 1990).

[241] Sherwin, *supra* note 227 at 10. Sherwin's fear is directed at law's formal institutions, and courts especially, and the use of video as evidence and in closing statements.

[242] Buchanan & Johnson (Strange), *supra* note 227.

[243] The field of Anthropology has been particularly instructive in reconsidering vision as privileged site of knowledge. Feld argues for methods that perceive the social world in ways that privilege sound over vision: Steven Feld, *Sound and Sentiment: Birds, Weeping, Poetics and Song in Kalui Expression* (Philadelphia: University of Pennsylvania Press, 1982). Stoller demonstrates how the fusion of the 'intelligible' and the 'sensible' can be deployed in scholarly practices and representations: *supra* note 49.

modes of law.[244] Moreover, there has been a move to recognize law's orality/aurality -- legal metaphors and practices organized around 'dialogue' and 'voice' suggest.

Within a discipline still (despite the 'visual turn') so very invested in the authority of the written word, indigenous, critical race, feminist legal scholars, as well as people working at the intersection of law and the humanities, have pointed to the problematic relations between legal texts, power and authoritative knowledge.[245] Reading and interpreting the written word is considered insufficient and often incongruent with the complexities of our lived experiences. Some scholars appraise and promote legal methodologies, concepts, and principles that acknowledge and draw on aural metaphors. For instance, by listening to marginal 'voices' and telling 'stories' based in epistemological proximity, we can highlight the ontological difference between the lived reality of marginalized groups and how it is symbolized in formal legal processes and practices.[246]

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[244] Boaventura de Sousa Santos suggests three topoi or sites of subjectivity that hold the promise of a 'new conception' of law: Boaventura de Sousa Santos, "Three Metaphors for a New Conception of Law: The Frontier, The Baroque, and the South" (1995) 29:4 Law and Society Review 569. Crenshaw extends the intersection metaphor to complexify entrenched understandings of legal subjectivity and the legal constitution of subjectivity: Kimberlé W. Crenshaw, "Demarginalizing the Intersection of Race and Sex: a Black Feminist Critique of Antidiscrimination Doctrine, Feminist theory and Antiracist politics" (1989) University of Chicago Legal Forum 139. Belley suggests *métaphore chimique* for law (soluble law, or how normativity is diluted in global social regulation), "Une métaphore chimique pour le droit" in Belley, *supra* note 78 at 233.

[245] On the tensions between First Nations' and Western (Euro-Canadian) conceptions of law as informed by a history of colonialism and imperialism, see: John Burrows, "Listening for a Change: The Courts and Oral Tradition" (2001) 39 Osgoode Hall Law Journal 1; Jo-Anne Fiske, "From Customary Law to Oral Traditions: Discursive Formation of Plural Legalisms in Northern British Columbia, 1857-1993" (1997/1998) 115/116 BC Studies 267. For a discussion of aural/oral metaphors' impact on American jurisprudence, see: Hibbitts, *supra* note 234.

[246] Early feminist standpoint approaches that emerged in the 1980s offered a method to center the voices of women ('silenced' by masculinist meta-narratives) and a means for naming oppressions of women from their analyses, points of view and experienced in their day-to-day and night-to-night. Some scholars have since noted, 'standpoint' theories postulate *a* feminist or *woman's* – point of view which overlooked other commitments, expectations and experiences: Patricia Hill Collins, "Toward an Afrocentric Feminist Epistemology", *Black Feminist Thought: Knowledge, Consciousness and the Politics of Empowerment* (New York & London: Routledge, 1991) 201; Smith, *supra* note 83; Nedelsky (Embodied), *supra* note 231. Sandra Harding also questions postmodern epistemologies that promote fractured identities to the point where political mobilization is impossible: *The Science Question in Feminism* (Ithaca & London: Cornell University Press, 1986). In later work, Harding develops a postmodern standpoint theory that "pulls away from its modernist

Here too, if we limit our understanding to law's orality/aurality (and especially how law silences certain voices) we may occlude how law engages our full range of perceptual, sensory, and imaginative human experiences. As others have suggested, we should direct our interest to how we are constituted by and how we constitute law *intersensorily*[247] and consider multisensory organizing concepts in law[248] in order to get at the "body that lives and feels through" it.[249]

I suggest in the next subsection why cinematic metaphors are a rich conceptual resource for apprehending street law. Cinema is a perceptual medium but it is not limited to the audiovisual registers. It is embodied and it generates (the possibility of) moral perception both of street law's *subjects* (and the moments of *subjugation* to certain modes and instruments of street law) and street law's *agents* (and the moments of *generation* of certain modes and instruments of street law).[250]

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origins", navigating the essentialist/relativist divide in interesting ways. She maintains her rejection of a singular feminist standpoint while suggesting an objective location where research should begin to avoid relativist insights – women's experiences: Sandra Harding, *Whose Science? Whose Knowledge? Thinking from Women's Lives* (Ithaca & London: Cornell University Press, 1991) at 134.

[247] David Howes, "Introduction: Empire of the Senses" in Howes, *supra* note 49 at 1.

[248] Roderick A. Macdonald provides a pluralist alternative to conventional legal metaphors: law as multiplicity: (Multiplicity), *supra* note 24. He also discusses the nuances of the harmonization, transplantation and viral metaphors in international law without ascribing symbolism to these metaphors but rather reflecting "on how effectively" they "capture the mode of norm migration at issue": Roderick A. Macdonald, "Three Metaphors of Norm Migration in International Context" (2009) 34:3 Brooklyn Journal of International Law 603 at 607. Finally, he explores offices' political dimensions through multiple conceptual registers including the sensual registers of touch, smell, taste, sight, hearing and intuition: Macdonald & Widell, *supra* note 188.

[249] Goodrich, *supra* note 233 at 259.

[250] The distinction here between legal subjects and legal agents lies in their ability to interpret law "in their own way:" Macdonald & MacLean, *supra* note 79 at 783. On the shifts in the meanings of 'subject' in relation to 'object' as well as in relation to 'subjectivity,' see: Raymond Williams, *Keywords: A Vocabulary of Culture and Society* (New York: Oxford University Press, 1983).

CINEMA AS EMBODIED PERCEPTION

Perception, as Teresa de Lauretis notes, is not simply about sight or cognition. [251] It is about memory, desire, pain; it is a signifying practice.[252] It cannot be divorced from a process of enunciation that engages the lived history of the viewing subject.[253] Film is a process of enunciation that extends beyond natural perception – whether biological or cognitive – to embodied, moral, normative perception of socio-cultural percepts such as poverty, homelessness, violence and injustice. To Vivian Sobchack, the camera, the screen and the film's body mediate embodied engagement with and in the social world.[254] The embodied perception of the camera involves the spectator actively, positing herself as an entity meaningfully engaged in a relation to her environment: "cinema is a sensuous object" but through our interactions with it, through our "presence" it becomes "a sensing, sensual, sense-making subject."[255] Cinema engages what Laura Marks refers to as our "haptic visuality," or the way in which all senses are interrelated and we *see* through touch, feel and taste as much as through sight and sound.[256] These film scholars, accordingly, ask us to think about what films *do* (how we respond to them) rather than just what they *mean* (how we

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[251] Teresa de Lauretis, *The Practice of Love: Lesbian Sexuality and Perverse Desire* (Bloomington: Indiana University Press, 1994).

[252] Cinema, which is directly implicated in the production of meanings and values, is, as a result, also a signifying process: Teresa de Lauretis, *Alice Doesn't: Feminism, Semiotics and Cinema* (Bloomington: Indiana University Press, 1984) at 37.

[253] *Ibid.*

[254] Vivian Sobchack, *The Address of the Eye: A Phenomenology of Film Experience* (Princeton: Princeton University Press, 1991) [hereinafter, Sobchack (Address)].

[255] *Ibid.* at 2. Cataldi calls this mode of engagement is like "inhabiting a spectacle:" Sue Cataldi, *Emotion, Depth and Flesh: A Study of Sensitive Space: Reflections on Merleau-Ponty's Philosophy of Embodiment* (Albany, NY: State University of New York, 1993). See also: Anne Rutherford, "Cinema and Embodied Affect" (2003) 3:25 Senses of Cinema 1 at 2-4.

[256] Laura Marks argues that none of our senses are entirely autonomous and defines haptic visuality as a familiarity with the world that the individual viewer knows through senses related to vision: *supra* note 121.

interpret them).[257] Put differently, thinking cinematically about street law means to *perceive* (to describe, to experience it) rather than only to *rationalize judgments* (to interpret it).[258] The radical potentiality of cinema is also that it presents multiple alternatives to the view that our capacity for judgment is rooted in practical reasons (that it is a product of our cognitive capacities which operate in a coherent, systematic and hierarchically ordered way). To Deleuze, these alternative perspectives are possible because of cinema's time-image which permits multiple and simultaneous pasts, presents and futures to co-exist.[259]

The moral perception inspired by cinema's techniques can play a fundamental role in the nature of our deliberations, our judgments and the actions that ensue.[260] Cinematic (embodied, moral) perception allows us to engage with the laws of morality[261] and is a

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[257] Vivian Sobchack, "In Conversation with Scott Bukatman" (2009) 2:1 Journal of e-Media Studies at 2.

[258] Of course, what films *do* is never separate from what they *mean.* Whether or not individual viewers are aware that they are engaging in interpretive acts, what feels like a knee-jerk response is part of the interpretive processes at play when experiencing a film. Conversely, viewers' active engagement and the frameworks through which they interpret films will, in various ways, facilitate or guide particular responses. Further still, when viewers are aware of these embodied responses and endeavour to interpret beyond them, they remain conscious of the reality that they constitute another mode of embodied response which is in turn generated or facilitate through interpretation.

[259] Deleuze's philosophical approach to cinema distinguishes between movement-image and time-image. Movement-image, often associated with classical Hollywood cinema, is exemplified by a continuum of time and space, a linear movement *through* space with a starting point and a destination, with an action and corresponding reaction. Temporality follows the law of the 'sensory-motor schema' and even where linear causality is disrupted (through flashback sequences for instance), moments are always reintegrated into the discernible lines of past, present and future. Movement-images are structured by closed frames, the logical progression of images, and continuous juxtapositions. Time-image emerges from the post-war new cinema and is exemplified by its rupture with the laws of succession, and synchronicity between visual and aural elements. The time-image breaks from the sensory-motor schema. Rather than focusing on reasonable progressions, time-image emphasizes the experience of the image itself, its opsign (pure optical), sonsigns (pure sound) and tactisigns (pure tactility): Deleuze (Cinema One), *supra* note 121; *Cinema Two: the Time-Image* (Minneapolis: University of Minnesota Press, 1989).

[260] Margaret Holland, "Touching the Weights: Moral Perception and Attention" (1998) 38 International Philosophical Quarterly 299 at 301.

[261] Moral perception, which is rooted in classical virtue ethics, is often counter-posed with modern principle-based moral theories; this is not to say that the two modes are either in opposition or mutually exclusive. For an overview of various perspectivists' concepts, see: Bridget Joy Clarke, *The Lens of the Character: Aristotle, Murdoch and the Idea of Moral Perception* (Thesis, University of Pittsburgh Philosophy, 2003) [unpublished].

condition to ethical reasoning, interpretation and judgment.[262] In relation to street-involved people, the possibility of moral perception is all the more imperative given that, for many of their interlocutors, the material conditions that ground their reality is experienced in a mediated way – whether through popular culture, formal and written legal texts, or the discourses of the help industry.[263] And yet, mediation in this sense does not assume that 'we' are ever separate from that which we perceive. Mediation does not have to be an intermediary between two autonomous entities (the street-involved person and her other) but can be a *métissage*, a hybrid process that can reinforce and blur boundaries as it constrains and facilitates relationships.[264]

The attempt to conceptualize street law through cinema's concepts can permit guttural and emotionally painful responses to injustices; it can also remind us that street law is not a one-way projection of power and authority emerging from law-giver and imposed on its subject. Rather, it is a fluid and constant process of interaction between individuals. Like cinema's spectators, law is never entirely imposed, nor is it passively imbibed by street-

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[262] Revisiting Plato's ethics: Iris Murdoch, "Vision and Choice in Morality" (1956) 30 Proceedings of the Aristotelian Society 44. Revisiting Aristotle's ethics: Martha Nussbaum, *The Fragility of Goodness* (Cambridge: University Press, 2001). On the role of emotion and especially of empathy in moral perception: Arne Johan Vetlesen, *Perception, Empathy, and Judgment: An Inquiry Into the Preconditions of Moral Performance* (Pennsylvania: Penn State University Press, 1994). Blum, *supra* note 182.

[263] For instance, whereas bureaucratic management and police presence remains, for many street-involved people, aspects of their daily negotiations, formally expressed and explicit law is generally "marginal" rather than constitutive of non-street-involved people's lives: Macaulay, *supra* note 28.

[264] Two concepts need unpacking. First, I use mediation, following Kember and Zylinska, as a heuristic device for "understanding and articulating our being in the technological world, our emergence and ways of intra-acting with it, but also the acts and processes of temporarily stabilizing the world into media, agents, relations and networks:" *supra* note108 at 3. Sobchack's existential phenomenology of mediation develops ways of discerning how our vision engages with "film's body." Rather than watching a film and concentrating merely on the signs, we can instead watch the film's body in order to feel the movements within and through the film as a material event which we experience through viewing: Sobchack (Address), *supra* note 252. Second, I use mélange and hybridity following Nancy's assertion that "to essentialize the *mélange* is to have already dissolved it;" a metissage takes on, or at least "seems to take on" multiple roles and function that do not come together finally and identify with one another, but rather, inhabit a space of "neither the one nor the other, nor … between the two:" (Being), *supra* note 5 at 150.

involved people.[265] As the cinematic legal metaphors I develop below will foreground, street-involved people reconfigure urban space according to their normative expectations of what care they require; they negotiate relations with official legal apparatuses and institutions; they deploy and respond to multiple conceptual structures that govern their interactions in more immediate ways; they lead complex normative lives and navigate a matrix of competing desires, expectations, habits, and values; they develop new connections and informal networks through momentary interactions with others; they collaborate and constitute long-term relationships based on shared understandings of what it means to be street-involved.

APPREHENDING STREET LAW IN THE METAPHORIC REGISTER

The cinematic legal metaphors I propose vary in scale and technique but also in the epistemological biases they emulate or endorse:[266] the Aerial Viewpoint, the Shot/Reverse Sequence, the Close-up and the Tracking Shot are four superimposed, potentially conflicting spatio-temporarily crystallized ways of imagining street law. By their very abstract and abstracting nature, they cannot provide a unified, linear, coherent, or determinate story about street law.

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[265] Christine Gledhill, "Pleasurable Negotiations" in E. Deidre Pribram, ed., *Female Spectators: Looking at Film and Television* (London: Verso, 1988) 64 at 66.

[266] The cinematic metaphors are not simply intended to position viewing subjects in a particular perspective but they nonetheless will incorporate epistemological assumptions of particular positions. For instance social-scientific legal pluralism may best be embodied through the Shot/Reverse sequence, leftist pragmatism through the Aerial Viewpoint, relational feminism in Close-up and critical legal pluralism as a Tracking Shot. I have limited my work to four cinematic metaphors but there is any number of perspectival modes available. Using different optical and aural and kinetic effects -- a variation in lighting, pitch, angle, depth of field, camera movement, composition, eye line, film speed etc. – could elicit different questions about street law. On perspective as more than scale and for an inquiry into the processes and practices through which particular viewpoints (and thereby subjectivities) are produced, see: Ruth Buchanan, "Border Crossings: NAFTA, Regulatory Restructuring, and the Politics of Place" (1995) 2 Indiana Journal of Global Legal Studies 371; and Rosemary Coombe, "Finding and Losing Oneself in the Topoi: Placing and Displacing the Postmodern Subject in Law" (1995) 29 Law and Society Review 599.

Because our normative commitments, our legal consciousness, and the legal institutions we navigate are fluid, contingent, and often contradictory, the way we perceive street law can likewise be so. To this end, I consider these metaphors as on-going, simultaneous and incomplete modes of apprehending what counts as street law and who counts as its generators, enforcers, and embodiment. Each of the four metaphors I suggest is selective in its object of attention, and has its own priorities in highlighting particular modes, sites, and instruments of street law and necessarily neglects, distorts or obscures others.[267] Each is in constant flux and has demanded on-going re-evaluation and re-negotiation according to my shifting normative expectations about street law (which have been appraised and reinterpreted throughout my interactions with street-involved people) and in terms of my past perceptions and associations (according to my shifting understanding of my own normative commitments as an interlocutor to street-involved people).[268]

Consequently, just as formal legal texts are always contingent and rarely the most respectful and evocative way to articulate meanings about our interactions with strangers, cinematic metaphors are partial stories that give us some insight into some aspects of street law, but never one universally satisfying picture. Like any framing device, they conceal, highlight, clean-up, demean, defend, challenge, include and exclude other accounts of the

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[267] Ways of seeing, as Kenneth Burke long ago pointed out, are always also ways of "not seeing": Kenneth Burke, *Permanence and Change: An Anatomy of Purpose* (New York: New Republic, 1935).

[268] Throughout this project I have developed metaphors only to abandon them as uninteresting or dead, as closer to simile than metaphor, or as less meaningful for my understanding of street law. And sadly, time and space constraints have led me to also abandon metaphors I still believe to be very powerful ways of apprehending street law and to which I will return. I would have liked, for instance, to develop the transdiegetic sound. Diegetic sound refers to that which stems from the film's universe and is a part of the character's natural world. Extra-diegetic sound stems from an external source, characters are oblivious to it, and it is conventionally understood to elicit particular responses from audiences. Transdiegetic sound suggests the world beyond it but simultaneously constitutes the diegetic world, defines what is in one field of action and what is beyond it simultaneously. It is both outside and within the frame.

same event.[269] The purpose, then, is not to provide a correct reading of street law. But I can attempt to achieve some semblance of what Stanley Cavell refers to as "completeness," not in the sense of "providing *all* interpretations" but rather in "seeing one *through.*"[270] Despite the innumerable perspectives on street law, my project aims to *see through* four interpretations. These engender more complex and ethical responses to the governance of and by street-involved people than those found in formal, written, externally imposed laws. This is not to say that I embrace absolute relativism:[271] these metaphors are more than merely four vantage points taken from any number of vantage points from which to observe street law. They are in competition for ontological and epistemological legitimacy with other (usually orthodox and often written) ways of symbolizing street law. Nevertheless, I favour metaphors that will engage in an exploration of the limits of dominant conceptions of street law and even suggest conditions that might foster new relationships among all street users.

Because I discuss street-involvement in terms of its urban instantiations (though it is not, as I note in Chapter One, merely an urban question), I briefly discuss below why cinema

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[269] Consider some variations on the framing theme. Goffman argues for multiple, related and often partially incompatible methods of analyzing discourse and suggesting a way to examine how we organize experience according to two primary frameworks: the natural, which is devoid of wilful agency and which does not emerge from intentionality and the social, which requires explicit effort of intelligence and agency): Erving Goffman, *Frame Analysis: An Essay on the Organization of Experience* (New York: Harper & Row, 1974). To Derrida, the frame is a parergon (*par*, outside and *ergon,* the work). It is a supplement that can neither exist entirely outside or inside the work, relating to the work "without being a part of it and yet without being absolutely extrinsic to it": Jacques Derrida, *The Truth in Painting*, trans. by Geoff Bennington & Ian McLeod (Chicago: University of Chicago Press, 1978) at 55. Finally, Haraway argues against the "passive camera obscura" and instead for the "wonderfully detailed, active, partial" ways of organizing the world: *supra* note 240 at 584.

[270] Stanley Cavell, *Pursuits of Happiness: The Hollywood Comedy of Remarriage* (Cambridge: Harvard University Press, 1981) at 37 (italics in original). Others urge that we move away entirely from 'interpretation'. To Kristeva it represents appropriation and thus an "act of desire and murder:" Julia Kristeva, "Within the Microcosm of the 'Talking Cure'" in Joseph Smith & William Kerrigan, ed., *Interpreting Lacan Psychiatry and Humanities* (New Haven: Yale University Press, 1983) 33 at 33.

[271] Here I dismiss relativism, in the sense of a claim that truth merely depends on any particular perspective and that all contradictory views hold equal weight, while acknowledging that we can never acquire absolute or perfect knowledge. Truth, that is, may exist whether or not we can assimilate it.

provides a novative conceptual grip when grappling with the intricate connection between law and the city.

2.1.2 LAW, CINEMA, CITY

The embodied perception that cinematic metaphors provide encourage different thinking about the interactions between street-involved people and their interlocutors; this thinking also invites questions about the law–city relation. There has always been an "intricate connection" between the cinema and the city.[272] City spaces in films can function as stages or backdrops, as defining characteristics of a particular genre, or can themselves take on the role of protagonist.[273] Film provides views, new views or impossible views of urban spaces and the bodies that move through and constitute them. The moving camera has served as mapping device, illuminating aspects of embodied, architectural, and social urban forms, bringing spectators to otherwise unknowable places– such as Brazil's favelas or the tenements of war-torn Italy.[274] They can also juxtapose, obfuscate or affirm the relation between the individual and urban identity according to a director's aesthetic impulses and through the camera's own movements and oscillations through space.[275]

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[272] The mutually determinative and constitutive relation between the cinematic form and the historical and material development of the city guides many explorations at the nexus of film, media, and urban studies. Several emphasize the allegorical quality of cinematic cities and especially the relationships between representation, ontology and geography: Mark Shiel, "Cinema and the City in History and Theory" in Mark Shiel & Tony Fitzmaurice, eds., *Cinema and the City: Film and Urban Societies in a Global Context* (Oxford and Malden, Mass.: Blackwell, 2001) 1. David Clarke, ed., *The Cinematic City* (London: Routledge, 1997); Fredric Jameson, *The Geopolitical Aesthetic: Cinema and Space in the World System* (Bloomington: Indiana University Press, 1992).

[273] Larry Ford, "Sunshine and Shadow: Lighting and Color in the Depiction of Cities on Film" in Suart C Aitken & Leo E. Zonn, eds., *Place, Power, Situation, and Spectacle: A Geography of Film* (Lanham, Maryland: Rowman & Littlefield Inc., 1994) 119. Compare: H. Roach, *The Music Box* (1932) in which Laurel and Hardy push a piano up a hillside and Josef von Sternberg, *Underworld* (1927) in which the metropolis is itself a corrupting influence and Fritz Lang, *Metropolis* (1926) in which the city is a villain.

[274] See: Fernando Meirelles & Katia Lund, *City of God* (2002) ; Roberto Rossellini, *Rome, Open City* (1945)

[275] Stephen Barber, *Projected Cities: Cinema and Urban Space* (London: Reaktion Books, 2002) at 8.

Indeed, film has always represented shifts in city life; it also provides new perceptual (though "never innocent") frameworks through which the city can be articulated.[276] Films can also enunciate the city's past and its future, its inhabitants' fears, desires, sensations.[277] They can leave traces of conflicts, displacement practices, and vanished neighbourhoods. They can work as archives and vehicles for visual memories and nostalgia.[278] For instance, the different between mobility and immobility – a fundamental trope in discussions around urban poverty – is also embedded in the discourses that distinguish between the experience of living a city cinematically and living a city architecturally.[279] Namely, whereas architecture imposes history and materiality on its passive contemplators, cinema embodies the fragmented and fragmentary "destabilizing impulses within city life."[280] Moreover, many contemporary instantiations of cinematic cities possess "an itinerant dimension" – moving across, over and under urban terrain and through discarded edifices and ruined tenements; mixing and distorting sounds; and providing glimpses into the hidden aspects, the subterranean and subaltern of urban life.[281]

Because of its material, embodied and imaginative relation to urban spaces, cinema can provide a conceptual and perceptual framework for governance that brings us beyond

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[276] To Dimenberg, "representing the metropolis" is always "motivated by cultural needs and ambitions:" Edward Dimendberg, *Film Noir and the Spaces of Modernity* (Cambridge: Harvard University Press, 2004).

[277] In Film Noir for instance, the city is isolating and shadowy as is reflected in its characters struggle with psychological drama and moral ambiguity. It is often juxtaposed with the countryside: whereas the urban represents pessimism, its 'other' suggests the possibility of redemption. Noir is often considered in terms of some of these recurring themes but it may best be qualified as a critical attitude of 'nonconformity' rather than a 'genre' proper: David Bordwell, Janet Staiger & Kristin Thompson, *The Classical Hollywood Cinema: Film Style and Mode of Production to 1960* (London: Routledge, 1985).

[278] Barber, *supra* note 275 at 61.

[279] Ackbar Abbas, "Cinema, the City, and the Cinematic" in Linda Krause & Patrice Petro, eds., *Global Cities* (New Brunswick, New Jersey: Rutgers University Press, 2003) 142.

[280] *Ibid.*, at 64. Cited in: Will Straw, "Spectacles of Waste" in Alexandra Boutros & Will Straw, eds., *Circulation and the City* (Montreal: McGill / Queens, 2010) 191.

[281] Barber, *supra* note 275 at 107.

what I consider to be the dominant metaphors for conceptualizing 'the city.'[282] There has also always been an intricate connection between law and the city. Law, like cinema, is one of the ways in which cities are symbolically and materially constructed. And like cinema, while legal rules give shape to and constitute the 'city,'[283] how we live in and through the city constitutes and shapes law first.[284] Certainly, as the Aerial Viewpoint (discussed below) makes most explicit, we cannot understand law without attending to its traces in urban space;

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[282] There are multiple theoretical models (each thick with normative expectations about the nature of space, place, subjectivity, aesthetics, and difference) for grappling with the question 'what is a (good) city?' Standard conceptual framings include metaphors such as the city as garden, narrative, market, theatre, text, spectacle, jungle, laboratory, organism, global village and system; as bounded semi-autonomous jurisdictions and administrative units materially partitioned by urban planners and managers and with formally prescribed authority (e.g., over zoning, telecommunications systems, sanitation, land-use and transportation) as instantiated in written rules (legislation) as provided for instance under section 92(8) of the *Constitution Act* as creatures of the province; or as an entity in relation to its 'other' – whether the country, the suburb, or the ghetto. For my purposes, cities take multiple historical, material and aesthetic configurations; they are forms of human settlements and interactions; they are spaces of movements and flows, rhythms, and the circulation of bodies and things; they are set within a multiplicity of discourses, networks and materialities (such as the tension between excitement and fear, mobility and immobility, permanence and memory, belonging and non-belonging) that continually shift and compete for authority; they are lived, embodied and representational spaces; they are spatio-temporal cultural forms that emerge and shift in relation to global and local matrices of legal, residential, commercial, ecological, recreational, production, industrial, aesthetic processes. For an overview of some of the philosophical works on the nature of cities, see: Sharon Meagher, ed., *Philosophy and the City: Classic to Contemporary Writings* (New York: SUNY Press, 2008). My view of the city is draws upon various work including: Nicholas Blomley, David Delaney & Richard Ford, *The Legal Geographies Reader* (Oxford: Blackwell, 2001); Lefebvre, *supra* note 103; Doreen Massey, *Space, Place and Gender* (Minneapolis: University of Minnesota Press, 1994); Evelyne Ruppert, *The Moral Economy of Cities: Shaping Good Citizens* (Toronto: University of Toronto Press, 2006); Boutros & Straw, *supra* note 280; and Young (Justice), *supra* note 14.

[283] Gerald Frug has been writing at the intersection of urban studies and law for over three decades. His early work on the city and the liberalist dualities through which it is constituted (e.g., self/community, state/civil society) continues to be highly relevant to rights-based analyses of local governments: "The City as a Legal Concept" (1980) 93 Harvard Law Review 1057. For more recent work that builds from his, see: Kenneth Stahl, "The Suburb as a Legal Concept: The Problem of Organization and the Rate of Municipalities in American Law" (2008) 29:3 Cardozo Law Review 1193. In *City Making: Building Communities without Building Walls* (Princeton: Princeton University Press, 1999), Frug documents government politics around urban life (zoning, revitalization/redevelopment, land use, and service-provision such as education and health which are all embedded in legal rules) constitute urban arrangements that reinforce divisions between privileged and impoverished urban dwellers. See also: Gerald Frug & David Barron, *City Bound: How States Stifle Urban Innovation* (Ithaca: Cornell University Press, 2008). In the Canadian context and the ways in which it is the provincial government, rather than the municipal government, that retains the status of 'real authority' in terms of planning law: Ron Levi & Mariana Valverde, "Freedom of the City? Canadian Cities and the Quest for Governmental Status" (2006) 44:3 Osgoode Hall Law Journal 409.

[284] Philippopoulos-Mihalopoulos, *supra* note 52 at 1.

consequently, epistemological questions about how we relate to one another in city spaces requires that we also contemplate the "legal edifices" of the contemporary city. [285]

In the remainder of this chapter, I will first elaborate how 'revanchist' metaphors constitute city spaces as a conflict zone between different rights bearers (such as the propertied and the unpropertied, the watchers and the watched, the panhandler and her other, the street and the non-street community). Building on the insight that cinematic metaphors are an especially rich resource for developing embodied perception of urban interactions as governed by rules, I will then develop four cinematic metaphors that suggest alternative ways of symbolizing the governance of and by street-involved people.

2.2 THE REVANCHIST CITY

Governance (in the sense of interventions, social services, regulation and infrastructure) operates most directly at the local/municipal level. Consequently, 'the city' in the West has been theorized as a "strategic site" for critically re-evaluating trends that are "reconfiguring the social order."[286] According to some scholars and activists, the city is a social and symbolic form through which questions of social justice are materialized. In some of these accounts, there are recurring metaphors for how particular bodies are governed in, through, and by the city, and especially in relation to the complex interplay between law,

[285] Pierre Bourdieu, "The Force of Law: Toward a Sociology of the Juridical Field" (1987) 38 Hastings Law Journal 839.
[286] Saskia Sassen, "Cities as Strategic Sites" (2005) 39:2 Sociology 352 at 352.

urban space and poverty. On this view, for street-involved people, the city is panoptic,[287] punitive,[288] divided,[289] and beyond the realm of justice.[290]

'Revanchism' has, it seems, become the "obligatory point of passage" in critical scholarship around urban poverty and street-involvement.[291] In most of its versions, 'the city' and 'the law' are mutually constitutive vertical structures that observe and regulate subjects through the production of space. In the revanchist city, economic interests (the business community that sustains metropolitan life), the State (bureaucratic actors enacting and enforcing legislation) and popular media work in conjunction to target street-involved people.

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[287] Foucault treats the Panopticon as the central metaphor for the disciplinary society where subjects, under weight of 'the gaze,' will interiorize self-regulating behaviour, becoming their own "overseer:" (Discipline) *supra* note 179 at 155; and "The Eye of Power" in Colin Gordon, ed., *Power/Knowledge: Selected Interviews and Other Writings 1972-1977* (New York: Pantheon, 1980) 146.

[288] Mike Davis' seminal work maps out what he refers to as the "spatial apartheid" in Los Angeles where he argues city officials create conditions that make parts of the city "as unlivable as possible" for street- involved people - simultaneously containing them within increasingly claustrophobic, militaristic, and highly policed zones of poverty: Mike Davis, *City of Quartz* (London: Vintage, 1990).

[289] Neil Smith insists against what he calls a common sense understanding of gentrification as the outcome of the desire of the new middle-class to experience urbanity; instead, it is part of broader political and economic transitions that commingle urban design, investment policies, and the forced removal of undesirables from particular spaces: Smith (Revanchism), *supra* note 22. On the *embourgeoisement* and aestheticization of traditionally industrial working-class, working poor and immigrant spaces by the 'new middle class,' see: David Ley, *The New Middle Class and the Remaking of the Central City* (New York: Oxford University Press, 1996). Similarly, Jon Caulfield finds that the new middle class migrate to these spaces in order to inhabit places that have historical depth and that bare traces of earlier uses: Jon Caulfield, *City Form and Everyday Life: Toronto's Gentrification and Critical Social Practice* (Toronto: University Press, 1994). Frug has shown how legal rules have been deployed to that effect: *supra* note 283.

[290] Writing at the intersection of law and geography, Don Mitchell argues that homelessness is the "bellwether of urban justice." He traces the practices that deny street community any "individuality" or "humanity." Essentially, city planners and urban entrepreneurs develop public-private coalitions backed by legal instruments and policing tactics designed to reclaim dilapidated areas and 'exterminate' homeless populations. The city is thus beyond postmodern; it is "post-justice:" "Postmodern Geographical Praxis? The Postmodern Impulse and the War Against the Homeless in the Post-Justice City" in Claudio Minca, ed., *Postmodern Geography: Theory and Praxis* (Oxford: Blackwell, 2001) 57.

[291] Geoffrey DeVerteuil, Jon May & Jurgen von Mahs, "Complexity not Collapse: Recasting the Geographies of Homelessness in a 'Punitive' Age" (2009) 33:5 Progress in Human Geography 646. They borrow the expression from Kevin Hetherington who argues against paradigmatic articulations of complex social problems in urban studies: Kevin Hetherington, "Moderns as Ancients: Time, Space and the Discourse of Improvement", *TimeSpace: Geographies of Temporality* (London: Routledge, 2001) 49.

Their collective aim is to evict unwanted bodies from *sight.*[292] In such conditions, living on or from the street is practically impossible, in no small part due to police harassment and ticketing for 'public nuisance,' 'quality of life' and 'public disorder' offences.[293]

The cityscape is re-imagined by urban planners to funnel these same bodies into zones of crime, decay, pollution and disorder: enclaves that contain as well as *provide* services to people living in poverty.[294] Correspondingly, privatized and semi-privatized zones of tolerance, interaction and circulation such as cultural corridors for entertainment, tourism and consumption attract citizens who also inhabit gentrified or otherwise residential zones of sophistication, decency, class, safety.[295]

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[292] To some, this argument extends to 'alternative' or 'community' police practices, protocols and individual values that encourage officers to direct the street community to social services rather than charge them with an offence: (Interview with Serge Lareault). However, without providing police officers with the socio-psychological tools necessary to assess the services to which individuals would best be directed, these interventions have as a default bringing the street-involved person to a holding cell to pass the night. Marie-Eve Sylvestre, *La pénalisation et la judiciarisation des personnes itinérantes au Québec : des pratiques coûteuses, inéfficaces, et contre-productives dans la prévention de l'itinérance et la réinsertion des personnes itinérantes* (Québec: Commission Parlementaire sur l'Itinérance, 2008) [hereinafter Sylvestre (Pénalisation)]. While a more cynical view (one grounded in actual police practices) is that the aim of such interventions is that they ultimately get 'undesirables' off the streets and out of sight, individual officers who hold to the view that street-involvement is a 'lifestyle choice' usually avoid more social interventions and use their discretionary power to "Ticket [street-involved people] out of the public space: (Interview with Eric 'Roach' Denis).

[293] I elaborate this tendency in my discussion of anti-panhandling legislation when I consider street law through the "Close-up."

[294] In most Western cities, these zones are inhabited by people who are disproportionately poor and racialized in particular ways; they are overcrowded; often located near hazardous industries and dumping grounds: See generally: Loic Wacquant, "'A Black City Within a White:' Revisiting America's Dark Ghetto" (1998) 2:1 Black Renaissance - Renaissance Noire 141. In Montreal, these neighbourhoods also tend to offer less access to services such as supermarkets, parks, and libraries: Philippe Apparicio & Anne-Marie Seguin, "Measuring the Accessibility of Services and Facilities for Residents of Public Housing in Montreal" (2006) 43:1 Urban Studies 187. On the emergence of urban "ghettos" for the service-dependent groups including people with physical and intellectual disabilities, people who have experienced criminalization, and people with addiction concerns in the United States, see: Michael Dear & Jennifer Wolch, *Landscapes of Despair: From Deinstitutionalization to Homelessness* (Princeton: Princeton University Press, 1987). Finally, there are a number of critical scholars who have discussed how strategies of exclusion operate in Canada. For instance, Joe Hermer explains how 'civic sanitation' operates in the city of Oshawa Ontario through the enactment of a nuisance by-law that constitutes and targets 'the loiterer:' "Keeping Oshawa Beautiful: Policing the Loiterer in Public Nuisance Bylaws" (1997) 12 Canadian Journal of Law and Society / Revue canadienne droit et société 171.

[295] On the suburb as the erosion of diverse communities and as a safe, "functionally separated" and "internally homogenous environment" for the middle class, see: Richard Sennett, *The Uses of Disorder* (New York: Knopf, 1970) at 2 [hereinafter, Sennett (Disorder)].

The panoptic, divided, punitive or post-justice cities are abstract and metonymic ways of imagining governance in and through the city: they stand in for abstract notions about the regulation of street-involved people. They also suggest something about the structural, social, and material conditions that street-involved people negotiate daily and nightly. I have found that in Montreal, the revanchist conception of the law-city nexus has been deployed as a mode of expressing and responding to direct governance of street-involved people. The clusters of metaphors that make up the revanchist city have been used to name the oppressive versions of formal, explicit, and hierarchical state-based regulation. These metaphors remain relevant to the street community and their collaborators in Montreal who pragmatically advance them in ways that confront street law in its 'vertical register.'[296]

Namely, responses and resistance to law occur through the deployment of rights discourse (and especially the 'right' to the city), legislative reform and policy analysis (official recognition of discrimination against street-involved people), and direct intervention in the municipal court system (with the assistance of 'mobile' legal clinics).[297] These initiatives have

[296] Davies (Flat), *supra* note 25.

[297] Other jurisdictions have used test case constitutional litigation (rather than municipal venues) to varying degrees of success. In *Federated Anti-Poverty Groups of B.C.* v. *British Columbia,* [1991] B.C.J. No. 3047 (B.C.S.C.), for instance, the social condition of being homeless is an analogous ground of discrimination under section 15 of the *Charter*. In at least two cases anti-poverty activists challenged provincial laws regulating loitering and panhandling as falling "in pith and substance" under federal jurisdiction: *R*. v. *Jarvis, Warrington and Verge* (1980) 119 D.L.R. (3rd) 538 and *R. v. Banks* (2001) 55 O.R. 3rd 374 (O.C.J.). In those cases, the courts upheld the laws as within provincial powers over the regulation of pedestrian and vehicular traffic. Compare constitutional litigation to the alternative approach adopted by Ottawa's Ticket Defence Program (TDP) – an affiliation of community members, students, and activists. TDP members accompanied or acted as agents for street-involved people who wanted to defend their tickets for panhandling, illegal camping, and squeegeeing before the provincial court. However, the Law Society of Upper Canada (which has the authority to regulate paralegals) has determined that TDP must obtain paralegal licensing in order to continue its service. Given TDP's mandate and structure, the decision has effectively forced the affiliation to stop providing a vital service to street-involved people in Ottawa. The group is currently challenging the Law Society of Upper Canada's decision: Ticket Defence Program, "The LSUC Denies Access to Justice for Ottawa's Homeless", online: (2008) <http://www.flora.org/legal/tickets/TDP_Press_Release_2008-11-17.pdf>.

without doubt worked to further the needs, expectations, and interests of the street community who remain at the margins of explicit, formal and written law.

A great number of these projects stem from the *Réseau d'aide aux personnes seules et itinérantes de Montréal* (RAPSIM),[298] which has also lobbied in response to efforts by city planners and administrators to produce "historic/touristic" cityscapes[299] with, in theory, plenty of "people places."[300] According to *RAPSIM*, state and economic interests collude through practices around the symbolic, economic and material 'urban renewal' and 'revitalization' of commercial and residential neighbourhoods 'in decline.' These interests are materialized through practices such as: the recent closure of most parks and public spaces in all boroughs between the hours of midnight and 6:00 am;[301] the additional ordinances passed by individual boroughs such as Ville-Marie's (which bans dogs from particular parks where 'punk' youth tend to congregate);[302] the eviction of the *Festival d'expression de la rue*

[298] RAPSIM is a coalition of over 90 non-governmental and not-for-profit organizations working with street-involved people: RAPSIM, "Le Réseau d'aide aux personnes seules et itinérantes de Montréal", online: (2010) <http://www.rapsim.org/fr/default.aspx?sortcode=1.0>.

[299] The strategies are considered part of attempts to render Montreal better able to relate to and compete with other urban agglomerations around the globe through marketing strategies and image-making. On the touristic-historic city model as an ideological instrument deployed to create a particular vision of the city and three dichotomies inherent to the concept touristic-historic city (namely, localism/globalism, national/vernacular, and residents/tourists), see: Gregory Ashworth & John Turnbridge, "Whose Touristic-Historic City?" in Alan Lew, Colin Michael Hall & Allan Williams, eds., *A Companion to Tourism* (London: Blackwell, 2004) 210-222.

[300] To Marcus and Francis, people-oriented places can apply to any feature of the urban landscape including parks, plazas, housing complexes, subway stations, university campuses and childcare facilities; they provide performance-based design recommendations that focus on relationships between the way spaces are designed and how they are used: Clare Cooper Marcus & Carolyn Francis, *People Places: Design Guidelines for Urban Open Spaces* (Toronto: John Wiley and Sons, 1998).

[301] *Règlement sur les parcs* (R.R.V.M., c.P-3), sections 3 and 30. The city's *Ordonnance* numéro 8 includes 46 exemptions to the closure rule, many of which are located near metro stations (e.g., Square Victoria and Place d'Youville).

[302] *Règlement sur le contrôle des chiens et autres animaux* (no. C-10) bans dogs from public spaces such as Émilie-Gamelin Park and Viger square.

(designed to be a bridge between street youth and the broader community) from its regular venue at a centrally located ('public') university.[303]

These discriminatory practices, according to *RAPSIM* and its allies are not the unfortunate outcome of the city officials' earnest attempt to deploy its jurisdiction over incivilities. Rather, they result from a deliberate attempt to assuage the concerns of resident and business associations lobbying for greater police presence through 'pas dans ma cour' ('Not In My Back Yard') responses to creating or sustaining already existing social services for street-involved people in 'revitalized' parts of the downtown core.[304] The result is a shrinking of the access to 'open' spaces by street-involved people, effectively denying their 'droit de cité' (right to the city).[305]

In large part from the pressure and the on-going campaigns by *RAPSIM* and the *Réseau Solidarité Itinérance du Québec* (RSIQ), Québec held its first public consultation on homelessness in 2008. The *Commission de la santé et des services sociaux* (Commission

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[303] The *Festival d'expression de la Rue* (FFR) is organised by the *Collectif d'intervention par les pairs* (formally street-involved youth) in conjunction with over fifty community groups. The specific goals are to favour better communication, more meaningful interaction, and deeper comprehension between street youth and the broader population. It is three days of music, performance art, workshops, and information-sharing that foster conditions in which street-youth and their allies to showcase their talent as well as interact with the broader community in ways that demystify street culture, shatter stereotypes about street youth and generate new interactions and dialogue. In 2009, however, after twelve years of collaborating with the Université du Québec à Montréal (UQAM), the organizers of the FFR were informed by the university's President that the space (the central location of Place de la Paix on St-Denis Street at the Berri-UQAM metro station) would not be made available to them. The university preferred, according to RAPSIM, to host activities of a more 'sober' and less 'polemical' nature: Bernard St-Jacques & Jean-François Mary, "Festival d'expression de la rue (FER): Quand L'UQAM donne dans le 'pas dans ma cour'!" (2009) 1 *L'Itinéraire* 29.

[304] The *Association des résidants et résidantes des faubourgs de Montréal* (ARRFM), the *Corporation de développement urbain du Faubourg St-Laurent* and the *Société de développement commercial du Village* have deployed '*Not-in-My-Back-Yard*' (NIMBY) discourses and lobbied for greater police presence in their neighbourhoods to counter the perceived threat of particular modes of income-generation such as prostitution and panhandling. However, according to one report, NIMBY strategies tend to be aimed at the service-providers (the organizations servicing street-involved people are being harassed) rather than at individual street-involved people: Anabelle Nicoud, « Refuge des jeunes: un déménagement controversé » *La presse* (8 juin 2010) online : http://www.cyberpresse.ca

[305] RAPSIM, *Pour une politique en itinérance: Une nécessité pour Montréal !* (Montreal: RAPSIM, 2008). See especially « Axe 1 : Droit de cité.»

de la santé) released its report in November 2009 and unanimously recommended that the provincial government adopt an official policy on homelessness.[306] Almost concurrently, after a lengthy, broad-based and inclusive consultation and inquiry, the *Commission des droits de la personne et des droits de la jeunesse* (Commission des droits) determined that street-involved people experience and continue to be "at risk of social profiling."[307]

The Commission des droits was particularly concerned with how police norms, policies, practices and standards regarding the 'uses' of public space make the street community "designated targets for ... monitoring and surveillance."[308] It also found that street-involved people in Montreal receive an inordinate number of tickets for municipal offences. While making up less than one percent of the city's population, they nevertheless accounted for almost 32 percent of all tickets issued by police under municipal by-laws in 2004. Of these, most were for minor offences such consuming alcohol or being intoxicated in a public place (despite municipal by-laws permitting the consumption of wine or liquor in some parks as part of a 'meal'), interfering with the flow of traffic, and loitering.[309] Numbers increase dramatically during Montreal's lucrative festival season, when people who generate income from and through the street are most likely to be noticed by police or other street users. A substantial number of tickets were issued for behaviour near subway stations:

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[306] Commission de la santé et des services sociaux, *Rapport sur l'itinérance au Québec : Agissons ensemble* (Québec: Bibliothèque et Archives nationales du Québec, 2009).
[307] Christine Campbell & Paul Eid, *La judiciarisation des personnes itinérantes à Montréal : un profilage social* (Quebec: Commission des droits de la personne et des droits de la jeunesse, 2009) at 51.
[308] *Ibid.* at 59.The Commission's findings were based in part on testimony from street-involved people, service providers, city council, the Mayor of the Ville-Marie borough (which passed contentious regulations that were directly at issue during the consultation), police, and researchers. Céline Bellot and Marie-Eve Sylvestre's qualitative and quantitative data were relied upon: Céline Bellot *et al.*, *Judiciarisation et criminalisation des populations itinérantes à Montréal* (Montreal: Réseau d'aide au personnes seules et itinérante de Montréal, 2005) [hereinafter, Bellot *et al,* (Judiciarisation)]; and Sylvestre (Pénalisation), *supra* note 292.
[309] According to Bellot, fifty-eight percent of tickets were issued under the *Règlement concernant la paix et l'ordre sur le domaine public (*R.R.V.M. c.P-1): *Ibid.*

attempting to impede the flow of traffic, jumping or attempting to jump the turnstile, sleeping or lying down on a bench.[310] The number of these tickets issued increased dramatically in the winter months, when street-involved people were more likely to seek shelter.[311] A smaller (though now increasing) number of tickets are related to behaviour such as smoking in public places.[312]

The Commission des droits also determined that of the individuals getting tickets, a small number of street-involved people (namely, those who are chronically street-involved and struggling with alcoholism or other addictions) received the largest proportion. This latter group was also comprised of the people most likely to be engaging in visible forms of income generation (panhandling, squeegeeing and street-level sex work).[313] Unsurprisingly, these same people tended to receive dramatically less tickets for loitering and similar offences if they found or were provided with long-term social housing.[314]

Finally, the Commission des droits recognized that street-involved people frequently served prison sentences[315] until the intense lobbying efforts by *RAPSIM* and the *RSIQ*

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[310] One man received a total of 216 tickets (almost all of which were for sleeping on a bench) over a six year period totalling 44,000$ in debts to the City: Brian Myles, "Montréal veut mettre la main sur 10 millions en amendes impayées" *Le devoir* (8 decembre 2007) online: :<http://www.ledevoir.com/societe/justice/167816/montreal-veut-mettre-la-main-sur-10-millions-en-amendes-impayees>.

[311] Forty-one percent of tickets were issued under the *Règlement concernant les normes de sécurité et de comportement des personnes dans le matériel roulant et les immeubles exploités par ou pour la société de transport de Montréal* (R-0-36-1), *Lois sur les sociétés de transport en Commun*, L.R.Q., c. S-30.01, art. 144: Céline Bellot (Judiciarisation), *supra* note 305 at 13.

[312] *Ibid.* at 14.

[313] *Ibid.* at 10.

[314] Céline Bellot, *La judiciarisation de l'itinérance : un enjeu majeur à Montréal / Le municipal : acteur-clé d'une stratégie en itinérance* (Montréal, Quebec Centre International de Criminologie Comparée, 2008).

[315] Sections 324 and 366 of Quebec's *Code of Civil Procedure* R.S.Q. c. C-21-1 empower police to issue a recognizance order to appear before a fine collector. If there is failure to appear, the collector can request that a judge sentence the person charged to prison and to issue an immediate arrest warrant for default of payment. A person who "deliberately attempts to avoid payment" is liable to imprisonment for a period not exceeding two years less a day. The Commission des droits also noted Montreal's moratorium with favour and recommended that the provincial government eliminate these provisions as they apply to street-involved people. In 2005, fully

effectively forced the city of Montreal to implement a moratorium on prison terms for unpaid fines.[316]

To be sure, the Montreal anti-poverty community has deployed revanchist discourses instrumentally and strategically to highlight how formal law is used to hierarchically order space in the city to the exclusion of street-involved people. The revanchist symbolizations so clearly emphasize the more manifest, overt modes of what we conventionally understand to be street law, but they may not get at its more latent aspects. The instrumental symbolisms that emphasize street-involved people's containment in or exclusion from public space, for example, do not fully grapple with: the more routinized and mundane modes of governance in and through city spaces; the paradoxical and inconsistent normative commitments of the individuals charged by the state to administer formal norms; the multiple normative universes that comprise the moments of interaction between street-involved people and their interlocutors; and the ways in which multiple street users constitute street law.

My argument is that there may be other ways of expressing street law (which I elaborate shortly) is not, however, a dismissal of more revanchist symbolizations. True, they may miss moments of injustice just as they reveal moments of oppression. They may also miss as many creative possibilities as they reveal the power of certain symbolizations of street law. All representation holds coercive and violent as well as constructive and life-

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75% of tickets issued to street-involved people resulted in a prison term for unpaid fines: *Ibid.* at 3. My interviews indicate that to some street-involved people, a prison term can at times be a quick way to write off tickets (Interview with Yann, on file with author). For others, it may mean a break in their methadone treatment; being forced to put a stop to a work agreement, recognized paid employment or formal education; the potential to lose custody of their children; being forced to abandon a companion animal; or having their name taken off the waiting list for social housing (Interviews with Marco, Richard and Samir on file with author).

[316] *Ibid.*

affirming potentials.[317] Pure cynicism about our dominant modes of governing and being governed in urban spaces may, as Zizek has pointed out, reinforce the very ideology and received beliefs that it seeks to dismantle; close attention that stems from scorn and disgust can become obsession and thereby a kind of homage.[318] I suggest four cinematic legal metaphors for street law with the aspiration that they both foreground injustice and retain the optimism that the critical legal pluralist ethos furthers: law is a framework for self-directed behaviour and the pursuit of individual or shared purposes.

2.3 Cinematic Legal Metaphors Of, For, and As Street Law

In this section, I argue that four metaphors can help us apprehend different spatio-temporal-psycho-social matrices of street law: Aerial Viewpoint, Shot/Reverse sequence, Close-up, and Tracking Shot. As noted earlier, like any other descriptive exercise, my choice of metaphor is "normatively charged." [319] Here, I construct conceptual devices aimed at iterating and irritating power relations that render street-involved people more vulnerable to unjust modes of governance. While any claim to generate alternative understandings can be used in ways that further marginalize already vulnerable groups, these metaphors work against constituting street-involved people through a narrow account of autonomy.[320] Instead,

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[317] Jacques Derrida, "Force of Law: Mystical Foundations of Authority" in Drucilla Cornell, Michel Rosenfeld & David Gray Carlson, eds., *Deconstruction and the Possibility of Justice* (New York: Routledge, 1992) 3 at 26.
[318] Slavoj Zizek, *The Sublime Object of Ideology (Phronesis)* (London & New York: Verso Books, 1989) at 28-30. See also: Maria Aristodemou, "Cause Lawyers are Alright: Ideology Works Its Magic on the Cause" (2009) 5:3 International Journal of Law in Context 331 at 336.
[319] While there is a contextual "intelligibility" to the distinction between descriptive and normative legal thought, that dichotomy collapses when we take into account how descriptions are always already "normatively charged": Pierre Schlag, "Normativity and the Politics of Form" (1991) 139:4 University of Pennsylvania Law Review 801 at 811-14 [hereinafter, Schlag (Normativity)].
[320] For an example of how a simplistic choice model informs orthodox assumptions about which legal actors should have authority to govern, see: Robert Ellickson, "Controlling Chronic Misconduct in City Spaces: Of

the four cinematic legal metaphors I propose are intended to show how street-involved people's individual agency can be conceived in terms of our relational autonomy and how their agential normative selves are materially and socially embedded, while always keeping in focus the relations and structures that advance (or hinder) the conditions that make such autonomy and agency possible.

2.3.1 Street Law in Aerial Viewpoint

The anti-poverty community in Montreal has mobilized in response official law enforcement's discriminatory practices which effectively force street-involved people out of shared urban spaces. An Aerial Viewpoint of Montreal would likely confirm that street-involved people have been shepherded out of commercial, aesthetic, and touristic zones, to either more remote neighbourhoods or to zones of decay or/and those marked as spaces of 'service-provision'. It would also provide, as I argue below, a better sense as to how, where, and when street-involved people circulate, generate income, and access services in Montreal. I argue that these movements through urban space are primarily governed through decentralized rather than centralized social norms.[321] This spatialized street law should, as a

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Panhandlers, Skid Rows and Public-Space Zoning" (1996) 105 Yale Law Journal at 1173 (arguing that 'localized' practices should be favoured over the "federal constitutionalization of street law" but that local law should be governed externally from the street community by "trustworthy police officers" with "significant discretion") For a critique of such essentializing and individualistic versions of autonomy generally: Catriona Mackenzie & Natalie Stoljar, eds., *Relational Autonomy: Feminist Perspectives on Autonomy, Agency and the Social Self* (Oxford: Oxford University Press, 2000). Within the legal context: Nedelsky (Autonomy), *supra* note 223.

[321] For two insightful surveys on how these decentralized norms shape governance *of* street-involved people by police in Montreal, see: Bellot *et al.*, (Judiciarisation), *supra* note 305; and Sylvestre (Pénalisation), *supra* note 289. Others have shown how Toronto's attempt to address homelessness by creating more shelters was unsuccessful, in part, because of the ways in which zoning law is designed to govern *uses* but actually governs *things* and *people* simultaneously: Mariana Valverde, "Taking 'land use' seriously: toward an ontology of municipal law" (2005) 9 Law Text Culture 34; Prashan Ranasinghe & Mariana Valverde, "Governing Homelessness Through Land-use: A Sociolegal Study of the Toronto Shelter Zoning By-Law" (2006) 31:3 Canadian Journal of Sociology 325.

consequence, also be attended to when imagining the governance of and by street-involved people that can further their conditions of autonomy and agency.

THE AERIAL VIEWPOINT

As noted earlier, cinema interacts with the city by providing new views of the city; one of these framing devices is the Aerial Viewpoint. Technically it is filmed in an exterior location from far above – whether from an airplane or the top of a building – and permits a 'bird's eye view' of a cityscape; figuratively, it is often used to convey relations of power and practices of regulation. At first blush then, the Aerial Viewpoint orders, plans, and captures the same meaning as the revanchist metaphors for the regulation of bodies through the definition of spatial territory. As film scholar Edward Dimenberg explains:

> From law enforcement observations of neighborhoods to the use of satellite images to plan the future location of shopping centers, the aerial view of urban space facilitated its oversight, management and planning, thus suggesting a new sense of the city and its 'truth.'[322]

When used as a static viewpoint from above, the Aerial Viewpoint does work as a cartographic exercise in that it conveys fixed points of reference. Consider the Montreal police services' attempt to make Montreal legible as a series of neighbourhoods each with their own regulatory objectives and targeted subjects.[323] As Bourdieu reminds us, "the power to impose and inculcate a vision of divisions, that is, the power to make visible and explicit

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[322] Dimendberg, *supra* note 276 at 47.

[323] Service de Police de la Ville de Montreal (SPVM), "Redrawing the Police Map", online: (2010) <http://www.spvm.qc.ca/en/pdq/2_3_1_revision_carte_policiere.asp>. Sylvestre has compiled a taxonomy of police priorities in particular city spaces, including « présence dérangeante de mendiants et itinérants » (annoying presence of vagrants), prostitution, graffiti and incivilities in sectors 20, 21, 22 and 38 (which comprise Montreal's primary shopping, commercial and entertainment districts, such as Old Montreal and the Plateau Mont Royal): Sylvestre (Pénalisation), *supra* note 292.

social divisions that are implicit is political power par excellence. [324] His conceptualization of the aerial viewpoint obscures how it might also provide insight into the ways material spaces are layered with imagined and experienced space.[325] Namely, individuals' material lives are constituted through relationships, experiences, habits, and self-reflection.

The perspective from above and from away is not always or necessarily detached from the lived space of our urban environments. Instead, the aerial perspective may enable what Franco Moretti in another context calls a "distant reading." The intentional abstraction of details can suggest something about the patterns and networks of governance that street-involved people navigate and generate. According to Moretti, distance is "not an obstacle" to knowledge about phenomena but a "specific form of knowledge" with "fewer elements" and consequently provides "a sharper sense of their overall connections." A distant reading of Montreal through the aerial viewpoint permits a perception of street-involvement as everyday routines or "small phenomena" which can be perceived "from afar."[326] In what follows I suggest how creating distance can actually expand and deepen some critical connections that have already been made around the relation between governance and poverty. As details (or specificities) that would make objects and subjects recognizable are minimized, this model works to emphasize broader patterns that occur in street-involved peoples' relationships to their physical environment. Taking a distance in this way permits us to think about networks of regulation as they operate horizontally rather than always already relying

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[324] Pierre Bourdieu, "Social Space and Symbolic Power" (1989) 7:1 Sociological Theory 14 at 23.
[325] For scholarship arguing against a positivist view of space, see: Henri Lefebvre, *The Production of Space* (Oxford: Blackwell, 1991). Edward Soja, *Postmetropolis: Critical Studies of Cities and Regions* (Oxford: Blackwell 2000). Whereas Lefebvre displaces the distinction between pure form (empty / imagined space) and impure content (lived time / everyday practices), Soja adds that all cities are hybrid forms with shifting realities.
[326] Will Straw, "The Circulatory Turn" in Michael Longrod, Barbara Crow & Kim Sawchuk, eds., *Sampling the Spectrum* (Toronto: University Press, 2009) 17 at 20 [hereinafter, Straw (Circulatory)].

on a vertical expression of social power; this latter symbolization of law can at times fail to consider subjects' expressions of agency.[327]

STREET LAW FROM A DISTANCE

Imagining street law through the aerial viewpoint, we can consider the jurisgenerative sites of the city of Montreal in spatial and geographical terms that take us beyond simply mapping the 'cartographies of homelessness'[328] or understanding street-involvement in terms of overlapping or conflicting zones of occupation (or non-occupation from the perspective of the street community).[329]

Without doubt, there are public spaces that street-involved people attempt to explicitly reclaim for their purposes such as city bus stops, benches, subway corridors and parks. The aerial viewpoint can give us a sense of such 'placemaking' tactics[330] in which street-involved people engage and through which they not only disrupt spatial order imagined through design and legislation but re-imagine and re-appropriate city spaces from which they have been 'expulsed'. Without overly romanticizing such practices, for some street-involved people, they are explicitly political. Denis Munger, for instance, has spent decades creating public art in Montreal's downtown from found garbage; he has a 'circuit' of about twelve

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[327]See Davies' discussion of horizontal (pluralist) hypotheses of law as opposed to vertical (positivist) accounts: Davies (Flat), *supra* note 25.

[328] In the United States, *Google Map* and the *National Alliance to End Homelessness* inaugurated its cartography of homelessness project based on statistics reported in local media and on a centralized website: National Alliance to End Homelessness, "Counts Media Map", online: (2009) <<http://www.endhomelessness.org/section/data/interactivemaps/2009countsmap>. >. Each American city is already required to conduct a one-day 'count' of the homeless population: Department of Housing and Urban Development, "Continuum of Care", online: <<http://portal.hud.gov/portal/page/portal/HUD>. >. Compare this approach to Marc Spooner's, an education professor at the University of Regina who has created a map *for* homeless people in that city, suggesting trajectories through the "patchwork supports" in Regina: Evan Thornton, "Living on the Street? Unfortunately There's a Map for That", online: (2010) Spacing Ottawa <http://spacingottawa.ca/2010/02/25/living-on-the-street-unfortunately-theres-a-map-for-that/>.

[329] This conception of street law will be considered in greater detail through the Shot/Reverse sequence.

[330]Susan Ruddick, *Young and Homeless in Hollywood: Mapping Social Identities* (New York: Routledge, 1996).

locations where he creates and displays his installation pieces.[331] Despite being arrested for disturbing the peace, he continues to display his art in public venues with the hope that people will breathe new life into found objects.[332]

The Aerial Viewpoint, conversely, enables perception of the other "nodal points" street-involved people move through; these points are "connected by the movement of people between them."[333] This perspective offers a glimpse into the rhythms of the day-to-day and night-to-night negotiations of street-involved people through multiple and simultaneous spatio-temporal matrices by highlighting how street-involved people 'spend' their time moving from place to place. Rather than bringing to light the shrinking public space, the Aerial Viewpoint permits a glimpse at the ever-expanding quasi-public and private zones of poverty. Through a mapping of these rhythms, it becomes clearer that street-involved people find themselves embedded in power relations that are not limited to, or necessarily dominated by, the formal, state-based, explicit and canonical expression of law. Unlike disciplinary metaphors for the city and how we govern and are governed through space, imagining governance as an Aerial Viewpoint moves us to think about how the street community not only responds to punitive regulation, but also navigates a mosaic of legal orders.

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[331] His work is 'tolerated' by city workers who usually take down the installations before the weekends: McLeod Tremblay, "Gangs de rues", online: (2009) 15:31 Métro <http://zepeintre.blogspot.com/2009/05/gang-de-rues.html>.

[332] Interview with Denis Munger (on file with author). Munger who holds a B.A. in architecture from the University of Montreal also ran as an independent candidate for city councilor. Part of his platform included creating low-income housing units and transforming an incinerator (at the Brébeuf and St-Grégoire intersection) into a garbage recycling centre: *Ibid.*

[333] Caroline Knowles, "Burger King, Dunkin Donuts and Community Mental Health Care" (2000) 6:3 Health & Place 213; and Hwang, *supra* note 111.

The Aerial Viewpoint is especially useful as way of perceiving the less 'visible' aspect of street-involvement. Conceptualizing the ways in which street-involved people circulate within and relate to lived space as a series of encounters, possible connections, and rhythms permits us to perceive a number of things. First, we can pinpoint instrumental and constitutive 'centralizing' spaces that are not as directly connected to the formal (criminal) law.[334] These are spaces where contractual norms and unofficial enforcement mechanisms are constantly renegotiated through hierarchically ordered interactions that loop back to street-involvement: collection agencies, pawnshops and payday lending businesses which increasingly make up part of the informal "economy of addiction."[335]

Second, it provokes interrogation of the production of representational spaces of 'accommodation' and 'targeted' services: administrative agencies that provide 'work programs,'[336] drop-in centers, missions, churches, youth hostels, food banks, detox centers, mobile food units, hospitals and other emergency health facilities.[337] Governance is distributed exogenously and endogenously through and within these 'help' spaces, which are part of the symbolic processes that embed homelessness into the social fabric. These other normative sites – shelters, soup kitchens, mobile health clinics etc. - while not necessarily

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[334] Blomley reminds us that even when we "decenter law … we find that the reproduction of some powerfully centralizing processes." He focuses on the oppressive property relations in Vancouver's downtown East side: (Gentrification), *supra* note 51 at 192.

[335] Will Straw explains that in Vancouver compact disks are integrated into this economy as they can be stolen, traded and sold with relative speed and ease: Will Straw, "Exhausted Commodities" (2000) 25:1 Canadian Journal of Communication 175 at 180. My interviews indicate that a similar circulation occurs in Montreal.

[336] In 2004, the Quebec Department of Justice passed amendments to the *Code of Civil Procedure* R.S.Q. c. C-21-1 (articles 335 et 339) that gave judges the discretion to allow impecunious people charged with regulatory offences to perform community work in lieu of paying fines (at minimum wage). *Le Pont* administers the program for youth under the age of 18, whereas the *YMCA* administers the program for adults according to an agreement with the minster of public security.

[337] Despite their higher need for health care, there exists little information on the street community's use of health care facilities, the barriers they face when attempting to obtain care or the appropriateness and effectiveness of the services they do receive. One study, however, has found that between 32-54% people who identify as homeless report that they have received care in an emergency department in 2009 (over three times the rate of use in the general population): Hwang, *supra* note 111.

marked by recognizable state symbolism must be attended to when grappling with street law. As Marianne Constable has put it, to point out that positive law "is but one possibility for law" will neither bring about 'justice' or 'community;' however, to "forget all other possibilities will certainly foreclose" the possibility of either.[338] The regulation of street-involved people is often more effective through the help sector than through the police. Indeed, street-involved people may more easily, in some cases, navigate regulation by official legal actors.[339] Moreover, it is often the more implicit and informal governance of shelter staff (who can engage in intrusive and judgmental risk assessments and case-management approaches) that most directly concern street-involved people: alcohol and drug bans, curfews, and people being turned away from spaces because of their companion animals.[340]

Third, while it is true that people move in and out of their family homes, women's shelters, transition houses, rooming houses, and motels, the mobilities of street-involved people, are far more complex than what the discursive label and subjectivity "street-involved" (and consequently service-reliant) permits. The Aerial viewpoint can give insight into how individuals constitute spaces that attest to the complex normative lives and the competing

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[338]Marianne Constable, *The Law of the Other: The Mixed Jury and Changing Conceptions of Citizenship, Law, and Knowledge* (Chicago: University of Chicago Press, 1991).

[339] For instance, people who sell the magazine l'*Itinéraire* are rendered almost 'immune' to police harassment (interview with Serge Lerault). However, they often endure similar harassing behaviour from some service-providers (interview with France). It is primarily for this reason that l'*Itinéraire*'s mandate is one of non-intervention. While the organization will assist people in finding stable housing, one's ability to work as a seller is not contingent one's ability to maintain such housing. Further, sellers are paid by the unit sold rather than hours worked (providing a framework of sufficient flexibility to foster conditions of stability).

[340] This point should not be taken as a pure cynicism and a blanket dismissal of the manifold actors who engage in compassionate, caring, and respectful interactions every day with street-involved people. My point is merely to question what is most commonly understood as the most oppressive regulatory force (the criminal law enforced by police for instance) with which street-involved people must content. It is also to suggest that people working within the help sector are also contradictory and complex jurisgenerative actors. The relations of care that guide interactions between street-involved people and service providers will be grappled with more fully in the next section, "The Close Up."' For a similar reading of interactions between shelter staff and street-involved people, see: Lisa Hoffman and Brian Coffey, "Dignity and indignation: How people experiencing homelessness view services and providers" (2008) 45:2 The Social Science Journal 207.

desires, expectations, habits and values each individual holds in every aspect of their "human spatiality" whether physical, mental or social,[341] whether affordable permanent and social housing[342], community coffee shops[343], methadone maintenance services,[344] green spaces[345] or shared kitchens.[346]

Each jurisgenerative site – whether instrumental, representational, or interactive - has many normative depths of field, taking multiple forms, and deploying multiple instruments. Each has its own rules, terms of use, entry conditions, jurisdictions and experts. But each is also in continual interaction and flux, always contesting, appropriating, and influencing each

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[341] Soja refers to these fields as the trialectics of spatiality – which are "real and imagined, concrete and abstract, material and metaphorical;" none is 'better' than the other "as long as each remains open to the re-combination and simultaneities of the 'real and imagined: Edward Soja, *Thirdspace: Journeys to Los Angeles and Other Real-and-Imagined Places* (Cambridge: Cambridge University Press, 1996) at 63.

[342] *La pointe libértaire* is an anarchist collective which has been working with community partners to create a squat / social center in an abandoned Canadian National building since 2007. Unlike community centres, they consider themselves to be entirely autonomous from the government and non-hierarchical in structure. Like some community centers, they also offer holistic programs and services. They merge artistic, educational and needs-based projects: community gardens, food distribution, permanent shelter, alternative media outlets, and bike workshops: La pointe libértaire, "Quartier autogéré, quartier libéré", online: (2007) <http://www.lapointelibertaire.org/>.

[343] Montreal-based *L'Itinéraire* has for over 16 years provided work for 400 people a year; it provides a venue for the street-involved to write, edit, and distribute a collaboratively produced magazine in the context of more holistic social reintegration strategy. It also runs a community café that serves approximately 2000 people per year: L'Itinéraire, "Pour vaincre l'itinérance", online: (2010) <http://www.itineraire.ca/>.

[344] *Méta d'Âme* is a day center which works with methadone patients and people addicted to heroin within a framework that develops and, when possible, rebuilds relationships with family, friends, coworkers and neighbours. It is organized within a peer-to-peer ("pour les pairs, par les pairs") framework and is the only service-provider in Montreal that is organized and directed by people who currently use (or who formally used) heroine or its derivatives: Méta d'Ame, "Pour les pairs, par les pairs", online: (2010) <http://metadame.org/>. However, it is not equipped with sleeping spaces and shelters are not staffed with people equipped to adequately deal with the complexities of addiction. There is a pilot project under development that would merge the two desired outcomes that these services attempt to achieve: safe places to sleep while negotiating the psychological, emotion and physical demands of addiction (Interview with Serge Lareault, on file with author).

[345] There is increasing awareness that day centers and other service-providers rarely have access to outdoor spaces such as parks and gardens where street-involved people can simply rest (Interview with Serge Lareault).

[346] One model of community kitchen which is directed specifically at street-involved people tend to offer participants access to a fridge and freezer, a space to their food and access to a kitchen either on a 24 hour basis or within a more limited schedule. Another model is the 'collective' kitchen, which is a network of people who share the costs of food and its preparation. Another still is a dining co-operative where members pay fees (priced on a sliding-scale) and agree to work a number of shifts a week in order to receive full meal services. See for instance the Dining Co-op which sadly has recently had to shut its doors: Montreal Urban Community Sustainability: online: <http://www.mucs.ca/>.

other's rules, decision-making processes, traditions, and institutions. In thinking about the associations between these multiple normative sites, we may be better positioned to stimulate new thinking about oppressive power relations. Looking at some of the patterns and rhythms of street life also gives us a sense of what services, relationships and interactions would further their conditions of agency from basic amenities like 24-hour open access to clean public washrooms, storage space and places to make and share meals, to more supportive preventive models of care such as wet-shelters and safe-injection sites, to spaces that can be lived and experienced in ways that engage people as complex, creative, spatial and normative beings. Getting a different picture of their everyday patterns can provide insight into how to foster conditions of agency for the street-community based on the relations of care that already exist; it also provides insight into how street-involved people produce and live in cityscapes that generate more meaningful services and long-term relationships.

In looking at the city from above, it becomes a complex of normative sites. In and through social practices that endlessly irritate or re-imagine those norms we constitute the conditions for possible self-transformation. While it is impossible to map out with any certainty the trajectories of the interactions of street-involved people (as a heterogeneous mix with multiple and conflicting desires, needs and normative expectations), we can, nevertheless, develop a sense of the tendencies, flows, and rhythms of their interactions.[347] These tendencies, flows and rhythms, I propose, can be apprehended through the Aerial Viewpoint.

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[347] Macdonald (Emergence) *supra* note 8 at 22.

Conceptualizing street law from the 'bird's eye view' is, as noted, but one, necessarily partial, scale. On one level, when we think about the movements of people and objects in space we must always remember that there is always "more at stake in the placement of people" and the street-involved poor especially "than the location of lamp-stands."[348] The attention to detail, to singularity that Blomley prefers we attend to is perhaps better apprehended, as I will explain later, when we consider governance of and by the street-involved people through the Close-up. On another level, to emphasize the flows of street-involved people may also reinforce the view that they are migrants.[349] Accordingly, their movements through particular urban space will be perceived as 'shallow' as opposed to shop-owners' more rooted connection (through reputation, lease, land ownership, and established relationships with institutional law enforcement officials).

It is for this reason that I believe the Shot/Reverse sequence, as I will explain below, is a complementary cinematic code to the Aerial Viewpoint. I believe it best captures some of the ways in which street-involved people assert their authority and legitimacy as integral and constitutive parts of the city's fabric.

2.3.2 Street Law Through Shot/Reverse

The Aerial Viewpoint can draw attention to exogenous rules and practices that restrict movement in city spaces as well as the ways in which street-involved people nonetheless

[348] To him, the traffic logic (flows, connections and networks) does more than simply associate people and things: it constitutes people *as thing*s: Blomley (Beggar), *supra* note 169.
[349] For instance, as young white male punks migrating to British Columbia for the summer months or in search of less expensive and more easily available drugs: Daniel Cross & Eric 'Roach' Denis, *Squeegee Punks In Traffic [S.P.I.T.]* (2001)

engage their material, social, and representational fields of human spatiality. The Shot/Reverse is the cinematic code I rely on in order to imagine relationships between street-involved people and particular interlocutors – the police – in ways that position them as judges. This relation is conventionally discussed in terms of surveillance and counter-surveillance. I use the Shot/Reverse to reconceptualize it in the aspirational realm of dialogue and inter-subjective possibility.

Surveillance - according to the expanding field devoted to its study - is a network of dynamic processes that occurs in situations of interaction whereby personal data is collected for the purposes of management of populations through governance, regulation and control.[350] A fundamental concern for anti-surveillance scholars and activists is how (formal, official) law's gaze is used to regulate particular populations, including street-involved people. The Panopticon has often been the dystopic visual metaphor relied on for knowing and experiencing current configuration of power in the global north. Law's ubiquity is embodied through its technologies of observation that in turn constitute self-regulating subjects: by way of its normalizing gaze, law delimits acceptable and unacceptable ways of being. These practices are often justified as a response to citizens' fear of terrorism, crime, and disorder; as part of downtown revitalization projects; or to meet growing demand for new modes of reality-type entertainment. Some surveillance scholars direct their attention to the ways in which the gaze is always bi-directional (rather than unidirectional) and that populations subjected to (formal, official) law's gaze always contest its claim to power and domination.[351]

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[350] For a survey of the field, see: Gary Marx, "Desperately Seeking Surveillance Studies: Players in Search of a Field" (2007) 35:2 Contemporary Sociology 222.

[351] The paradigmatic instance is such unidirectional panoptical analyses is to show the motivating factor behind increased video surveillance, and especially the control of particular racial and socio-economic groups: Gary

One of these resistance tactics is the counter-gaze or counter-surveillance. Paradoxically, like other revanchist metaphors, the panoptical gaze – and even the resistance embodied by legal *subjects* - remains a symbolization that obscures any possibility of social actors as *agents*. Consequently, other scholars express agnosticism toward imagining governance in urban spaces in terms of an omniscient gaze.[352] They tend to promote a more ambivalent understanding of the dynamic, imperceptible, and mundane patterns of surveillant interactions and the assemblages and networks of surveillance that flow over our contemporary social body.[353]

Further, as Rancière comments, transformative politics is contingent upon our ability to express dissent as well as our need to promote dialogue.[354] Rancière aligns the study of cinematic modes of thought with conceptions of agency and autonomy.[355] Building on his insight and on that of critical surveillance scholarship generally, I argue that one way to understand how modes of governance and regulation generate acquiescence to oppressive behaviour (such as police brutality) is through cinematic forms that rely on conflict and

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Armstrong & Clive Norris, *The Maximum Surveillance Society: The Rise Of Cctv* (Oxford: Berg Publishers, 1999).

[352] Some scholars categorically reject panopticism as an adequate metaphor for our current post-disciplinary moment. However, most research in the field tends to accept the heuristic utility of Foucault's model. They tend to nonetheless shift toward a decentralized conceptualization of surveillance, favoring micro studies around new public and private forms of surveillance throughout urban space: Kevin Haggerty, Laura Huey & Richard Ericson, "The Politics of Sight / Site: Locating cameras in Vancouver's Public Spaces", *Surveillance and Governance: Crime Control and Beyond* (Bingley, BD: Emerald Group Publishing Limited, 2008) 35.

[353] These practices occur within a broader context of acquiesced surveillance (e.g., web browser 'cookies', wireless internet connections, welfare system/revenue services, personal identification numbers) and our collective awareness and large scale embracing of a certain 'surveillance aesthetic' (e.g. consumer profiles, bank machines) and shifting social norms around privacy and disclosure (e.g. cell phones, social networking media, on-line interfaces and platforms, and avatars). See generally: Ric Simmons, "Why 2007 is not Like 1984: A Broader Perspective on Technology's Effect on Privacy and Fourth Amendment Jurisprudence" (2007) 97 Journal of Criminal Law and Criminology 531.

[354] Jacques Rancière, *The Politics of Aesthetics: The Distribution of the Sensible* (London: Continuum, 2006) [hereinafter, Rancière (Aesthetics)].

[355] This interpretation of Rancière's project is elaborated in: Tom Conley, "Cinema and its Discontents: Jacques Rancière and Film Theory" (2005) 34:3 SubStance 96.

contradiction.[356] I rely less on the panopticism/post-panopticism as the conceptual frame for relationships between street-involved people and the social actors who have come to stand in as one of the primary symbols of surveillance society: the police. Rather, I use the Shot/Reverse sequence from film theory as a way to understand how Rancière's dual aspirations - critique and dialogue – constitute interactions between street-involved people and police.

THE SHOT/REVERSE SEQUENCE

A conventional Shot/Reverse sequence will switch between complementary spaces; it often features two characters in face-to-face interaction, and usually in conversation. It generally consists of spectators being presented someone who is watching; there is a cut and the spectator then sees what the watcher is looking at. If a Shot/Reverse sequence abides by the postulates of continuity (or 'invisible') editing - which is founded on a desire to minimize the audiences' awareness of shot transitions, fragmentation or any other cinematic technique in order to maintain the story's flow - the camera shows each figure in succession.[357] Correspondingly, the spectator makes spatial and temporal connections between characters (that they share a space and are looking at each other). According to one view, through the Shot/Reverse interaction, the viewer becomes a mediator between two

[356] Rancière (Aesthetics), *supra* note 354.

[357] According to the180° rule for spatial continuity, the camera cannot move beyond an imaginary line (the axis of action) that separates two characters. The 180° line determines a half-circle within which the camera can be placed when filming the action within a scene. The rule is intended to ensure a consistent eye line (characters are perceived to be looking at one another) and screen direction (keeping characters' movements within the frame constant). This structure should allow viewers to know exactly where characters are in relation to one another and in relation to the space in which the scene takes place. For an overview of some of the rules of continuity editing, see: Pramaggiore & Wallis, *supra* note 23 at 187.

perspectives, 'suturing' competing claims into a seamless whole.[358] The conventional understanding of the Shot/Reverse has been called a technique that maintains the "omnipresence of classical narration."[359] To be more precise, it draws on viewers' prior knowledge of cinematic conventions about how a particular story will unfold. As such, it may "reinforce habitual expectations" (common sense assumptions) rather than alter our "normal viewing activities" (everyday practices).[360] This may be true, but I argue that the Shot/Reverse does nevertheless work as a dialogic mode.

Filmmakers often use the Shot/Reverse structure to facilitate the feeling of a conversation between two actors on the screen. I rely on these somewhat conflicting readings of the meanings generated through the Shot/Reverse sequence to use it as metaphor for street law. In the first subsection, I show how the Shot/Reverse can be used as a way of understanding surveillance and counter-surveillance in ways that order and sustain conflicting discourses. I discuss *Copwatch*'s counter-surveillance tactics: individuals who 'watch the watchers' in order to resist formal law's authority to define who is a legal subject and who is a legal agent.

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[358] Building on Lacan's theory of the subject and language, suture, for some film theorists refers to the way cinematic conventions weave the spectator into a narrative. See especially: Jean-Pierre Oudart, "Cinema and Suture" (1978) 18:1 Screen 35.

[359] Bordwell, *et al, supra* note 277 at 31. The Shot/Reverse pattern is considered mainstay of a somewhat narrow set of editing possibilities that have historically been deployed in dominant Western filmmaking that ensure narrative continuity:" Bordwell & Thompson, *supra* note 541 at 276.

[360] Consider the analogy with relationships between police and the street-community. In Winnipeg, while the city has recently reaffirmed a by-law against particular forms of panhandling. Anti-surveillance activists assert (correctly) that this law has and will be used to displace street-involved people. However, it is a different regulatory instrument, *The Intoxicated Persons Detention Act,* C.C.S.M. c. I90 and its enforcement by state-empowered citizens hired by the business community that is used to harass and humiliate panhandlers and other street-involved people (Interviews with Macho, Winnipeg *Copwatch* and with Byron Williams, council for NAPO who was successful constitutional challenge to sections of Winnipeg's anti-panhandling by-law, on file with author). See also: Winnipeg Downtown Biz, "Safety Tips", online: <http://www.downtownwinnipegbiz.com/home/safety/safety_tips/>

In the second subsection, I explain how the Shot/Reverse sequence can be used to think about street law in terms of its potentiality for self-reflection and self-transformation. As Silverman notes, its operations permit the viewing agent to proclaim: "yes, that's me" and "that's what I see."[361] Through its processes of ascribing a view to an actor who is then revealed in the next shot, it helps us imagine another function of governance: creating conditions for self-transformation by re-evaluating how we believe our 'others' see us.

REVERSE SHOT AS CRITIQUE

The Shot/Reverse structure can help us imagine and understand the normative disagreements between street-involved people and their interlocutors and, for our purposes, the police.

Over the last few decades, collectives and affiliations have emerged in every major Canadian urban centre to counter police harassment and other forms of brutality directed at particular populations (including street-involved people) by 'cop watching.'[362] *Copwatch*'s overarching goal is to "end police brutality, police impunity and police misconduct."[363] This

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[361] Kaja Silverman, "On Suture" in Leo Braudy & Marshall Coeh, eds., *Film Theory and Criticism* (Oxford: Oxford University Press, 1999) 137-147 at 140.

[362] *Copwatch* is an informal network of self-governing volunteer collectives. It first emerged in the United States based on the model implemented by the *Black Panther Party*. Members of the *BPP* would foot patrol and kept a watch over police officers in predominantly African-American neighbourhoods. They would intervene if individual officers became intimidating or abusive. The broad aims of *Copwatch* are to foster police accountability, to document and prevent police brutality and to safeguard the rights of citizens. While goals of different collectives vary, most collectives engage in community legal education and videotape interactions between police and the public. They also tend to be an important presence in leftist protests and demonstrations, collecting witness statements and archiving violent and non-violent interactions. See generally: *Copwatch*, "Refuse to be Abused", online: <http://www.berkeley*Copwatch*.org/>. In Montreal, le *Collectif opposé à la brutalité policière* (COBP) is one of the main forces behind the rally against police brutality held each March 15th. They also provide support to people who have experienced violence at the hands of police officers; publish and distribute *L'Agent provocateur* which provides legal information; and engage in « du cop watch » which they define as « l'action d'observer la police dans l'exercice de l'abus de ses fonctions: » Collectif opposé à la brutalité policière, online: <http://repertoire.crac-kebec.org/?q=cobp>.

[363] Interview with Macho, Winnipeg *Copwatch* (on file with author).

aim is achieved by engaging in community legal education with, for and by people who are targeted by police; lobbying efforts and advocacy; publishing newsletters; and engage in policies. In spite of these other efforts, the primary function of *Copwatch* remains foot patrolling neighbourhoods; the targeted focus is the behaviour of individual institutional law enforcement officers; the instruments used to achieve this regulatory aim are video cameras or camera phones used to collect footage of police engaging in their duties; and the desired outcome is to "empower folks to become copwatchers ... to watch the police on their own."[364] Members of *Copwatch* have been instrumental in reconfiguring case law on bystanders: filming police interventions directly addresses some of the needs and expectations of the street community. In a number of jurisdictions, despite on-going detentions and arrests for filming police,[365] charges of interference have been dropped, copwatchers acquitted, and police officers reprimanded.[366]

Imagined within the Shot/Reverse framework, when members of *Copwatch* perceive police through their camera as part of a larger counter-surveillance project, they are attempting to upset the objective/subjective, surveillance/resistance dyad. They perform a synoptic gaze, as the people acting for and on behalf of targeted groups in order to enact

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[364] *Ibid.*

[365] For instance, in Quebec City, a man was forced to spend a night in a holding cell for having taken pictures of police while they intervened in a brawl outside a bar: Jean-François Néron, "Périlleux de photographier des policiers en action ..." Le soleil online: <http://www.cyberpresse.ca/le-soleil/actualites/justice-et-faits-divers/201003/15/01-4260978-perilleux-de-photographier-des-policiers-en-action.php>.

[366] In Montreal, a judge recently threw out charges of obstruction laid against a woman who filmed police who while they gave youth tickets for consumption of alcohol in a park (Interview with Anya). In Quebec City, two officers were reprimanded by the *Comité de déontologie policière* (Police Ethics Committee) for arresting a man under similar circumstances. In response, the Service de police de la ville de Québec has implemented mandatory training regarding when it is appropriate to confiscate a camera or to charge someone who is filming an officer performing his or her duties: Marc-André Gagnon, "Deux policiers de Québec suspendus : Ils avaient arrêté un citoyen qui les filmait" Le journal: <http://lejournaldequebec.canoe.ca/journaldequebec/actualites/regional/archives/2010/04/20100423-225408.html>.

judgment by the 'many' over the 'few.'[367] Copwatchers directly confront formal law's gaze which bestows the status of 'watcher' on state-based bureaucratic actors. They return the gaze directed at street-involved people and other marginalized groups and redirect it toward institutional actors.

In this sense, their counter-gaze is within the orbit of the empirical-positivist legal pluralist project of ethnographically recording and ultimately transforming the interplay within and between legalities. Their practices are intended as resistance to state-articulated law by confronting it with an alternative normative regime and through localized modes of social regulation.[368]

Their aim is normative: to create the conditions in which police will be accountable when they transgress the shared values and expectations of interactions on the street. If individual officers believe that they are constantly being watched and will be objects of judgment, they may internalize *Copwatch*'s gaze, incorporate that self-monitoring in their daily practices, and ultimately transform the ways in which they relate to the street community. Further, taking on the identity of copwatcher, individuals emerge as experts who reject or at least displace state law's authority over city spaces, over their community and over themselves.

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[367] But as Mathiesen argues, synopticism (from the Greek *syn* – stand together – *and opticon* – of the visual realm) is not an alternative to panopticism; rather, it emerged in conjunction with and in constant relation to it. In his estimation, therefore, "things are much *worse* than Michel Foucault imagined:" Thomas Mathiesen, "The Viewer Society: Michel Foucault's 'Panopticon' Revisited" (1997) 1:2 Theoretical Criminology 215 at 231. I return to this point below.

[368] Sousa Santos and Rodriguez-Garavito might refer to this mode of street law constitution as 'subaltern law' which emerges through the constitution and embodiment of alternative legalities. Subaltern law arises out of conditions of inequality that result in the labeling of certain people as outcasts from the broader social and political processes. Their 'alternative law' is intended to reduce such exclusions by creating alternative legal identities: Boaventura de Sousa Santos & Cesar Rodriguez-Garavito, "Law, Politics and the Subaltern in counter-hegemonic globalization" in Boaventura de Sousa Santos & Cesar Rodriguez-Garavito, eds., *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge: University Press, 2005) 1-26.

As in the Shot/Reverse, the model of governance endorsed by *Copwatch* is one that functions to both complement and complicate the relation between the 'observer' and 'observed.' *Copwatch* performs its alternative normative regime to the police's through its own methods of dispute resolution: empowering individual members of the community to evaluate and judge acceptable and non-acceptable behaviour in public spaces. The perception of each member of *Copwatch* may be organized by positioning herself as 'not the other', when the actions of actors amount to misuse of the power conferred to them by the state. And yet, because "eliminating police brutality is not the same thing as eliminating police,"[369] the ultimate goal is that these shared values and expectations will coincide with those of the individuals empowered by the state to regulate public space. [370]

The broader impact of such tactics is ultimately contingent upon the normative universe of the individual target rather than the person attempting to enforce a particular norm. For instance, one Montreal copwatcher found that her experience filming officers has varied from being greeted with a wave and a smile to being charged and arrested for an obstruction offence.[371] As a result, when limited to a confrontational mode, the Reverse shot or the counter-gaze that Copwatch performs holds limited potential as a critical pluralist hypothesis of street law. Namely, it does not take into consideration whether individual police officers – with complex lives, shifting commitments that vary with their own location along vectors such as race, class, gender and sexuality, their prior normative intentions, their

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[369] Interview with Macho (on file with author)

[370] On *Copwatch*ing as an instrument to further official and institutionalized law reform see: Howard Wasserman, "Orwell's Vision: Video and the Future of Civil Rights Enforcement" (2009) 68 Maryland Law Review 600. He argues that "individuals must remain unconstrained in their ability to capture, in powerful sensory form, details of official law enforcement conduct that might be the subject of civil or criminal litigation" at 608.

[371] Interview with 'A' (on file with author).

aspirations and commitments, and the varying degrees to which they are dependent on their employment - may actually reflect the normative expectations of individual members.

Further, as laudable and necessary as it is to halt or dismantle relations of violence, and to attend to vulnerable groups who are scarred by oppressive interactions with police, counter-surveillance misses the point that often, the most flagrant gestures of violence are marked by the lack of agency of the person who enacts them.[372] For instance, while I was unable to secure an official interview with any member of the Montreal police force,[373] other research indicates that police officers are exposed to a host of health and safety risks (including assault and homicide) and that the dynamics of many of their daily interactions put enormous stress on their interpersonal relationships.[374]

Finally, 'returning the gaze', as effected by some copwatchers, may reinforce and reinscribe the regulation, and the values that inform it – domination, confrontation and suspicion - that anti-poverty, new media and other activist groups attempt to destabilize and dissimulate. In the end, it seems that the belief that recasting the gaze will deter police brutality and other injustices may actually reinforce the panoptical and synoptical norms of

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[372] Denise Riley, *Impersonal Passion: Language as Affect* (Durham, NC: Duke University Press, 2005). She makes this point in relation to violent speech.

[373] I made a formal request through the SPVM which was denied.

[374] Police officers are also at greater risk of developing long-term health problems (e.g., hypertension, coronary artery disease, auto-immune disorders, diabetes) as well as premature mortality; have rates of attempted suicide are approximately 15 percent higher than the general population; negotiate substance abuse; and for women and members of racialized groups, remain targets for harassment and other forms of discrimination: Jihong Zhao, Ni He & Nicolas Lovrich. "Predicting Five Dimensions of Police Officer Stress: Looking more Deeply into Organizational Settings for Sources of Police Stress" (2002) 5:1 Police Quarterly 43; and Harish Jain, Parbudyal Singh & Carol Agocs, "Recruitment, Selection and Promotion of Visible-Minority and Aboriginal Police Officers in Selected Canadian Police Services" (2000) 43:1 Canadian Public Administration 46.

surveillance anti-poverty activists want to uproot: skepticism and violence. At its most plain, the democratization of surveillance may simply mean more surveillance for everyone.[375]

The question then becomes what conditions would enable or further police officers' - as individuals who serve a social function (enforcement) and who respond to society's expectation that they will fulfill that function – ability to perceive and respond to street-involved people as the complex, caring, judicious, compassionate, and responsible legal agents society needs them to be. Put differently, how can we create environments in which police may interpret interactions such that they can exploit a broad range of governance instruments, re-imagine their profession as mediating deferring to the expertise of those most affected by street law's exigencies, and perform their role as part of a long-standing tradition of dialogue (rather than exogenously imposed rules and constraints) and resolution (rather than the conflict between two normative orders). Only when we take police in a counter shot that also grants them full humanity (with the ability and often the desire to perceive street-involved people also as complex, caring, competent, and responsible legal agents who deserve to be treated with dignity) will interactions between these multiple generators of street law resemble relationships organized around values other that confrontation.

To return to an earlier point, in the context of multiple normative assertions, the fundamental issue, it seems, is less whether or not a community can make normative claims.

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[375] Huey et al make a similar point in relation to the Vancouver-based *Copwatch* members whom, they argue, engage in "antidemocratic" practices. Their reproduction of hegemonic structures is, the authors find, in part due to their inability to enlist the local community - in their case study, the members of Vancouver's Downtown East side: Laura Huey, Keith Walby & Aaron Dolye, "Cop Watching in the Downtown Eastside" in Torin Monahan, ed., *Surveillance and Security: Technological Politics and Power in Everyday Life* (New York: Routledge, 2006) 149-165. While *Copwatch* cannot be reduced to 'vigilante' justice, consider the dehumanizing potential of vigilante-type surveillance such as taking photographs and filming people while panhandling and then posting such images, with vitriolic commentary, on a social networking site: http://www.facebook.com/album.php?aid=202601&id=594988759.

Rather, the concern should be whether other communities, other jurisdictions will defer to their judgment, endorse it, and render it as though it were their own.[376] It is in this respect that *Copwatch* – often considered a fringe anarchist group that may not represent shared normative commitments - loses much of its transformative potential. Other endeavours by communities who, by virtue of their collaborative nature, broader demographics, and plurality of governance objectives, may, as I discuss below, hold a more radical potential.

REVERSE SHOT AS INTER-SUBJECTIVE DIALOGUE

Another related mode of Shot/Reverse is performed through the *Rapport d'abus et de discrimination* (RADIS) which aims to have street-involved people document cases of police violence. The pilot project emerged from *RAPSIM*'s mobile clinic which was designed to officially intervene in the judicialization of street-involved people at the level of the municipal courts.[377] The *Clinique Droits Devant* (CDD) provides legal information and support for individuals who wish to contest tickets relating to the use of public space.[378] *Clinique Droits*

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[376] Berman (Legal Pluralism), *supra* note 76 at 236.

[377] The clinic is the result of a compromise of the members of *l'Opération Droits Devant* (an umbrella project run out of RAPSIM) some of whom have an ambivalence toward formal legal processes to bring about social change, others who entirely reject the state's authority to hand out tickets for anodyne behaviour on the part of already marginalized groups, others still who fully embrace the clinic model and envisioned it as a legal-aid type service dealing with issues specific to the street community: correspondence with Bernard St-Jacques, Community Organizer for RAPSIM (on file with author). See also: Bernard St-Jacques & Isabelle Raffestin, *Rapport d'évaluation: un an de Clinique Droits Devant* (Montreal: RAPSIM, 2007).

[378] The clinic is not empowered to provide services relating to what are considered formal legal questions that street-involved people also negotiate daily (such as litigation around housing, social assistance, child and welfare, immigration, and criminal matters). Clinic staff assists on procedural matters (such as providing information on how the court system works, getting a summary of tickets issued and the debt-load of an individual, and help negotiate the removal of outstanding warrant or to make arrangements for community work or payment options with the court clerk. In 2007, the staff lawyer assisted clients in approximately 25 cases that involved informal negotiation and the opportunity for the defendant to make a statement before a municipal court judge. She found that when defendants did appear before judges, often a denial of the accusations was sufficient to convince the judge to throw out the ticket or have its fine requirements dropped: Interview with Stephanie, former coordinator of the clinic (On file with author)

Devant organizers are clear that in an ideal scenario, few if, any street-involved people would ever be forced to navigate the formal judicial sphere for matters relating to basic sustenance and survival.

The ultimate normative aim for *RAPSIM*, *CDD* and *RADIS*, then, is broader structural changes in terms of an entrenched right to social housing, a national policy on homelessness and the reattribution of full citizenship to street-involved people.[379] In the interim, the clinic functions both to further such idealist aims through more pragmatic interventions. To this latter end, through the clinic, the *RADIS* project emerged in response to widespread complaints of police misconduct and abuse and the perception among street-involved people that formal and officially recognized regulatory bodies[380] were either unwilling, or unable, to hold police accountable for misconduct. [381] Moreover, according to *RAPSIM*, features of the formal administrative process make it practically inaccessible for street-involved people: it is time-consuming, has stringent deadlines, is non-anonymous (and leaves complainants vulnerable to backlash from other officers) and is organized around a mediation process that (for all intents and purposes) forces a victim to confront an aggressor. As a result, street-

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[379] St-Jacques & Raffestin, *supra* note 370 at 5. RAPSIM furthers a view of street law that operates within a rights framework in terms of the conflict between a capitalist vision of social relations(that extols market virtues and individual freedom) and the communitarian vision of social relations(that strives to end inequality, injustice, poverty through mutual obligations and democratic systems).

[380] The *Commissaire à la déontologie policière du Québec* receives and classifies complaints against police and the *Comité de déontologie policière* is the administrative tribunal that hears and adjudicates matters : Government of Quebec, "Système déontologique policier", online <http://www.deontologie-policiere.gouv.qc.ca/>>.

[381] In Montreal, there are documented cases of police brutality towards street-involved people. For instance, in 1999, Jean-Pierre Lizotte, known as the "poète de la prison de Bordeaux," a regular panhandler on St Laurent street, was beaten to paralysis by a police officer and died in hospital due to health complications. Gilles Mignault who presided the *Comité de déontologie policière* in the matter found Officers Slante and Fouquette negligent but not for using excessive force: *Comité de déontologie policière* (Montreal) Dossier: C-2004-3210-3 (99-1142-1) (August 13, 2008) and C-2004-3211-3 (99-1142-2) (August 13, 2008). Both were suspended without pay for 25 days. On appeal before a jury trial at the Quebec Superior Court, all charges were dropped.

involved people will often tolerate police misconduct and in fact consider it an intrinsic aspect of their current situation.[382]

RADIS' objectives are threefold. First, it monitors and documents the actions of individual state-empowered regulatory agents. Working within the definition of discrimination and abuse as written in Quebec's police code of ethics,[383] individuals fill out reports regarding their experiences of police misconduct, including verbal aggression, the refusal to file a complaint, intimidation, illegal searches, and sexual assault. Researchers will develop a taxonomy of these offenses to generate quantitative data of the same nature that led to the findings of the *Commission des droits* -- that police have been, and continue to engage in, social profiling. For this purpose, its second goal is to effect substantive policy changes. Its third aim is to render police accountability more accessible and to generate conditions in which the street community may eventually develop new relationships with official legal actors.

What the project does achieve is a sense among street-involved people that they are actively engaged in a formal legal process, which for the most part, they consider foreign, inaccessible and ineffectual. When individuals actually participate in decisions that affect them directly, Nedelsky notes, they are "less likely to relinquish their autonomy as they accept the benefits or control of the state."[384] Specifically, while the project relies on the official police definitions of misconduct, it also invites street-involved people to evaluate, refine, expand or reject those official definitions that go against their conceptualization of

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[382] « Tous ces facteurs mis ensemble font en sorte que des groupes en sont venus à tolérer une certaine forme d'abus et à les considérer comme inhérentes à leur situation : » RAPSIM, "Projet RADIS", online: (2010) <http://www.rapsim.org/docs/Projet%20RADIS%20en%20gros.pdf>:

[383] *Code de déontologie des policiers du Québec,* (1990) 122 G.O. II, 2351; and *Loi sur la police* (L.R.Q., c. P-13.1).

[384] Nedelsky (Autonomy), *supra* note 223 at 34.

respectful relationships between multiple street-users. It also provides a venue through which street-involved people can feel that they are the appropriate authority on what constitutes a breach of those norms. *RADIS* is a means through which street-involved people can engage in agential practices and autonomous actions in ways that are not merely 'in response to' formal regulation by the state. Insofar as they develop a sense of confidence by following their own values *despite* discriminatory police practices, and in addition to the new relations that may be developed with other official state-based legal agents (such as clerks, lawyers, and judges), street-involved people are legal agents.[385]

In building an archive of oppressive interactions, street-involved people's direct engagement with formalized legal structures may well rescue their everyday realities from the common sense 'habits of mind' that individualize (blame) rather than singularize (morally perceive) the complexities and contradictions inherent to their life situations.[386] Street law is imagined then in terms of conditions in which street-involved people not only returning law's gaze (in counter shot). They recast the shot entirely. They assess the representation of themselves that the official legal system and its institutionally empowered actors prescribe. They interpret it. They embody and appropriate their identity as legal agents.[387]

Then again, there is no guarantee that such bureaucratic performances will promote street-involved people's autonomy; they can transgress and reaffirm normative identities that

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[385] According to Céline Bellot, the street community deals directly only with two formal judicial actors: the police (when they are handing out tickets) and the police (when they arrest the same people years later for unpaid fines): Brian Myles, "Montreal veut mettre la main sur 10 millions en amendes impayees" Le Devoir (8 decembre, 2007) at 2. See also: Bellot *et al.*, (Judiciarisation), *supra* note 308.
[386] Ben Highmore, *Everyday Life and Cultural Theory: An Introduction* (London: Routledge, 2002).
[387] Goodrich compares this mode of resistance, looking at how the "system presents" us, to one that is aesthetic rather than relational: Goodrich, *supra* note 233. In grappling with law, to him, we must question the imagery and aesthetics of legal representation. *Ibid*.

continually crisscross, reinforce or invalidate one another.[388] That is to say, street-involved people may emulate legal agents and leave traces of their life histories (through for instance the paper trail they leave within the municipal courts) in a system that they experience as oppressive while never fully embodying the socio-cultural ideals of that formal and institutionalized normative order. To Butler such agential formations "take place only upon the acceptance of guilt" which is self-attributed and submissive of formal and official law's demand for conformity.[389] Put otherwise, the transgressive performance of alternative legal identities (as rights bearers, as advocates and as legal experts, for instance) for street-involved people can only emerge once they have submitted to formal law's authority.

That being said, RADIS does more than assist people in adopting the form and processes of formal institutionalized law. It fosters conditions in which they can appropriate oppressive forms and processes, turn them on their heads, and use them to their own purposes in ways that enable them to construct new modes of legal consciousness and different images of themselves.

BEYOND POLICE SURVEILLANCE

Copwatch and *RAPSIM* both engage in counter-surveillance tactics primarily directed at state-based legal actors and especially the police. Street-involved people experience and engage in governance of multiple natures and magnitudes and, conversely, in ways that are far more invidious and even mundane than overt police practices in the public space. Law's

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[388] For instance, Butler has argued that women "accomplish" normative sexuality by pushing away same-sex desire or pleasure. Normative femininity is maintained by emulating, though not necessarily embodying, the cultural ideals of gendered femininity: Judith Butler, *The Psychic Life of Power: Theories in Subjection* (Stanford: Stanford University Press, 1997) [hereinafter, Butler (Psychic)]. On how to structure bureaucratic encounters that may be conductive to autonomy: Nedelsky (Autonomy), *supra* note 223.
[389] Butler (Psychic), *ibid* at 107.

gaze is not limited to state-sanctioned power. Indeed, who is permitted 'to look' is not only regulated by individual police and judges: it is governed through the heuristics of gender, race, and class.[390] Critical engagement with surveillance must, as a result, acknowledge how these vectors inform interactions in multiple normative (and surveillant) orders.

Surveillance interweaves and is distributed through chains of institutions. Importantly, different actors engage in multiple interactions in and through these institutions -- whether these are cooperative, managerial, representational, literal, interpersonal, or ritualistic. The relationship between governance, surveillance and street-involved people must be understood as situational, contextual and historical. Otherwise it will not account for the multiple ways, and vantage points from which, surveillance is not only contested, but generated, appropriated, and diffused.[391] Sadly, even RADIS, as interesting as it is as an alternative normative structure, intervenes far less into these other dialectics of surveillance that do not involve state or quasi-state (such as private security) actors. Consequently, as noted above, the resistant legal agencies RAPSIM encourages street-involved people to perform may be limited. These new subjectivities emulate those of formal legal actors: 'responsible' and 'active' litigants within a hegemonic structure.

This critique aside, it cannot be overstated that the alternative legal performances and enunciations performed by street-involved people can have an impact on legal consciousness. Nevertheless, the Close-up, as I argue below, may provide ways of symbolizing the more implicit, informal modes of performances and thereby edge us into more meaningful alternative modes of governance.

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[390] Lionel Bently, "Introduction" in Bently & Flynn, *supra* note 49 at 5. This understanding was, of course, the thrust of Laura Mulvey's powerful critique of cinematic practices and processes: Mulvey, *supra* note 238.
[391] Luis Fernandez & Laura Huey, "Is Resistance Futile? Some Thoughts on Resisting Surveillance" (2009) 6:3 Surveillance & Society 198 at 200.

2.3.3 STREET LAW AS CLOSE-UP

According to some scholars and activists, our current urban space is one that is marked as beyond the exercise or aspiration for justice. The "problem lying on our sidewalk" in the post-justice city is addressed by formal and bureaucratic legal regulation of street-involved people, especially through the application of legislation that penalizes certain ways of being in public spaces.[392]

Panhandling - the paradigmatic face-to-face interaction between street-involved people and their interlocutors – is explicitly regulated in the post-justice city through legislation. In Quebec[393] and in Canada[394] there are provincial and municipal laws that restrict how, when, and where panhandling can occur. Some of the shared understandings within critical socio-legal scholarship include: first, formal laws against panhandling reinforce dominant class and race interests; second, they are veiled attempts at reinstating federal

[392] The most serious problem related to street-involvement, according to Steven Paisley - considered the poster child for the post-justice mentality by Don Mitchell – is "its devastating effect on a city's image" (1994: 1272), cited in Don Mitchell, *The Right to the City: Social Justice and the Fight for Public Space* (New York & London: Guilford Press, 2003).

[393] In Montreal panhandling is not directly regulated through legislation. The request for spare change is nonetheless indirectly, formally (through police) and informally (through business associations) regulated through other legislative instruments (especially traffic by-laws and the provisions around the flow of pedestrian and vehicular traffic). Courts in Quebec seem reticent to attach criminal sanctions to panhandling behaviour by street-involved people. For instance, a judge refused to find an accused guilty of loitering because his request for spare change had a clear purpose (rather than being 'idle activity') *R. v. Longston* 96-131 Province of Quebec, District of Montreal, C.M.M: 194-161-311. The challenge for anti-poverty scholars and activists in Montreal has been to establish how the formal law produces and affirms the identity 'panhandler' and especially 'aggressive panhandler' without explicitly targeting street-involved people requesting donations. See, for instance: Bellot *et al.*, (Judiciarisation)*, supra* note 308.

[394] Calgary, Edmonton, Halifax, Hamilton, Kingston, Oshawa, Ottawa, Saskatoon, Sudbury, Quebec City, Winnipeg, Vancouver and Victoria have implemented by-laws against panhandling on or near city streets and especially 'obstructive' solicitation. Ontario and British Columbia have also enacted similar provincial legislation. Consequently, federal criminal law may not be the most visible form of official law but it is often discursively-wielded as a threat by formal and informal legal actors (interview with Yann on file with author).

vagrancy laws;[395] third, the formal legal apparatus serves to reinforce the validity and the enforcement of these discriminatory rules.[396]

As a result, the creation of new 'status' offences' in provincial and municipal law (specifically panhandling but also loitering, jaywalking or sleeping in public places) and the selective enforcement of such legislation are used in ways that judicialize and criminalize street-involved people. Anti-panhandling legislation, then, is one of the most powerful symbolizations of governance in the post-justice city. When challenging such legislation, anti-poverty groups tend to deploy rights discourse: anti-panhandling laws offend the rights and freedoms enshrined in the *Charter* and international documents and protocols that express similar values.[397]

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[395] See: *Ledwith*, *supra* note 161; *Munroe*, *supra* note 161. While the federal provisions regulating vagrancy were struck down in 1972, loitering remains an offence under the *Criminal Code of Canada*: *Heywood*, *supra* note 161. Anti-loitering and other vagrancy type laws are used (according to some instrumentalist leftist critiques) against particular populations (poor people, radicalized people, new Canadians for instance) and in ways that fortify neo-liberal business interests: Todd Gordon, *Cops, Crime and Capitalism: The Law and Order Agenda in Canada* (Halifax: Fernwood, 2006).

[396] The Ontario Court of Appeal and British Columbia Supreme Court have upheld such legislation was challenged as *ultra vires* but ultimately upheld as constitutional: *Banks, supra* note 297 (panhandling was considered valid 'expression' under s.2 of the *Charter* but the infringement of that freedom justified under s.1*)*; and *Federated, supra* note 297 (non-obstructive panhandling is a means of providing basic sustenance and falls under the ambit of s.7 of the *Charter,* however, the by-law targeted the consequences of panhandling rather than the conduct under its valid jurisdiction over the regulation of movement and traffic on the streets). Indeed, most pragmatically-informed anti-poverty responses to formal legal governance of people who panhandle starts from the view that law is compartmentalized, and discrete. Litigation challenging such laws' validity is often framed within a discourse of jurisdictional transgressions, the doctrine of *ultra vires*. For instance in *Banks*, applicants argued that Ontario's *Safe Streets Act* (1999) S.O. 1999 c. 8 is *ultra vires* the province as it reinstates vagrancy offences (and is therefore in conflict with federal jurisdiction over criminal law). Davina Cooper argues against projects that reinforce boundaries on institutional activity through the legal concept *ultra vires.* It normalizes, she argues, "the need for and capacity to achieve a division of political power." The doctrine should be set aside as a political mechanism or mode of bottom-up resistance, accordingly, in favour of practices that permit "governing out of order."' These may destabilize entrenched hierarchies (between upper and lower courts for instance) based on the principles of political realities, responsibility, clarity, and innovation: Cooper (Out of Order), *supra* note 131 at 163-65.

[397] In *Federated,* panhandling was held to be a means through which street-involved people "engage with the rest of society about their plight:" *ibid* at p. 151. Panhandling was, as a consequence, protected speech. However because the by-law did not impose a complete restriction on the message individual panhandlers were attempting to deliver (but rather only imposed restrictions on when and how the request for alms might occur), the prohibition did not amount to a violation to s. 2 of the *Charter*: at para 180. In terms of equality rights, poverty is not considered an immutable characteristic that would engage section 15 of the *Charter*. Others

Insightful and important as this work has been on questions of institutionalized power and other hierarchies embedded in the regulation of the panhandling event, it has at times also reproduced – sometimes for purely pragmatic purposes - a conventional, instrumentalist view of law. Law is, according to this view, reified as state-imposed or judicially-enacted and either instantiated in written text or embodied in the actions of police officers. It is something wielded against the poor (by people with social, economic and cultural capital); it is therefore beyond their grasp. Law is not, consequently, a series of processes and knowledges that street-involved people may themselves also already generate.[398]

While I take seriously Patricia Williams' caution against dismissing the work of anti-poverty scholars and activists as equivalent to a fool's errand,[399] above I have turned to the Aerial Viewpoint to help us visualize how such pragmatic approaches to law may fail to consider the other normative *sites* through which we govern and are governed in all our

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have tried, with rare success, to rely on criminal defenses or justifications (e.g., necessity, mental illness or duress): *R.* v. *Creighton* [1993] 3 S.C.R. 3 (poverty and homelessness do not meet the requirements of the necessity defense). Still others look to international law for guidelines on how to address political, social and economic inequality in which street-involvement is embedded: Margo Young *et al.*, eds., *Poverty Rights, Social Citizenship and Legal Activism* (Vancouver: UBC Press, 2007).

[398] There is, of course, considerable critical engagement with 'rights discourse' or the reliance on particular conceptualizations of rights. Patricia Williams succinctly recounts the critique of rights theory that emerged from Critical Legal Studies: rights are indeterminate, contradictory, reified and of limited value as decisive in social behaviour. This now familiar view of rights is, to Williams, very different for racialized people, for whom "relationships are frequently dominated by historical patterns of physical and psychic *dispossession*"*;* entrenched rights therefore remain of fundamental importance to "blacks, other minorities, and the poor": Patricia Williams, "Alchemical Notes: Reconstructing Ideals from Deconstructed Rights" (1978) 22 Harvard Civil Rights-Civil Liberties Law Review 410 [hereinafter, Williams (Alchemical)]. Martha Minow makes a claim for an interpretive framework that grounds rights in a process of communication and the construction of meaning instead of in abstract or enduring foundational propositions: Martha Minow, "Interpreting Rights: An Essay for Robert Cover" (1987) 96 Yale Law Journal 1860. Jennifer Nedelsky proposes a radicalized inter-subjective conception of rights (rights as relationships or a "dialogue of democratic accountability") as an alternative to the view that rights are a trump on state power: (Rights), *supra* note 71. For other attempts at imagining "post liberal conceptions of rights", see generally: Austin Sarat & Thomas Kearns, *Identities, Politics and Rights* (Anne Arbour: University of Michigan Press 1995) at xv. Finally, Wendy Brown has succinctly charted out "the conundrums of rights" as a means of articulating inequality and oppression in liberal States: "Suffering the Paradoxes of Rights " in Wendy Brown & Janet Halley, eds., *Left Legalism / Left Critique* (Durham: Duke University Press, 2002) 420.

[399] Such an attitude, she argues, "gives the courthouse scenario a cast not just of subservience but of futility" and is "locked" in a "refutation of formalist legal scholarship:" Williams (Alchemical), *ibid* at 413.

dynamic life spheres. I have also turned to the Shot/Reverse to reframe *modes* of governance that are informed by confrontation in terms of relationships and the often conflicting normative expectations and commitments we embody as individuals navigating institutions. Here, I rely on the Close-up to consider how an encounter between two human beings on the street - the communicative event called panhandling - engages our 'own laws,' in Nedelsky's terms.[400] I argue that the moral frameworks and personal values (as inflected, circumscribed, and constituted through discourses) that we draw on during our moments of interaction facilitate and burden the ways in which we relate to one another. These conceptual and affective structures also enable us to constitute a self with which we can live.[401]

To say that we constitute street law through our interactions is not to deny that for people who panhandle, the limited version of 'street law' (the application of governance instruments such as the criminal, provincial and municipal laws as enforced by police and other state authorities) is an acutely felt visible and permanent force that can and is deployed to demobilize and marginalize street-involved people. This, to me, is without doubt. The figure of the vagrant has been imagined and re-imagined over centuries in legislation as transient, as tramp, and, more recently, as panhandler.[402] The symbolization and visual

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[400] In her critical engagement with the liberal conception of 'autonomy', Jennifer Nedelsky argues that it is not a quality that "one can simply posit about human beings" but rather, being autonomous requires the ability to "develop and sustain the capacity for finding our *own law*" and therefore the relationships and personal practices that may "foster that capacity:" (Autonomy), *supra* note 223 at 7.

[401] Charles Taylor, *Sources of the Self: The Making of the Modern Identity* (Cambridge: Cambridge University Press, 1989) at 3.

[402] The figure of the 'aggressive panhandler' has been formally embedded and instantiated in legislation geared toward "obstructive solicitation." This is not to argue that the figure of the aggressive panhandler was created through legislation. Nevertheless, it raises the question of the mutually constitutive relation between the formal instantiation and the meaning attached to the daily negotiations by people who are referred to, represented as, or identify with the word 'panhandler'. Indeed, as noted earlier, while in Montreal no legislation explicitly

image of the vagrant stands in for the harm of disorder, incivility, and threat of the stranger to the safety of citizens. When institutionalized into a formal anti-panhandling rule system, such symbols work (as suggested by the post-justice metaphor for the city) in ways that particular people are regulated and excluded. As street-involved people, their exclusion is not only from the sedentary (propertied, housed) community. They are denied *access* and *uses* of public spaces; they are often denied the possibility of even *being* in public.[403]

To symbolize street law and its 'subjects' through explicit, written norms emanating directly from the political State is but one way of establishing a legal identity subjected to regulation[404] Here we can think of the panhandler or the aggressive panhandler depending on the text's limits and exigencies.[405] Anti-panhandling legislation is a discursive practice that enacts and produces that which it describes and names.[406] It is a performative: a ritual constituted through repetition which can never be "fully determined" *a priori* but which occurs nonetheless within structures informing the "shape" of its production.[407] These structures are in turn informed by a multitude of discursive formations that circulate about and around

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regulates panhandling, without doubt, particular individuals who engage in requests for spare change are targeted by police for such activities.

[403] See generally: Janet Mosher, "The Shrinking of the Public and Private Spaces of the Poor" in Joe Hermer & Janet Mosher, eds., *Disorderly People: Law and the Politics of Exclusion in Ontario* (Halifax: Fernwood Press, 2002) 41; and Prashan Ranasinghe & Mariana Valverde, "Governing Homelessness Through Land-use: A Sociolegal Study of the Toronto Shelter Zoning By-Law" (2006) 31:3 Canadian Journal of Sociology 325.

[404] Compare such legislation to another written instrument of governance, the personal identification number. To Mohr, it establishes a subject to be monitored, but also, and "more significantly," constitutes the identity of the "acting subject" who is empowered to engage in contracts. The signature, while similar to the PIN in that it also ascribes identity, includes the active intervention of the human hand, the learned, repetitive act of signing one's name. While the artifact (one's name written by hand) itself is always different, there exist enough similarities in each expression to establish one's identity with legal certainty: Mohr, *supra* note 331 at 39.

[405] Some provincial legislation and municipal by-laws limit when and where any requests for change may occur (constituting the legal person 'panhandler') while others add limitations on to how it may occur (constituting the legal person 'aggressive panhandler'). Most legislation has been amended to include an exception that solicitation will be exempt from regulation where it has been authorized pursuant to the relevant *Charities Act*. See for instance: City of Winnipeg By-Law No. 6555/95, *The Panhandling By-law* (26 January 1995), s. 2.

[406] Judith Butler, *Bodies that Matter: On the Discursive LImits of 'Sex'* (New York: Routledge, 1993) at 13.

[407] *Ibid.*

street-involvement, of which few emerge from the street community itself or through direct engagement with the people most affected by vagrancy-type legislation. Such documents are symbolic as well as a material entities: they represent as they archive particular legal subjects.[408]

On de Certeau's view, law disciplines by 'writing on' our bodies through such formalized instantiations (in addition to the more overt instruments "from the police bludgeon to the dock").[409] To this end, human flesh becomes a 'body' "by means of tools:" discourse and definitional practices.[410] But as Elizabeth Grosz elaborates, through certain modes of "engraving," the body becomes a text producing "networks of meaning and social significance … as meaningful and functional 'subjects' within social ensembles."[411] The relation between body and subjectivity is accordingly more multilateral than de Certeau's analysis suggests; similarly, his view of law as limited to the workings of the criminal law ignores the "manifestation of law in everyday dealings between citizens."[412]

The normative expectations and commitments organized through legislative symbolizations are not merely imposed ideological categories.[413] The two people involved in

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[408] On how other physical objects (such as identity documents and the data they contain) also constitute legal identities, see: Mohr, *supra* note 331.
[409] Michel de Certeau, "Tools for Body Writing" (1988) 21/22 Intervention 7 at 9.
[410] *Ibid.*
[411] Elizabeth Grosz, *Volatile Bodies: Towards a Corporeal Feminism* (Bloomington and Indianapolis: Indiana University Press, 1994) at 117.
[412] Mohr, *supra* note 331 at 38.
[413] On discourse generally, see: Sara Mills, *Discourse: the New Critical Idiom* (New York: Routledge, 1997); Smith, *supra* note 83. 'Discourse' supports a range of definitions and functions but is most commonly associated with speech (to dialogue) and narratology (the principles governing how a story is told). Pêcheux's work is a useful starting point for theories and analyses of 'discourse' which is the concept he uses to discuss the relation between language and the production of subjects' positions: Michel Pêcheux, *Analyse automatique de discours* (Paris: Dunod, 1969). I use discourse here as a social phenomenon, as a system of thought and values that are socially constructed and circulated. According to this view, discourses structure 'reality' and 'truths' through relations of power-knowledge. Foucault's historical method is premised on the view that systems of thought and knowledge (discursive formations) are governed by conventions that stretch beyond those of grammar or logic. Discourses operate through the rules and structures that produce particular utterances or

the panhandling moment both rely on, respond to, reconfigure and deploy discourses and negotiate discursive constraints through their interaction. Therefore, to the extent that the institutionalized criminal law and penal law remain highly sensed in street-involved peoples' lives, they should not be, merely by reference to their source, mode or form alone (state-based, explicitly enacted, written documents), be granted more critical attention than other aspects, sites, or instruments of street law.

During the panhandling encounter, the possibility of a (potentially asymmetrical) relationship opens up, one which requires both individuals to negotiate how to manage their identity and to assess their normative commitments to the 'other' with whom each person finds him- or herself in face to face interactions. The shifting agreements that can proliferate through interactions between two people can confront the official / formal law which desires a written text to assign identifiable bodies to particular roles and responsibilities.[414]

I suggest that we consider street law - as generated through interactions between multiple street users - through the Close-up rather than through the legal identities encrypted in formal, written norms emanating from the State. Through the Close-up, we can begin from the view that in the panhandling moment, more often than not, the interacting subjects adhere to different normative references than those instantiated in anti-panhandling legislation. The Close-up permits us to advance the perception of both agents of the panhandling moment as singular beings in a momentary and perhaps on-going relationship without resorting to tired stereotypes that continue to cast the social and economic features

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texts, the modes of conceptions that structure how we think and what we believe in particular contexts: Michel Foucault, *Archeology of Knowledge* trans. by A.M. Sheridan Smith (London: Tavistock Publications Ltd., 1972).

[414]Bruno Latour, *The Making of Law: An Ethnography of the Conseil d'État* trans. by Marina Brilman & Alain Pottage (Cambridge: Polity Press, 2010) at 294. See also: Mohr, *supra* note 331.

of street-involvement (e.g. under-employment and lack of access to housing) as individual pathologies whether cast as moral frailty, bad lifestyle choices, or markers of deviance.[415]

THE CLOSE-UP

Formally, the Close-up emphasizes details; it subordinates space and exteriority to time and affect.[416] Consequently, in established film theory, a Close-up of the human face can be read as a text that suggests something about the character's 'interiority,' her subjectivity.[417] As a technique that inspires us to turn our mind to personal experiences and emotions, it can enhance "our ability to learn what fosters and constitutes autonomy."[418] The Close-up nevertheless has been critiqued as a mode of voyeurism and objectification and violence.[419] According to one view, unlike other cinematographic techniques, the Close-up cares little for the rules of perspectival realism and is one of the most obvious cinematic techniques designed especially for the spectator.[420] The proximity afforded by the Close-up can, for instance, be critical in establishing how those who are located along certain vectors of class and race privilege are "apart" from their 'others.'[421]

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[415] For a historical analysis of how such stereotypes frame the figure of the 'tramp' in the United States, see: Tim Cresswell, *The Tramp in America* (London: Reaktion Books, 2001).

[416] Deleuze (Cinema One), *supra* note 121 at 87. To Bela Balazs, the Close-up is what separates film from other art forms as "not even the greatest writer, the most consummate artist of the pen, could tell in words what Asta Nielsen tells with her face in Close-up as she sits down to her mirror and tries to make up for the last time her aged, wrinkled face, riddled with poverty, misery, disease and prostitution, when she is expecting her lover, released after ten years in jail; a lover who has retained his youth in captivity because life could not touch him there:" Bela Balazs, *Theory of the Film: Character and Growth of a New Art* (New York: Roy Publishers, 1953) at 123.

[417] For a critical overview of the economies of the Close-up in film, see: Mary Ann Doane, "The Close-up: Scale and Detail in the Cinema" (2003) 14 Differences: A Journal of Feminist Cultural Studies 89 [hereinafter, Doane (Close-up)].

[418] Nedelsky (Autonomy), *supra* note 223 at 25.

[419] As Doane puts it, the Close-Up inspires horror as much as it does love: *supra* note 417 at 89.

[420] Mary Ann Doane, *Femmes Fatales: Feminism, Film Theory, Psychoanalysis* (New York: Routledge, 1991).

[421] Ahmed, *supra* note 232 at 70.

While it can encourage certain forms of objectification, the Close-up can also encourage the kind of attention to detail and singularity that can generate greater identification and intimacy. To Deleuze, the Close-up, of the face especially, is the "affection-image."[422] It summons affective responses. As a "type of image and component of all images," the Close-up allows spectators to see what is usually not seen: it "expresses in a free way all kinds of tiny local movements which the rest of the body usually keeps hidden."[423] As conventionally a tight shot, often of someone's face, the Close-up allows the camera to take an intense pause, to linger more closely and for a longer duration than what is normatively appropriate in relations between strangers.[424]

Accordingly, objectification, such as that afforded through the Close-up, can advance meaningful communication; we should not ask ourselves whether the Close-up objectifies. We should ask ourselves how it does so, and, to what effect.[425] The Close-up stands in for the perspective of the panhandler's other, the '*askee,*' the person of who a donation is requested. I suggest that rather than relying on externally imposed definitions of panhandlers as instantiated in written legislation, the Close-up permits the askee to consider her own normative expectations of that relationship based on her interactions with her '*askor*'.

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[422] Deleuze works from Eisenstein's view that Close-ups summon affective readings of film. Deleuze (Cinema One), *supra* note 121 at 87.
[423] *Ibid.* at 88.
[424] While an intense scrutiny of the face may well be appropriate or required between relative strangers in other contexts (having one's photo identification verified at the door of a pub for instance) or in contexts marked by intimacy, Goffman's concept of "civil inattention" carries significant normative weight. In our interactions on the street, we ought to display, accordingly, non-dehumanizing avoidance and disregard for the other in public places and especially on the street: (Behaviour), *supra* note 198. His interlocutors have illustrated that civil inattention is a culturally specific presentation of self - based in middle-class, hetero-normative, Anglo-Protestant norms - that does not capture many interactions among 'non-dominant' identities or constituencies: Davina Cooper, "Being in Public: The Threat and Promise of Stranger Contact" (2007) 32:1 Law and Social Inquiry 203; and Sennett (Disorder), *supra* note 295.
[425] Schlag (Normativity), *supra* note 319 at 835.

SYMBOLIZING THE PANHANDLING MOMENT AS CLOSE-UP

Despite claims that in their current configuration, cities are no longer constituted in ways that make "contiguity and face-to-face contact" as paramount as in the constitution of the 'modern' city,[426] panhandling persists as a face-to-face communicative event that occurs in shared urban spaces.[427] People who work the panhandle whether cyclically, more systematically or for survival, reach out to other urban subjects, often of different normative positioning (or who are perceived as such) and request by gesture, speech, or text spare change for personal use.

The panhandling interaction most frequently occurs in places that bear both the markers of circulation and mobility and correspondingly those of immobility and stagnation: the roadway, the sidewalk, and near subway stations.[428] It is an encounter that is informed by street-involved people's specific temporal and spatial frameworks, woven into individuals' daily routines of circulating through the city and the institutional and administrative networks that may organize their time. The norm against aggressive panhandling as instantiated in the formal and official law is the social norm most commonly articulated by street-involved people during interviews. There is also a shared understanding that such behaviour on the part of

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[426] Akhil Gupta & James Ferguson, "Beyond 'Culture'": Space, Identity, and the Politics of Difference" (1992) 7:1 Cultural Anthropology 6 at 17.

[427] My project is highly localized in the sense that I look at street-involvement (and in this section panhandling) primarily as it is experienced in one North American city – Montreal - looking up occasionally to also examine other jurisdictions. Others have engaged in more historical and geographic comparative perspectives. For instance, Jordan outlines what he considers to be panhandling's "relevant features" and found that there is less stigma attached to the encounter in many non-Western states for whom it remains a visible aspect of social life: Bill Jordan, "Begging in the Global Context and International Comparisons" in Hartley Dean, ed., *Begging Questions: Street-Level Economic Activity and Social Policy Failure* (Bristol: Policy Press, 1999) 43-60.

[428] Bauman makes a metaphorical distinction between tourists (mobile and economically secure) and the vagabonds (poor and socially barred): "a world without vagabonds is the utopia of the society of tourists:" Zygmunt Bauman, *Globalization: The Human Consequences* (New York: Columbia University Press, 1998). On the tension implicit in the relationship "of stasis to mobility" in urban communications, see: Straw (Circulatory), *supra* note 326.

street-involved people (i.e. requests for change that may elicit fear or unease from their clientele) are rare and often provoked by violent speech or acts from their interlocutors.[429] Finally, people panhandle for complex reasons embedded in personal circumstance and conditions of personal agency; for example, it may be—and often is-- a temporary income-generating activity.[430]

While people tend to disagree as to the 'causes' of panhandling, it seems that irrespective of one's particular ideologies or belief structures, there is a general norm that, at the very least, it is undesirable to live in a society where begging is a person's only possible mode of sustenance.[431] The panhandling moment is always mediated by our beliefs, fears and desires in regard to the 'other.' Consequently, to answer the question, how can we strive for street law that facilitates conditions in which panhandling is no longer a necessary option for the most vulnerable citizens, we must first be able to view the panhandler not as a figure but as a singular human being.

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[429] Interviews with Michel, Samir, Karine and Roach (on file with author).

[430] A general sense of who engages in panhandling can be gleaned from interviews with people working on the street, general observations, and broader research on 'homelessness.' Part of my project is to denaturalize what is understood by 'panhandler' and 'panhandling' because only by questioning the naturalness (and thus fixity) of this category and all it evokes can we come to see the role of human agency in the construction of all human categories, structures, states, languages and processes For a denaturalization of (often related) terms such as 'home', 'homeless' and 'homelessness,' see Kathleen Arnold, *Homelessness, Citizenship and Identity: The Uncanniness of Late Modernity* (New York: State of New York University Press, 2004) (arguing for a radical politics of homelessness based on hospitality).

[431] On the left end of the political spectrum, panhandling is usually construed as a result of unequal social, economic relations, whereas on the right, it is believed to emanate from the moral frailties of the panhandler. To the former, the numbers of people who are compelled to panhandle will not decrease until there is a meaningful shift toward communitarian values and collective responsibilities for those who are suffering or who are otherwise in need of care and support. For a representative sample of the leftist thesis, see: Joe Hermer & Janet Mosher, "Introduction" in Hermer & Mosher, *supra* note 403. On how legal discourses filter and categorize experiences into harms that will be considered either brought about by a series of external factors beyond harms we can legitimately contest and those that are brought upon by the legal subject herself and the ways in which this definitional process plays out in relation to street-involved people, see: Blomley (Beggar), *supra* note 169.

That is, a person who receives a request for change is invited, though perhaps only momentarily, into a relationship with the person making the request. At its best, this interaction involves enough proximity to foster conditions of mutual recognition by both social actors: each requesting to be truly seen in their singularity.[432] According to the street-involved people I have interviewed, panhandling is an important form of social interaction for themselves and for their clients. To this end, I agree with Hermer's notion of the panhandling moment as a "gift encounter" that summons a sentiment of reciprocity between the askor and the askee.[433] At its worst, panhandling may be a violent confrontation that may produce new modalities of racism, classism, and xenophobia.[434] The panhandling moment is a normative event which inspires questions around the tensions between social hierarchy, objective structures, and social forms on the one hand, and individual autonomy, subjectivity and creativity, on the other.

Whether or not the askee believes giving change is a beneficent act (in ethical theory's sense of an action intended to benefit and promote the well-being of another) or a moral obligation performed for non-obligatory reasons depends on how the interaction falls within a matrix of possible relations: as a supererogatory act (going beyond what is required of us as moral agents); a strict obligation (founded upon the norms of morality) or a loose obligation (based on personal expectations of other human beings).[435]

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[432] Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity* (New York: Simon and Schuster, 1963) at 105.
[433] Hermer (Gift Encounters), *supra* note 163; and *Policing Compassion: Begging, Law and Power in Public Spaces* (London, Hart: forthcoming).
[434] See Goulder's critique of Goffman's thesis as not attending to power and hierarchy and especially that Goffman does not account for the broader structures that render one person's options for presentational selves more meager than another's: Alvin Gouldner, *The Coming Crisis of Western Sociology* (New York: Basic Books, 1970).
[435] For an introduction to the concept of beneficence in theoretical and applied ethics, see: Tom Beauchamps, "The Principle of Beneficience in Applied Ethics" (2008) Stanford Encyclopedia of Philosophy. According to

Ultimately, whether or not she gives spare change will depend on her assessment of her interlocutor. The moral judgment of the askor by the askee will be, in part, conditioned by history: panhandling and other modes of street level income generation tend to increase during times of economic and social upheaval. They are also conditioned by discursive productions of panhandlers that circulate in socio-cultural artifacts, news, and popular culture: images of deserving or undeserving poor, of victims of circumstance, or of aggressive confidence men,[436] of entrepreneurs, and of people marked with immobility and deviance.[437] Each person to whom a request for spare change is made enacts a moral judgment of the person from whom she receives the request. The Close-up's attention to the lives of street-involved people, its embodied proximity, and its attention to the singular, unique conditions of the askor, can cultivate the kind of evaluation that moral perception requires. To Sousa Santos, for instance, being in the 'near' can render the familiar, unfamiliar

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Hume's moral-sentiment theory, benevolence is the fundamental principle of human nature: David Hume, 1751, *An Enquiry concerning the Principles of Morals*, Tom L. Beauchamp (ed.), Oxford: Oxford University Press, 1998. To Mill, beneficence is measured according to its utility (the greatest good being the foundation of morality): John Stuart Mill, *Collected Works of John Stuart* Mill, J.M. Robson, ed., (Toronto: University of Toronto Press, 1969). Kant who is less concerned with beneficence but nonetheless supports it as an aspect of leading a moral life: Immanuel Kant, *Ethical Philosophy*, second edition, James W. Ellington, trans., (Indianapolis: Hackett Publishing, 1994).

[436] Unlike some other sectors of the visibly homeless street populations, panhandling is increasingly less gendered. According to the people who used two community level clinics assisting people with tickets they received for aggressive panhandling (or related municipal offences); however, men and boys receive more tickets from police. It is worth noting that other factors in the police-panhandling interaction also carry normative weight. These may include whether or not a particular officer has an on-going rapport with (and may as a result target) particular individuals; or, whether the behaviour in which men engage may (by virtue of the behaviour itself or by virtue of the meaning ascribed to it in because of their gender or their race) will be perceived by an interlocutor as threatening.

[437] For a sample of how street-involvement is feature in various symbolic forms: John Allen, *Homelessness in American Literature: Romanticism, Realism and Testimony* (New York, Routledge: 2004) (literature), Jacques Rancière, *The Philosopher and His Poor* (Duke University Press, 2004) (philosophy); Patrick Greaney, *Untimely Beggar* (Minneapolis: University of Minnesota Press, 2008) (Mallarme's poetry). To these works, I add Chapter Three, "Cinematic Street Law" (cinema).

and at the same time, the unknown, known. It can thus effect a 're-enchantment of the world.'[438]

The Close-up asks that we see a number of difficult social phenomena: that there are 'chronically' and 'invisible' homeless people in urban spaces; that people with mental, physical and emotional health concerns are left without long-term supports; that every year across Quebec and elsewhere in Canada, homeless people die from exposure to extreme weather conditions;[439] that street-involved women negotiate multiple violences daily – whether physical, sexual, or verbal violence directed at them personally or the emotional and symbolic violence of having their children taken from them by state authorities; that people who live with experiences of institutional or inter-personal oppression and who rely on alcohol and other substances to cope with these experience (often in ways that result in harm to themselves rather than to others) are the targets of criminal and penal sanctions; that the poor and working poor are caught in cycles of crushing debt loads; and that families are torn apart by child and welfare decision-making practices that remain embedded in racist and colonial mindsets. In short, the Close-up demands that we see street-involvement in terms of the breakdown in caring relationships.

While an askee's response to a request for change may vary according to spatio-temporal contexts, it is ultimately her assessment of the person with whom she is engaging that will lead her to act -- whether out of a desire to alleviate the conditions that make panhandling

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[438] Sousa Santos (Common Sense), *supra* note 41 at 53.

[439] There is currently an inquest into the hospital waiting room death of Brian Sinclair, a homeless Aboriginal man. Wheelchair-bound because he lost both legs to frostbite, Mr. Sinclair died of an untreated blood infection after 34 hours in a hospital waiting room. The infection was brought on by a blocked catheter. Staff who were accustomed to seeing him (and who had often permitted him to sleep in the waiting room area) assumed that he was sleeping. The incident is a painful example of 'death by kindness': Jen Skerritt, "Security sought care for man" *Free Press* online: <http://www.winnipegfreepress.com/local/Security-sought-care-for-man39255907.html>>.

that person's most viable life-sustaining option or out of a sense of outrage that she is being asked to attend to the needs of another.[440] During the askee's close assessment of her other, she will also be ethically confronted by who it is she believes herself to be. This assessment is equally informed and configured by ideologically- inflected discursive productions of herself as 'panhandler's other' (through figures such as the hard-working taxpayer, the cosmopolites, the *flaneurs*, the upwardly mobile, and the citizen), encrypted with emotions that range from fear, annoyance, discomfiture, through indifference and shame to generosity, and empathy. Ultimately, whether or not she will be compelled to assume responsibility for her other and to act on the implicit belief that the well-being of the askor is "a precious thing" is contingent on her ability to let go of stereotypes and to emotionally engage with another human being.[441]

To do so, she must first see her interlocutor not as a figure but as an individual toward whom indifference is not an ethical option. Imagining the individual who panhandles as though in Close-up goes against practices that formulate particular legal identities and in so doing render street-involved people objects of law rather than its agents. Whereas such formal and official processes enable the stakeholders responsible for particular legislative enactments to constitute themselves in relation to the 'panhandler,' the Close-up invites her to constitute herself in relation to her moral judgment of the other, thereby drawing attention to, rather than reinforcing, the underlying assumptions relied upon in making that judgment.

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[440] Jeremy Waldron, "Homelessness and Community" (2000) 50 University of Toronto Law Journal 371 at 379-80.

[441] To Bauman, who draws heavily on Levinas, when we achieve this perception of the other, we take a moral stance to endeavour to enhance the other's well-being: Zygmunt Bauman, *Alone Again: Ethics After Certainty* (London: Demos, 1994) at 18.

The Close-up helps express some of the conceptual structures that govern interactions on the street in much more immediate and everyday ways than anti-panhandling legislation and their application. Such categories of thought range from the powerful to the empowering: fear, a desire to help, a willingness to respect another's agential practices - It also indicates that when we turn to implicit modes of governing street interactions (rather than the external, officially enacted norms), it becomes more evident that any desire to reduce suffering and express disapproval of oppressive relations between street users cannot be symbolized through municipal and provincial legislative provisions against panhandling.[442]

Any broad restriction on panhandling (whether as a type of survival and otherwise income-generating behaviour) is inimical to the face-to-face practices that already exist between street users: those which are built upon notions of proximity, singularity and interactions. The street law that is produced in and through the panhandling event engages communicative, economic and moral dimensions of social life. Like the gift, its regulation does not require formal, written symbolizations. Rather, it requires creating conditions in which street users can more meaningfully interact. Given that street-involvement— and panhandling by association— stems primarily from the breakdown of relationships, it also requires generating conditions in which new modes of communication, new relationships, based on reciprocity and inter-subjective understanding can emerge. When these conditions of interaction are achieved, all street users may evaluate and amend their own partial perceptions and the frameworks on which they rely when engaging in moral judgments of

[442] As noted earlier, the Supreme Court of Canada has already determined that the *Criminal Code* is not the appropriate governance instrument to meet these goals; as noted above, the vagrancy provisions in Canada have been struck down as overbroad: Heywood, *supra* note 165.

their 'others.' In the final subsection, I argue that *HomelessNation* (HN) attempts to promote such conditions by instantiating street law as a Tracking Shot.

2.3.4 STREET LAW AS TRACKING SHOT

Until now, I have argued against conceptualizations of street law as always activating and reinforcing totalizing logics and hierarchical relations, as always embedded in competing rights, or as constituting fixed legal subjectivities. Instead I suggest that street law is dispersed, dialogic, and embodied in interacting individuals. Street law can therefore be apprehended by imagining the governance of and by street-involved people as an Aerial Viewpoint, within a Shot/Reverse structure, and in Close-up. Here I deploy the Tracking Shot to discuss how *HN* – which attempts to foster a street community - symbolizes and generates street law.

HomelessNation is a Montreal-based non-profit organization dedicated to "democratizing technology" throughout Quebec and elsewhere in Canada. It offers access to the internet[443] and training on new media and communications technologies (including e-mail, video cameras, sound recording equipment and editing software) to street-involved people. The overarching goal is to facilitate the street community's ability to "tell their stories and have their voices heard" through written, audio and video testimonials.[444] HN began as a

[443] According to *HN*'s "National Homeless Survey" (on file with author), most street-involved people can access the internet, have some level of secondary education and know how to use a computer. The survey's analyst/ interpreter concluded that "to assume that they do not possess the ability to interact with a technology the rest of us take for granted is an insult to the intelligence of homeless people." It is noteworthy that *HN*'s data do not account for differences in access to new media and formal education based on age, gender and race differences among street-involved people.

[444] The project was inspired by the photographic images archived by the *Farm Security Administration* and especially the images of migrant workers taken during the dustbowl era which 'captured' the lived reality of rural

"street archive," a documentary film project designed to collect, preserve and transmit localized histories of the street community.[445] Referring to homelessness as a "national disaster," documentary filmmaker Daniel Cross envisioned HN a space that provides "a class of people underrepresented in mainstream media" the "opportunity to create unique and poignant works of art."[446]

HomelessNation's sizeable additional aims include constituting a forum for the "virtual and actual" street community to develop a "national collective voice," to "change people's lives," and to "create dialogue between Canada's homeless and mainstream society."[447] I argue that by tracking and archiving interactions on and through the street over time, *HN* generates and embodies street law that is imagined, framed, and communicated by the people most concerned with it. First, it was designed to bring us into 'homeless spaces' in ways that the Aerial Viewpoint attends to, but does so from a view 'on the ground' rather than from a 'view from above.' Second, it is an archive of interactions which includes but is not limited to resisting the reifying power of official legal agents' gaze. Third, the space itself mediates between multiple relations of connectedness and otherness, whether as a virtual space between the street and the non-street or by way of its moderators who generate conditions of dialogue between street-involved and non-street-involved people. Finally, while providing a site through which street-involved people can voice their unique concerns (not merely as the objects of their others' perception). *HN* is a medium through which

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poverty in America: *HomelessNation*, *Homeless Street Archive* (Montreal: 2002) at 3 [hereinafter, *HomelessNation* (Archive)].

[445] *Ibid.*

[446] In relation to his other documentary endeavours, Daniel Cross writes that "personally and artistically" he was "tired of cutting out all the stories / characters that don't fit into the narrative arch." His aspiration was that the street archive become a "new way of presenting the voices of [his] subjects directly to the audience:" *Ibid.* at 4.

[447] *Ibid.* at 2.

members of the street community can generate their own laws and the conditions they deem necessary for a meaningful exercise of their autonomy and agency through creative acts and non-formulaic expressions of normativity. In so doing, its members go beyond challenging pre-existing, received categories about the street and about street law. They provoke tacit legal change by suggesting other ways of imagining how to govern through interactions on the street. It is by performing these functions, that *HN* generates conditions of multiple interpretive possibilities through relationships based on proximity instead of only being based on confrontation. It is also by performing these functions that *HN* symbolizes street law as a Tracking Shot.

THE TRACKING SHOT

Andre Bazin's cinema of 'duration' refers to an aesthetic upholds the value of realist filmmaking practices that retain a sufficient uncertainty of meaning in order to constitute lived reality.[448] The method he proposed was shots in long takes, shot in depth because the essence of the cinematic event becomes "dependent on the simultaneous presence of two or more factors in the action".[449] The Tracking Shot is a species of long take that permits a long depth of field and it corresponds with Bazin's desire to respect the autonomy of the subjects and objects within the continuous space. It is an unbroken sequence that preserves spatial and temporal unity and invites multiple interpretive possibilities through relations of proximity among and between bodies, objects and spaces instead of imposing meaning through juxtaposition or confrontation.

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[448] André Bazin, *What is Cinema: Volume I* (Berkeley: University of California Press, 1967).
[449] *Ibid.* at 127.

The mobile camera in tracking can move backwards and forwards, vertically and horizontally; it permits viewers to take more time to get a sense of the detailed ways in which bodies and objects interact within a particular framing. Rather than the synthetic and abstract spatio-temporal feel of Shot/Reverse sequences, for instance, the Tracking Shot allows interactions and actions to develop of their own accord, over a longer time and from multiple vantage points (those subjects and objects that are at the front of the frame and those which are farther away from the camera and any combination thereof). Within the Tracking Shot, there are always competing meanings, shifting subjects and objects to contemplate, movements within movement all vying for the attention of the active and engaged audience. Similarly, rather than fostering relationships between two separate, autonomous fields (such as the street vs. the broader public), sites of normativity can be conceived through the relationships that occur within and through them, and on different planes and in different forms simultaneously. The Tracking Shot is consequently a powerful way of symbolizing law's irreducible plurality.

HomelessNation operates as a Tracking Shot of street law (provides new *sights* on street law's *sites and modes*) and symbolizes street law as a Tracking Shot (it *constitutes* street law in the symbolic register). In the first instance, *HN* is materially 'on the ground' as it comprises a network of moving cameras operated by its members. Through the camera eye which 'moves among' its subjects, people who are not-street-involved are encouraged to draw on multitude information sources and get a sense of how relationships on and with relation to the street develop and shift over time. In the second instance, *HN* is an archive of interactions that organizes and provides new information about the specific situation of

individual street-involved people as well as the broader 'street community' (a heterogeneous social group with many shared experiences, commitments and concerns).

In the third, *HN* is motivated to be both medium and mediator, a virtual space where assumed boundaries between self and other (or street and non-street) are dissimulated by suggesting ways in which we are all governed and governing through a fluid assemblage of networks and through our interactions. Finally, *HN* advances conditions of agency for street-involved people. Rather than assuming that they must respond to official state-based legal normativity, its members project "an imagined future upon reality"[450] through their collected footage and performance pieces (such as news bulletins that provide information which is directly relevant to street-involved people and satirical commentary on information which is deemed less so). Their symbolization of street law moves beyond visual evidence of the existence of an alternative normative structure that emerges from the street to instantiating street law as irreducibly plural.

HomelessNation as Site, Sight and Media of Street Law

HomelessNation was designed to provide a new way of seeing the street which simultaneously complements and is qualitatively different from the Aerial Viewpoint. Rather than taking distance and looking from above in order to get a better sense of movements of things and bodies or to identify the production of space through new assemblages, the mobile camera in the hands of participants conveys "a feeling of life on the street" in ways that "artistically ... immerse the average Canadian into the sights and sounds of the homeless

[450] Cover (Violence), *supra* note 5.

experience"[451] and ultimately "stimulate a new genre of social documentary."[452] Non-street-involved members of *HN* who access the website are

> … placed in an environment familiar to a homeless person or … confronted with the drone of rush-hour traffic under the Gardiner Expressway ... the wail of sirens at Pigeon Park ... scores of discarded needles at Place Pasteur ... [and] the din of hundreds of men eating soup at the Salvation Army.[453]

The aim was originally to have "outreach workers" capture sounds and images ("accurate video" and "panoramas") through their "direct involvement with people on the street." [454] Eventually, street-involved members of *HN* would generate, after training, their own "recordings of real events, real places and real people."[455] By moving with members through city spaces as mediated by their camera eye, non-street-involved people ("the public and institutions") would "explore the spaces lived in by homeless people, to feel the texture of what it is to live on the street"[456] and ultimately "get a virtual feeling of what homelessness is all about."[457]

Some of its discourse unintentionally perhaps reflects the problematic subject-object assumptions of early ethnographers.[458] Yet, the overall belief is that through the *HN* site, street-involved people will generate new visions of how governance in the city actually occurs

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[451] *HomelessNation* (Archive), *supra* note 444 at 6.
[452] *HomelessNation*, *Cyberpitch Funding Proposal* (Montreal: n.d.) at 16 [hereinafter, *HomelessNation* (Cyberpitch)].
[453] *HomelessNation*, (Archive), *supra* note 444.
[454] *Ibid.* at 6.
[455] *Id.*
[456] *Ibid.* at 14.
[457] *Ibid.* at 15.
[458] Indeed, *HN* facilitators deploy a different discourse than that which is circulated by its founder. There is a shared understanding that street-involved people are (and with reason) wary of the media and researchers and to the objectification that occurs in both these media. *HN*'s approach is not to capture images of the street community for external purposes but rather, as Ash, a coordinator explains by making the process collaborative: "Hey, we're part of this project. This is what we're doing. Do you want to be involved with the project?'" Interview with Ash, cited in: Peter Tupper, "Curbside Internet for the Homeless" The Tyee online: <http://thetyee.ca/Life/2006/11/22/*HomelessNation*/>.

and perform their own normative geography. *HN* members welcome their interlocutors into certain spaces and exclude them from others, thereby producing new spaces and new modes of interaction among multiple street users. Moreover, in moments where street-involved people explicitly present themselves as subjects in their cinematic mapping of the city, they hold themselves up as authoritative participants in and interpreters of the world they represent.[459]

In the proposal which ultimately lead to the funding required to implement the project, *HomelessNation* is defined as a 'street archive' or a web-based digital memory of and from the street. The 'archive' is a trope that conjures up questions around representation and interpretation and how these concepts intersect with questions about identity, memory, evidence and authenticity. Furthermore, it incites critical engagement with definitional, classifying and containment processes, including those performed in and through law.[460]

HomelessNation is not merely a street archive; it is, in the literal sense of the term, a documentary archive, "documenting the voices of homeless Canadians"[461] and their interactions in and through the street. Outreach workers ask whether street-involved people want to learn skills, such as: how to document their stories on camera, how to edit audio and

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[459] See: *HomelessNation*, "Untitled Clip", online: <<http://www.*HomelessNation*.org/en/node/12765>>
This short film plays on a well-known series of commercials for a credit card to get at the lived experience of living on the street.

[460] The archive has been theorized and historicized broadly across disciplines. Osborne relates the archive to the history and historiography of science: Thomas Osborne, "The Ordinariness of the Archive" (1999) 12:2 History of the Human Sciences 51. On the archive as furthering colonial knowledges: Gayatri Spivak, "The Rani of Sirmur: An Essay in Reading the Archives" (1985) 24 History and Theory 247. Deleuze refers to Foucault as the 'new archivist:' Gilles Deleuze, *Foucault* (Minneapolis: University of Minnesota Press, 1988). For a recent collection of essays on the question of the archive, see: Craig Robertson, "Historicizing the Archive" The Communication Review 13 (2010) 1.

[461] In their funding application it is explained that "[t]he heart of the … *Archive* is an immense collection of homeless voices and stories ... Thousands of personal web pages will be created, archived and updated acting as a unifying voice for the homeless and a wake-up call for the rest of Canada:" *HomelessNation* (Cyberpitch), *supra* note 452 at 6.

video files, and upload files onto the web. However, in claiming to provide a "collective memory,"[462] *HN* runs the risk of presenting a homogenized vision of street-involvement or a representation which fails to do justice to the diversity of recollections which belong to the individuals who are street-involved.

The footage stored and amassed by outreach workers structures but also limits the stories the site will preserve. Like the formal legal processes that define and contain street-involved people *as* homeless, the archive of "homeless voices" is not an unambiguous collection of 'facts.' Nevertheless, as Derrida claims, every archive is "revolutionary and traditional" at once.[463] In and of itself, the existence of the street archive problematizes other archival-based claims to truth, such as those found in the official, enacted law or in industry-produced cinematic depictions, by drawing attention to the shallowness or at the very least, incompleteness, of these records. Members of the street community have rarely been active participants in decision-making processes that directly impact their lives. They certainly have not been consulted around vagrancy type legislation.[464] The street archive can operate as a corrective to these conditions and showcase individual lives rather than the caricatured versions embodied in legislation, research, and even the policies of some help institutions.

Further, the street archive was created because of its potential as a historical record which would contain and convey information over time that might be useful to street-involved people in the future. In this endeavour, the archive has been used to articulate an alternative street law which has, to some extent, been incorporated into the official legal order. For instance, the images collected by members in Victoria were used to substantiate the formal

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[462] *HomelessNation*, (Archive), *supra* note 444 at 9.
[463] Jacques Derrida, *Archive Fever: A Freudian Impression* (Chicago: University of Chicago Press, 1995) at 5.
[464] See subsection 2.3.3 of this Chapter ("Street Law as Close-up"), for instance.

legal claims by anti-poverty lawyers that the city's bylaws against camping in public violated homeless people's right to life, liberty, and security of the person.[465] The street archive has been deployed in ways that puts into sharp relief how the containment of memory in written formal law is porous and incomplete. In so doing, *HN* also articulates a different expression of street law that includes the memories of those individuals coping most with its exigencies.

Unlike *RAPSIM* (through the *Projet RADIS* and the *Clinique Droits Devant* as discussed earlier), *HN* does not explicitly aim to integrate members of the street community into formal legal mechanisms. Some members support such initiatives (and there is overlap between people who are *HN* members and people who rely on *RAPSIM*'s mobile clinic).[466] Others adamantly oppose any mode of negotiation within the formal legal system.[467] *HomelessNation's* function, as I elaborate, has become one of mediator between worlds rather than that of archivist. That is, *HN* has more recently shifted from its expository (showing the street) and archival (documenting the voices from the street) aspirations and has taken on a life of its own through the practices in which its users engage. As a result, it has more recently began deploying "interactivity potential"[468] as between the street community, support groups and the broader public.

HN has circulated some problematic discourse, in the form of "giving a voice to the homeless" or assuming that they can "empower"[469] others which tends to reinforce the view

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[465] *Adams, supra* note 110. See also: *HomelessNation* (2009) "City News", online: <http://www.*HomelessNation*.org/en/citynews/Victoria?page=1>.
[466] Interview with Roach (on file with author).
[467] For instance, at the request of one of the *HomelessNation* moderators, I developed a project whereby members of the street community could forward legal questions through the site and a group of pro bono students would attempt to provide timely and useful information to be posted as general guidelines for all *HN* participants. While the project was embraced with considerable enthusiasm, one member responded to our post with: "Never."
[468] *HomelessNation* (Cyberpitch), *supra* note 452 at 7.
[469] *Ibid.* at 6.

that their constituents are 'subjects' rather than 'agents.' Nevertheless, the values that inform how the site has been constructed and how it is used indicate a strong desire on the part of outreach workers and moderators to act as conduits and facilitators of dialogue rather than as anthropologists or activists. *HN* is a material, a virtual, and a symbolic site of street law in and through which multiple street law constituents can represent and evaluate their own visions of street law. It attempts to bring about this shared outcome by taking on the role of host, medium, and mediator.

On one level, *HN* positions itself as 'host,' materially creating "a hospitable environment of involvement and inclusion."[470] In line with Derrida's view of hospitality, in which the host is constituted by defining and treating the guest as someone who is different from herself, the guest in the hospitable relation generated through HN is the street-involved person's other.[471] Through *HN*, the host-guest relationship is altered subtly. The organization is 'housed' in the sense that there is a physical space with an office and computers administered both by people who have and have not lived from the street. It is also 'being housed' in the sense that it has furnished community partners with recycled or donated computers to set up internet cafes and training sessions within shelters. Each venue is intended as "a central point for artists, activists and homeless people to interact physically (brainstorm, training etc.) in assisting each other to develop unique ways to interact."[472]

On another level, *HN* is a virtual space that is moderated by volunteers and staff. It provides space for articulating immediate concerns (including a forum to submit information

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[470] *HomelessNation*, *Homeless Street Archive* (Montreal: 2002) at 3.
[471] Derrida develops the ambiguous notion 'host' through the concept of 'hos*ti*pitality:' Jacques Derrida, *Acts of Religion* (New York & London: Routledge, 2002) at 362. See also his discussion of 'hospitality:' Derrida (Hospitality), *supra* note 161.
[472] *HomelessNation* (Cyberpitch), *supra* note 452 at 10.

about missing persons), and long term commitments to generate conditions of empowerment (information on housing rights and guidelines for health and safety on the street). The *HN* site is, consequently, an *instrument* of street law. It has been used as a medium through which people enact judgment of policies, practices and individual actors who further entrenched social inequities. By uploading videos commentaries and visual evidence of negative interactions, *HN* members constitute these exchanges as negative and contrary to shared beliefs and values.

Finally, *HN* aims to relieve some of the tensions that exist between individual street-involved people and their immediate 'others' – whether other street-involved people, family members, service-providers, police - and their more distant 'others' – policy makers, judges, and other official decision-makers. *HN* does so less by providing space to enact judgment and more by taking on the role of mediator. It provides a virtual space designed to promote dialogue and negotiation among diverse members of the street community in ways in which (ideally) all interacting parties take responsibility for their level of commitment to one another and have exchanges that will challenge the boundaries between those who are street-involved and their real/imagined others. According to one staff member, it takes on a 'facilitative' role rather than a 'directive' one:

> We use video and online technologies to give the homeless a voice. We empower and act as a vehicle, but do not decide on content/issues. Many people from the street community might want to blog about human rights violations, but they may also just want to blog about their shitty day or the new dog they got. [473]

In deploying discourse such as "merging art and technology," "bridging the gap between the rich and the poor," and "bringing together Canada's homeless and mainstream

[473] Correspondence with Chris Aung-Thwin, *HomelessNation*'s National Coordinator (On file with author).

society,"[474] *HN* embodies Cover's conception of law as a conduit between normative "worlds that are" and those "that might be."[475] At the same time, it *re-constitutes* the "'worlds that are." Specifically, members articulate alternative relationships through a social site which offers new configurations for interaction that are not present in face-to-face interactions. As Danah Boyd suggests, relationships engendered through social media are increasingly organized around persistence (speech acts leave a trace), searchability (community is constituted through the search and discovery of 'like minds'), replicabilty (through cut and paste functions, the original becomes indistinguishable from the 'copy'), and invisible interlocutors (it is impossible to know who will fall upon specific utterances made in networked spaces).[476]

HomelessNation embraces social media as a means of complicating and fundamentally altering how street-involved people engage as citizens and how they interact with one another and with the broader public in two ways. The people who initially conceptualized *HN* imagined it first as a medium through which street-involved people will "access a national community" and thereby gain a "sense of belonging" as well as "control [over the] distribution of their own voice and image."[477] In turn, the "general public" would have the opportunity to "talk directly with homeless people on discussion boards" and "hear unique first person stories from the street."[478] The intended result was normative insofar as

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[474] *HomelessNation*, "Our Goals", online (2007): <www.*HomelessNation*.org/en/node/16973 <http://www.*HomelessNation*.org/en/node/16973>>.
[475] Cover (Nomos), *supra* note 15 at 96.
[476] Danah Boyd, "Why Youth (Heart) Social Network Sites: The Role of Networked Publics in Teenage Social Life" in David Buckingham, ed., *Youth, Identity, and Digital Media* (Cambridge, MA: MIT Press, 2007) 119 at 126.
[477] *HomelessNation* (Cyberpitch), *supra* note 452 at 26.
[478] *Ibid.*

HN sought to encourage non-street-involved people "breakdown" any "stereotypes" they have about street-involved people.[479]

Second, by creating conditions of "communication" through access to the internet, according to Daniel Cross (*HN*'s founder) "holds limitless potential and promise" and can "solve problems in a democracy." He envisioned *HN* as providing a "methodology for homeless people to take part in public processes."[480] Darin Barney cautions, through our engagement with new and emerging media technologies, and the renewed sense of hope they engender, information, communication and participation become surrogates for motivation, judgment and democratic action.[481] Nevertheless, *HN*'s aspirations are in and of themselves significant: to persuade its actual, imagined or ideal audience of the legitimacy of its members' interpretations and claims through inclusive technology; to provide checks on abusive or coercive behaviour; to encourage a general ethos of dialogue and respect; to generate a space of egalitarianism where all voices, regardless of the status of the person making the utterance (whether from the 'street' or not), will be granted equal weight. These aspirations and their symbolization through the *HN* media are broad ethical principles of just conduct, the very kinds of rules generally associated with 'law.'

Further, *HomelessNation* has tapped into changes in the social and cultural landscape through which the vast majority of urbanites navigate intuitively, using a pastiche of

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[479] *Ibid.*
[480] *Ibid.* at 12.
[481] Darin Barney, "Politics and the Emerging Media: The Revenge of Publicity" (2008) 1:1 Global Media Journal 89 in which he interrogates the potential of increased access to information, communications and technologies when embedded in instrumentalist consumer culture). For Barney's discussion on the normative weight of expectations and possibility that emerges from new modes of mediating information and communication and the material realities that these sometimes fail to address: *Prometheus Wired: The Hope for Democracy in the Age of Network Technology* (Vancouver, UBC Press, 2000). For an elaboration of his critical examination of whether democratic citizenship and technology can co-exist: "Radical citizenship in the Republic of Technology: A Sketch" in Lincoln Dahlberg & Eugenia Siapera, eds., *Radical Democracy and the Internet: Interrogating Theory and Practice* (New York: Palgrave, 2007) 37.

computer-mediated communications through which they make "offline connections" with other social actors.[482] I argue that through shifts in practice and discourse endorsed and performed over time, *HN* has become a space where street-involved people represent and evaluate their own visions of street law. In its ideal mode, *HN* embodies Sousa Santos' "neo communities", the translocal and transtemporal groupings that shatter the street/non-street dyad by generating conditions of interchange, common purposes and ultimately "intersubjective web[s] of reciprocity."[483]

Through the sites (the individuals, the physical space, the virtual, and the metaphoric space) and sights of *HomelessNation* (from the street, of the street, of the public, for the public, through creativity rather than confrontation), the distinction between users and their intended audience is reconfigured as a community of *vusers* and one that is constantly shifting as people move in and out of their roles as content-providers/knowledge producers and content-receivers/knowledge consumers. It is also in the interactions of these multiple interpretative communities, as Cover reminds us, that *HN* members create street law. Consequently, it has the potential to favour but also move beyond relations based on reciprocity to promote those based on respect, dignity, forgiveness, love, and compassion, or in short, the values and aspects of human relationships most advanced through gift exchanges.

HN is a medium: it creates the space for interlocutors to take the perspective, and consequently to evaluate, the normative commitments of street-involved people. Street-

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[482] To Wilson, the same processes occur through the generation of *Korsakow* films – a point I will elaborate in Chapter Four: Scott Wilson, "Moving the Camera: Exploring New Media Ethnography Using the *Korsakow System* in the Classroom" (2009) 31:4 Practicing Anthropology 43 at 46.
[483] Sousa Santos (Common Sense), *supra* note 41 at 121.

involved people, in turn, advance their "own laws"[484] through the narratives they circulate and the images they construct with *HN*. This is not to say that there is a 'street sub-culture.'[485] If we take culture as a set of practices interwoven with all social practices, however, then clearly there is a street community. Each member of *HN* may well have his or her 'own laws' and his or her own normative commitments. Like any other person's, these values are constituted by, and graspable through, reference to shared values and norms, including, perhaps those of a discrete social group.[486] More than returning the gaze on formal legal actors or responding to other normative forms and sites, individual members of *HN* assert their jurisdiction to govern interactions on the street, to speak as a community with shared normative expectations, endowed with the authority to use, reject, and re-craft official law's language, form and content, adjudicate when conflicts arise and thereby articulate new visions of the future.[487]

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[484] Nedelsky (Autonomy), *supra* note 223 at 7.

[485] Anthropologist Oscar Lewis coined the controversial concept 'subculture of poverty' in reference to autonomous sub-groups that socialize members into behaviours and attitudes; these subgroups ultimately perpetuate their own poverty: Oscar Lewis, *Five Families: Mexican Case Studies in the Culture of Poverty* (New York: Basic Books, 1959). The concept '*sub*culture' (and the related view that it is a separate form of 'community,' 'public', or 'society') is highly contested. Some interlocutors note that the use of *sub* connotes a secondary status (subaltern, subordinate). Members of *sub* groups ascribes to themselves or / are ascribed by others a deviant identity -- often linked to other markers of identity including race, class, gender, sexual orientation and so on. Others point to the ways in which belonging within a subculture opens the possibility to contest and renegotiate subordinate status and to constitute new modes of status. Others still perceive the subcultural as neither inherently progressive nor resistant, but more likely as part of the shattered and shattering quality of life. For an introduction to the contested terrain of subcultures consider the following works: Hebdige compares 'innovative' subculturalists to 'imitative' mainstream consumers: Dick Hebdige, *Subculture: The Meaning of Style* (London: Hutchinson, 1979); Cohen argues that antagonisms between 'mods and 'rockers' were intensified by media and police who generated moral panics about these subcultures: Stanley Cohen, *Folk Devils and Moral Panics* (London: MacGibbon and Kee, 1972). On the uneasy relationship between subcultural theories and feminism(s), see: Angela McRobbie, "Settling Accounts with Subcultures: A Feminist Critique" (1980) 39 Screen Education 37. For other analyses that complicate the binary oppositions in earlier discussions of the subcultural, see: Ken Gelder and Sarah Thornton, *The Subcultures Reader* (London & New York: Routledge, 1997).

[486] Nedelsky (Autonomy), *supra* note 223.

[487] Cover (Uses), *supra* note 66.

2.4 BEYOND EMPIRICAL RESEARCH

> *The camera cannot see everything at once but it makes sure not to lose any part of what it chooses to see.*[488]

In this chapter, I have argued that what I call cinematic legal metaphors can be part of critical explorations in law: they encourage ways of perceiving that are embodied and potentially ethical. These sights of street law reveal aspects of our existence as urban subjects and agents that may not be perceptible in more orthodox symbolizations of street law. I have deployed cinematic legal metaphors to prompt critical engagement with the taken-for-granted assumptions about the subjects and the agents of street law that inform these more dominant instantiations of street law. These metaphors were grounded in my empirical research on the governance of and by street-involved people.

While the use of these plural, overlapping, and sometimes contradictory perspectives may seem, as Linda Williams would argue, "splintered,"[489] these competing interpretations are neither inherently nor necessarily intolerant of one another. On the one hand, each mode of perception, as a cinematic device, has its own rules, its own way of embedding relationships. On the other, the determining factor for each of the cinematic metaphors I have produced is that each can at once seem like an invitation to embrace familiar modes of appreciating street law. Simultaneously, each provides a new focus, a reworking of our common assumptions about street law's subjects and agents.

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[488] Bazin (Cinema), *supra* note 448 at 26.

[489] Linda Williams, "Mirrors Without Memories - Truth, History and the New Documentary" (1993) 46:3 Film Quarterly 9 at 53 [hereinafter, Williams (Mirrors)].

These contradictory and partial perspectives allow for a "constantly recurring refraction" of interactions on the street.[490] When viewed cinematically, street law must be, in Laura Marks' telling, "perceived all over again,"' thereby compelling the viewer to choose afresh which image of street law or which part of an image of street law remains relevant to his or her purposes.[491] The cinematic metaphors permit an uncertainty in ways that trigger ethical questioning, such as: What is the possibility of caring relations between relative or imagined others? Can we be hopeful about the possibility of destabilizing entrenched social boundaries?

Perceiving street law and its agents from multiple vantage points, as I have done, can encourage more pluralist contestations of those aspects of street law that are oppressive. As Bazin puts it, no camera angle can fully capture the subject of its gaze. Each cinematic legal metaphor for street law that I suggest presents a different scale; at times each serves similar functions; at times they contradict one another. Nonetheless, taken together they make complementary contributions to understanding street law as a complex facet of human life.

The Aerial Viewpoint provides a distance from what it being perceived. It can thus bring elements about street-involvement into view that from other, more embedded vantage points are more difficult to see the Close-up can sometimes violently confront its perceiver with details that make it difficult to ignore the deeply personal nature of street-involvement in the context of much broader systemic problems. Nevertheless, as Doane explains in cinema, "the detail and enormity, miniature and gigantic, are inextricable"[492] and complement one another. Similarly, the Close-up and the Shot/Reverse work well together insofar as both can

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[490] *Ibid.*
[491] Marks, *supra* note 121.
[492] Doane (Close-up), *supra* note 417.

consolidate “humanity as an aspect of subjectivity”[493] – through proximity for the former and through dialogue despite difference for the latter.

Both the Close-up and the Tracking Shot linger for a longer duration than what is appropriate in relations between strangers on the street. Whereas the former can invite the ‘perceiver’ to morally perceive her ‘others’ (and sometimes as a result to self-reflexively evaluate her own normative expectations of herself), the latter upsets assumed delineations between self and other (or street and non-street) by suggesting ways in which all street users are governed and are governing through fluid assemblages, networks and interactions.

The Shot/Reverse sequence relies on expectations that emerge from habit and from spectators’ past experiences and knowledge. These in turn have developed by learning how to read cues through interactions. The Shot/Reverse is, then, a powerful reminder that street-involved people’s perceptions of state-based legal actors are largely based on expectations that have been generated from lived experiences (often marked by negative interactions). Though taken in its dialogic instantiation, the Shot/Reverse is also a powerful reminder that other modes of interaction between police and their interlocutors are possible.

The Close-up gives us some indication as to how we might alter those expectations through relations of proximity. Paradoxically, it can equally bring us in too close and provide a claustrophobic perspective which might exacerbate our already negative impressions of others’ expectations and of our possible interactions.

Finally, while the Shot/Reverse favours a ‘unity of meaning’ that can help constitute shared interpretative communities, the Tracking Shot allows for competing meanings, shifting

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[493] *Ibid.* at 106.

subjectivities and the possibility to contemplate the multiple normative commitments that vie for the attention of any agent of street law.

Having developed a conceptual frame for street law through metaphor in this chapter, in the following chapter I look toward cinematic instantiations of interactions between street-involved people and their interlocutors that gesture towards different visions of street law to those found in more entrenched, formalized and institutionalized legal forms. I go on to argue that it is through the interactions between these characters and their real/imagined others with whom they share multiple and overlapping legal constellations, street law is constituted.

CHAPTER THREE: CINEMATIC STREET LAW

Law (as artifact, as discipline, as process) confronts, competes and is inextricably interknit with innumerable other ways of arranging and constructing knowledge. Cinema is one of the competing and complementary modes of knowing that stands in relation to law. To more orthodox writers, law and culture (including film) exist in binary opposition or are, at least, separate and separable from each other. The 'cultural turn' in legal scholarship posits a shift in such thinking about legal processes, subjectivities and identities, and problematics.

'Culture,' then, becomes a framework for law. Through it, we can undertake to understand how we make sense of our world and our role within it. Correspondingly, 'law' becomes an important site of cultural construction of cinema's meanings. To iterate a point made in earlier chapters, film and law are both ways of symbolizing how to be and co-exist; they deal with interpersonal conflicts; they circulate, reinforce and destabilize deep-seated assumptions and beliefs; they produce bodies; and they can generate multi-sensory responses to suffering. In a world in which we need symbols by which to live,[494] law and film are integral aspects of the contemporary human experience. Consequently, film is an important site of cultural construction of legal meanings and law is an integral site of cultural construction of cinematic meanings.

In Chapter One, I described what I understand as 'street law' and the particular instantiation that I refer to as the governance of and by street-involved people. I also discussed how concepts from cinema and cinema studies can assist in furthering a critical legal pluralist hypothesis of street law. In Chapter Two, I expressed a pluralist vision of street

[494] Langer (Feeling), *supra* note 198.

law by suggesting what it might look and feel like through four cinematographic techniques. Each of these foregrounds in different ways the expectations, commitments and restrictions and agential behaviour of people most concerned with street law's exigencies. In this chapter, I further develop a critical legal hypothesis of street law by turning my attention to the cinematic instantiations of interactions between street-involved people and their 'others.'

I begin from the assumption that the cinematic dimension of human experience already exists in law and the legal dimension of human experience already exist in film.[495] I also engage with law as more than the rules as expressed in written texts, the pronouncement of judges, or the private law of individual rights and responsibilities. Law is one attempt to imagine how rules shape and reflect our relationships and interactions. This endeavour also includes the tentative and ambivalent normativity, the intangible and affective normativity, and the sensory and embodied normativity that is generated in, by, and through film. I also begin from the view that film is more than a consumer-driven mode of entertainment or a spectacle that threatens law's legitimacy. Films are progenitors of legal thought; they may be jurisgenerative.

In what follows, I provide a critical review of how law, film, and the relation between them have been, and perhaps should be, conceptualized in legal scholarship. Work at the nexus of law and film is generally concerned with the doctrinal, pedagogical and jurisprudential relevance of film *to* law. As I will discuss, some law-film methodologies assume and reinforce the positivist view that film provides an external perspective on law and

[495] Here insight from legal aesthetics and cultural studies is helpful, see especially: Manderson (Songs), *supra* note 25; Carol Clover, "Law and the Order of Popular Culture" in Sarat & Kearns, *supra* note 187 at 97.

legal processes.[496] There is nonetheless a broader shared understanding among most people working in the field that neither the social phenomena nor the disciplines that study them are self-governing or self-sustaining. I will briefly discuss the former articulation. I prefer to emphasize the latter, however, and build upon it to argue that film *is* law.

In each of the following subsections, I interpret cinematic moments of interaction between street-involved people and their 'others.' These are, of course, my interpretations which are in turn informed by my sensory responses to what I see and hear in the film, my own memories, my familiarity or lack thereof with narrative and thematic conventions, my interpretation of what feels like embodied responses, and so on.

While the discursive formations circulating in fictional film can at times reproduce and reflect the conceptualizations of street-involved people as they are instantiated in formal legal doctrine (some of which I discussed in Chapter Two), they also inform and shape the basis of alternative beliefs about street-involved people. I discuss a few cinematic moments that provide different symbolizations of the relationships that make street law meaningful.

In my interpretation of these films, my concern is not with the fidelity of the representation of street-involved people or what I would call the 'law of the street' (formal and explicit state-based regulation directed at street-involved people). I do not offer a survey of the treatment of every possible mode of street-involvement in film. To my knowledge no such conspectus exists on the figure of the 'beggar' or the 'panhandler'. The Tramp, and especially Chaplin's iconic embodiment of that figure, as a trope and the self-conscious

[496] This is Posner's understanding of interdisciplinary endeavours: the task of legal theory is to draw on other disciplines methods to cast an external gaze onto law and legal education: Richard Posner, *Frontiers of Legal Theory* (Cambridge: University Press, 2001).

presentation of zones of poverty and homelessness in a distinct 'genre' (Film Noir) have generated some rich scholarship.[497]

In the face of the proliferation of documentaries about street-involved people (in part the outcome of new user-friendly editing software, file-sharing, portable equipment, camera-ready phones, and new exposition venues such as YouTube[(c)]) that often rely on ethnographic methodologies, I prefer to limit my discussion here to 'fictional' narratives.[498] I do not discuss films that claim to give 'voice' to the street community (e.g. documentary films designed to elicit a sense of common humanity and compassion), nor films made *with* the community (e.g. in collaboration, through the use of auto-cinematography, or within anthropological paradigms that favour filmmakers' immersion in their subject's social networks and daily lives).[499] I agree with theorists from documentary studies who claim that empirically based realist historiography may not always be the most appropriate mode for some discussions of lived events,[500] and that fictional strategies can often confront difficult

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[497]See: John Belton, "Film Noir's Knights of the Road" (2006) 54 Bright Lights Film Journal; Raynalle Udris, "Countryscape / cityscape and homelessness in Agnes Varda's Sans toit ni loi and Leos Carax's Les amants du Pont-Neuf" in Myrto Konstantarakos, ed., *Spaces in European Cinema* (Oregon: Intellect Books, 2000) 42.

[498] On the blurring between fictional and nonfictional narratives in film and the vexing question of what is 'documentary' film's relationship to law, see: Musser, *supra* note 227. Moreover, Lee Grievson illustrates how regulatory and commercial discourses and practices operate to construct a discursive identity for mainstream cinema based on its distinction from non-fictional discourses: Lee Grievson, "Woof, Warp, History" (2004) 44:1 Cinema Journal 119.

[499] There are some particularly artful or more careful engagements with the street community: Hennessey provides a collage of individual stories taken over the period of a year: Pat Hennessey, *Homeless Home Movie* (1997); a film produced 'with' the homeless in Montreal and especially those struggling with alcoholism: Daniel Cross, *The Street: A Film with the Homeless* (1997); on daily routines, survival strategies and living conditions of male youth sex workers, shot on location in hotel rooms in Santa Monica boulevard: Fenton Bailey & Randy Barbato, *101 Rent Boys* (2000); a filmmaker's fascination with Maggie, a homeless woman living in New York's Central Park: Michel Negrophonte, *Jupiter's Wife* (1994); a collaborative documentary about community living in rail tunnels under New York City; the filmmaker lived with the community for two years: Mark Singer, *Dark Days* (2000). On the transformative potential of those documentaries that engage with difficult historical truths and manage to mirror these processes in "complicated and indirect refractions:" Williams (Mirrors), *supra* note 489 at 10.

[500] John Grierson to who is attributed the term 'documentary' has argued that the documentarian 'movement' began as an anti-aesthetic one: "The Documentary Idea" in Forsyth Hardy, ed., *Grierson on Documentary* (London: Collins, 1946) 11. However, to Rancière, documentary film is privileged as it is not asked to "create

social questions in powerful ways.[501] Further, while I pay attention to a few rich instances when street-involved people are protagonists, the cinematic performance of street law I have often found more compelling is constituted through secondary or 'minor' characters in a singular interaction that nonetheless furthers a broader narrative.

I am not concerned here with 'the law of filming on the street.' This is not to say that the legality of videotaping interactions on the street (or, as noted in Chapter Two, whether the filming of police by street-involved people has regulatory effects) is of no interest to me.

As I will elaborate, engaging with law and film with an eye to whether or not footage taken by the street community is within the confines of established legal doctrine runs the risk of missing a more normatively tacit and expressive potential of cinematic artifact. Too much emphasis on the regulation of what can and cannot be filmed may also miss some of the rich insight of legal pluralism: law exists beyond the boundaries of the state. It also misses the insights of critical legal pluralisms: law is irreducibly plural and polycentric; it is experienced in a multisensory way; it is generated by multiple legal agents with shifting normative selves; its processes are dynamic; and its effects are symbolic. Consequently, an inquiry into the 'law of street films' would require attention to these myriad modes and sites of law.

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the feeling of the real"; as a result, the documentary can "treat the real as a problem" and thereby can "experiment more fully with the variable games of action and life, significance and insignificance:" Rancière, (Film Fables), *supra* note 127 at 17. In Chapter Four "Film as Law as Film," I discuss some of the possibilities that non-linear, explicitly interactive documentary film opens to a critical legal hypothesis of street law.

[501] Janet Walker, "The Traumatic Paradox: Documentary Films, Historical Fictions, and Cataclysmic Past Events" (1997) 22:4 Signs 804. See also: White (Content), *supra* note 211. Regina Austin argues for greater scholarly attention in law to documentary films: "The Next 'New Wave': Law-Genre Documentaries, Lawyering in Support of the Creative Process, and Visual Legal Advocacy" (2006) 16 Fordham Intellectual Property, Media & Entertainment Law Journal 809. Finally, to Viviane Sobchack, the documentary method - unlike fictional material – situates our ontological bodies in the real world: Vivian Sobchack, *Carnal Thoughts* (Berkeley: University of California Press, 2004).

We can, as I do in Chapter Two, argue that institutions, such as *Copwatch*, enact judgment, generate precedent, and reinforce its members' normative expectations for respectful interactions on the street. In this chapter, I want to continue to think cinematically about street law, but in a different register. I argue that certain cinematic sequences can be considered ethical frameworks for understanding our interactions on the street. I further contend that street law is symbolized through a few selected films in at least four ways: films mediate interactions between the characters and their real/imagined others; they show various legal constellations (both diegetic and extra-diegetic) that street-involved people and their interlocutors negotiate; they generate conventions that play with audiences' expectations in their interactions with their 'others;' they invite interpretations by viewers who are themselves complex normative agents. I begin with a discussion of the broad field of research located at the nexus of law and film.

3.1 THE LAW-FILM NEXUS

There is a well-founded belief that many law students, and most members of the broader population, develop some of their understandings and at least some of their expectations, about law through popular media, including the cinema.[502] As a result, "*law – film*" studies has emerged as a diverse field generally concerned with the doctrinal,

[502] For an early exploration of the power of visual media on socialization about law: Macaulay, *supra* note 28. Kathy Laster and Krista Breckweg express a familiar sentiment that film and television are "the main source of common knowledge about the law" especially because of their accessibility: *The Drama of the Courtroom* (Leichhardt, N.S.W: Federation Press, 2000). Many law-film scholars negotiate a tension between an idealized view – that cinema is an ethical supplement to law, as a means of generating empathy, and as a part of a broader pedagogy of ethical lawyering – and a cynical view – that cinema is a medium that distorts reality in disturbing ways, misleads audiences into holding law to inappropriate or unreasonable standards, and generally misinforms. Macaulay reminds his readers, for instance, that films, are after all "entertainment not social science:" *Ibid.* at 1545.

pedagogical and jurisprudential relevance of film *to* law and, at times, though exceptionally, of law *to* film.[503]

There are a number of ways to talk about the points of contact between these disciplines and socio-cultural processes. In this chapter, I discuss five ways we can think about the law-film relation. These are conventionally understood as: 'film law' (the ways in which film production and cinematic practices are governed through legislation, the decisions in which courts balance the claims of competing groups in areas such as copyright); 'law *in* film' (films are a legal text which can be mined for legal themes); 'law *and* film' (film and law are mutually constitutive socio-cultural fields); 'cinematic law' (thinking through the cinematic dimensions of formal and informal legal processes); and 'legal cinematics' (thinking through the legal qualities of cinematic events).

I show how each of these modes of engaging the law-film relation points to some of the multiple and competing normative orders in any film. These include the regulatory frameworks in which the film is produced, the norms of the constructed world described and lived in the film's diegesis, the fixed order of sounds and images, the ideologies and normative commitments that inform the actions of the director, the rules of genre that constitute systems of knowledge through associations, and the individual viewers' own law and how she positions herself within these normative orders.

I revisit the more conventional understandings to argue how in each of these other modes of grappling with the law-film nexus, film is normative in itself. Drawing on my

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[503]Rosemary Coombe has cautioned that 'law and' explorations "will not be fruitful" unless they can transcend, transform, disrupt, undo its initial categories (Contingent), *supra* note 187 at 22. Despite this caution, it is still rare for law-film academics (even those from other disciplines) to ask what law transposes to film. For instance, Gaines provides a rich discussion on the reproducibility of film and its implications *for* law: Jane Gaines, *Contested Culture: The Image, the Voice and the Law* (Chapel Hill: University of North Carolina Press, 1991).

interpretations of a number of films that feature interactions between street-involved people and their 'others,' I suggest each of these interrogations of the law-film relation can be interpreted in ways that conceptualize film 'as' law, in the sense that film constitutes a mode of imagining rule-governed behaviour in interactions on the street.

3.2 FILM LAW

'Film law' can refer to the ways in which film production and cinematic practices are governed through a complex matrix of formal, explicit, informal and/or implicit social, cultural and economic ordering. It can include policies and legislation governing the film industry, such as the decisions in which courts balance the claims of competing groups around questions such as ownership, contractual obligations, cultural protection, freedom of speech, and health and safety regulations.[504] It can also, however, refer to formal economic and cultural regulation that shaped the industry such as the *Hays Code* and the Jim Crow laws in the United States.[505] Finally, film law can be taken as the implicit norms that govern film production, such as the moral codes of each person involved in the production or the informal norms that developed through filmmakers' collective practices that developed over time. We can ask, for example, about the ways in which moral perception is shaped and constituted

[504] For a discussion of the substantive legal disputes around one film, see: Matthew Rimmer, "Shine: Copyright Law and Film" (2001) 12 Australian Intellectual Property Journal 129. For an early articulation of ownership of cinematic images from a Marxist perspective: Bernard Edelman, *The Ownership of Image: Elements for a Marxist Theory of Law* (London: Routledge, 1979). On the United States Supreme Court ruling over state censorship of films: John Wertheimer, "*Mutual Film* Reviewed: The Movies, Censorship, and Free Speech in Progressive America" (1993) 37:2 American Journal of Legal History 158. For a rich account of copyright law in the U.K. through the prism of aesthetics and Marxist theory, see: Anne Barron, "The Legal Properties of Film" (2004) 67:2 Modern Law Review 177.

[505] The United States provides the paradigmatic voluntary industry rating system. Its code and means of certification emerged primarily to avoid formal municipal, state and federal structures and remains backed, among other things, by economic incentives, religious affiliations, notions of citizenship and public opinion. Other jurisdictions have implemented legislative documents that bestow authority on official bodies to determine industry standards.

through an individual filmmaker's worldview or how we should respond to a filmmaker who has engaged in monstrous and immoral acts.[506] Or, we can inquire into non-legislated normative orders: the "censorship of caution" [507] in Holland after the murder of Theo Van Gogh, governed cinematic form and content often in far more profound ways that other modes of regulation.[508]

Of these, I focus here on the relationship between the *Motion Pictures' Production Code* (Code) and the films about street-involvement produced while it was in full effect. In 1934, amendments to Motion Picture Producers and Distributors of America's (MPPDA) *Code* required that all films receive a certificate of approval from its Studio Relations Office (SRO). The *Code's* guiding principles included the proviso that "sympathy of the audience shall never be thrown to the side of crime, wrongdoing, evil or sin."[509] In theory, the *Code* regulated content of all films but informally it was used by the five major production

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[506] Consider Roman Polanski's history of sexual violence (he drugged and raped a 13 year old girl (Samantha Geimer) in 1978 then fled to France on the eve of his sentencing hearing; British Actress Charlotte Lewis has recently disclosed that Polanski also sexually assaulted her when she was 16; and he publically declared in an interview with Martin Amos that 'Judges want to f— young girls. Juries want to f— young girls. Everyone wants to f— young girls!"). See generally: Jillian Weinberger, "Roman Polanski: An Un-detected Rapist? ", online: (May 18, 2010) Ms Magazine <http://msmagazine.com/blog/blog/2010/05/18/roman-polanski-the-undetected-rapist/>. Yet the film industry has, to a large extent, tacit acceptance of his behaviour. It is, after all, en route to receive a lifetime achievement award, that Swiss authorities arrested Polanski in September 2009. For a list of filmmakers who signed a petition calling for his immediate release: "Free Polanski", online: <<http://community.livejournal.com/ohnotheydidnt/39618660.html>>.

[507] Van Gogh collaborated with Aavan Hirsi Ali to make a short film about women's inequality under certain fundamentalist instantiations of Islam: Theo van Gogh, *Submission* (2004). He was murdered shortly after the film's release. See generally: Imre Szeman, "The Politics of Documentary Today: A Roundtable", online: (2008) 9:2 Politics and Culture <http://www.politicsandculture.org/>.

[508] On the ideological function of the United States' *Production Code (*or *Hays Code)*, see: Richard Maltby, "Documents on the Genesis of the Production Code" (1995) 15:4 Quarterly Review of Film and Video 5. Contrary to the 'repression' story of *Production Code* Hollywood, Maltby documents how pressures from regulatory bodies and commercial interests shaped an aesthetic of ambiguity, inferences, connotations and often contradictions. On the relationship between the Catholic Legion of Decency and film censorship in the United States: Gregory Black, *The Catholic Crusade Against The Movies, 1940-1975* (Cambridge: University Press, 1998).

[509] "The Motion Pictures Production Code of 1930", online: <http://www.artsreformation.com/a001/hays-code.html>.

companies[510] to limit independent and other filmmakers' access to the major first-run release outlets (which would refuse to screen films that did not carry the SRO's 'seal').[511] In practice, the narrative conventions of films released between the mid-1930s and 1940s within the Hollywood system relied on implicitly (through allusion, allegory, and double-entendre) or explicitly (through characters whose motivations did not meet the *Code*'s standard of propriety) constructed their own aesthetics.

Virtually all 'social problem' films featured protagonists who had meaningful encounters with marginal workers or other street-involved people (then formally regulated under vagrancy laws). Consequently, in direct contravention of the *Code*, protagonists were 'on the side of crime.' For instance, one of the main tropes of social problem films is a dignified upper-middle-class (often male) character who engages in 'class transvestitism.[512]

By literally taking on the attire, the lifestyle of, and inevitably identifying with marginal populations, he attempts to bridge differences and constitute new relationships between the rich and the poor.[513] In most of these films, the 'homeless person' is a minor character who

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[510]The five studios at the time were: Paramount, Warner Brothers, RKO, MGM and 20th Century Fox.

[511] In 1948, the United States Supreme Court found that this distribution model was in violation of American anti-trust laws. The Court ruled that the production companies were required to divest themselves of their monopoly over film exhibition. See: *United States* v. *Paramount Pictures, Inc*., 334 U.S. 131 (1948). Further, in 1953, the Supreme Court overturned *Mutual Film Corporation v. Industrial Commission of Ohio* 236 U.S. 230 (1915). In that case, the Supreme Court held that the free speech protection in Ohio's Constitution, which was almost identical to the First Amendment of the United States' Constitution, did not extend to motion pictures. In *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 (1952), the Court held that the provision of New York State's education laws which allowed censors to ban non-licensed motion pictures was an unconstitutional restriction on freedom of speech. In 1967, the MPPDA was renamed the Motion Picture Association of America. It instituted a letter rating system which remains in place today. See generally: Maltby, *supra* note 508.

[512] Eric Shocket, "Undercover Explorations of the 'Other Half', Or the Writers as Class Transvestite" (1998) 64 Representations 109. Shocket refers to middle class 'investigators' - researchers and artists - who attempt to "close epistemological gaps" and bridge social boundaries through impersonation: at 110.

[513] John Dawson (Lionel Atwill) is disabled by an accident in his factory; rendered destitute, he travels the country organizing the homeless to help him regain control of his steel mill in Phil Rosen, *Beggars in Ermine* (1933). Class-transvestitism is also a convention of depression-era comedies such as Gregory LaCava, *My Man Godfrey* (1936). In that film, a disheartened millionaire becomes one of the 'common people' living and working in New York's factory district. This trope remains a popular narrative engine: see more recently: Mel

nonetheless plays a pivotal role in the narrative. Conventionally, a curmudgeonly protagonist reveals his entrenched assumptions about poverty and the people for whom it is a daily reality. His belief-structure is shaken as a result of an interaction with a street-involved person; this encounter is a catalyst for (sometimes mutual) self-transformation.[514]

Often, the narrative would indicate that the philanthropic protagonist is better-equipped than governmental actors to provide services and infrastructure to street-involved people.[515] Consequently, some films have been read as circulating ideological messages that do little to identify or address the structural causes of homelessness.[516] This may be true even with

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Brooks, *Life Stinks* (1991) in which a wealthy businessman wagers he can get by living with the 'common folks' in Los Angeles in order to gain choice real estate. Of course, women who enter 'poor spaces' have an additional layer of transvestitism: they tend to take on the attire of working class boys. See for instance, Nancy (Louise Brooks) in *Beggars of Life* (1928) and Veronica Lake (credited as 'the Girl') in *Sullivan's Travels* (1941). In a recent twist on both tropes, see Raoul Ruiz' *Trois vies et une seule mort* (1996). In that film, Georges Vickers (Marcello Mastroianni) abandons his career as a professor to find meaning on the street. He meets, and falls in love with, Tania (Anna Galiena), a street-level sex worker, who turns out to also be the Chief Executive Officer of a well-established company.

[514] The expectation that the protagonist will be transformed through this encounter remains common in films that portray interactions between street-involved people and their others. For instance, the comedy: Harold Ramis, *Groundhog Day* (1993) which grapples broadly with the possibility of reconfiguration through repetition. During a series of replayed days, Phil Connors (Bill Murray), a narcissistic weather man is trying to get the day right in order to acquire Irene's (Annie McDowell) attention and affection. During a series of replayed days, he encounters 'Old man' (Les Podewell). His responses shift from disdain to indifference to care as he learns more about his day to day. However, despite various attempts (money, food, companionship, medical care), he cannot stop the man from dying at the end of each day. On the film's evidence, through his interaction with Old man, Phil contemplates the possibility of loss, the finitude of life, and the empathetic qualities of care, and ultimately a sense of connection to the social world.

[515] In *My Man Godfrey* and in its re-instantiation in *Life Stinks*, the protagonists invest in infrastructure for the homeless and provide them with shelter and low-level, low-skill employment opportunities). Sometimes these individual interventions usually result in a heterosexual monogamous union: Gregory LaCava, *Fifth Avenue Girl* (1939) in which a young homeless woman is taken in by a millionaire and marries his son; Michael Barnard, *Nights in White Satin* (1987) in which a young homeless woman taken in by a photographer); and *Life Stinks* (Molly, a kindly homeless woman marries the rich land developer).

[516] See for instance: William Brigham, "Down and Out in Tinseltown: Hollywood Presents the Dispossessed" in Paul Loukidas & Linda Fuller, eds., *Beyond the Stars: Studies in American Popular Film (Volume 5)* (Bowling Green, OH: State University Popular Press, 1990) 165-186. Brigham does not sufficiently compare the shattering potential of slapstick films, especially those embodied by Chaplin. His work, in the fields of plot, performance, *mise-en-scene*, irreverence and play with technological regimes, mechanization, and linear time have been read as directly and indirectly confronting "the culture of status and distinction:" Miriam Bratu Hansen, "The Mass Production of the Senses: Classical Cinema and Vernacular Modernism" (1999) 6:2 Modernism/Modernity 59 at 69. See also Charles Musser, "Work, Ideology and Chaplin's Tramp" (1988) 41 Radical History 37.

films and filmmakers associated with the 'popular front' (which combined Hollywood formulas and anti-fascist politics) who were making films with social messages whose political content may, according to some scholars, have been displaced by questions of the relation of medium to message and the power of the mass-media form.[517] Moreover, these films were produced at a time when writers, sociologists, and other producers of knowledge about homelessness were embedding themselves in the communities upon which they wrote.[518] 'Outsiders' negotiated disgust and desire, and generally framing *trampdom* or *hoboism* – the wandering casual labourers whose work was instrumental in the development of western industrial capitalist structures - as "liberating"[519] and within embedded within a romanticized discourse of self-sufficiency and adventure.

Within this historical context, it seems less interesting to struggle with whether or not these narrative conventions offer an indictment of the formal regulation of street-involved people. Rather, these cinematic instantiations of interactions are a indication of the complex interplay between the explicit and informal normativity of the *Production Code* and its relationship to the more implicit normative expectations of the perceive audiences to whom filmmakers and producers directed their work.

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[517] Kathleen Moran & Michael Rogin, "'What's the Matter with Capra?' Sullivan's Travels and the Popular Front" (2000) 71 Representations 106 at 112. On the popular front as a socio-political formation and the attempt to create a leftist national popular culture, see: Micheal Denning, *The Cultural Front* (London: Verso, 1996).

[518] See especially, the work of Nels Anderson who as a graduate student drew on his previous experiences as a migrant worker to engage in ethnographic observation of the 'hobo' as an integral component of the frontier labor market: Nels Anderson, *The Hobo: The Sociology of the Homeless Man* (Chicago: University of Chicago Press, 1923). In later work, he developed a satirical taxonomy of figures and glossary that includes definitions such as "eye doctor," or a "panhandler who can catch the eye of his client and hold it without quailing" to point out how the 'life on the road' had largely been romanticized by 'outsiders.' *The Milk and Honey Route A Handbook for Hobos* (Chicago: Vanguard Press, 1931). The classification system he circulated – the hobo (migrant worker), the tramp (dreamy wanderer) and the bum (sedentary and often prone to vice) - were adopted by other academics and especially his colleagues from the Chicago School who were developing and refining their ethnographic methods which continues to hold currency in contemporary social research.

[519] For a literature review and discussion of transient workers as fundamental to continental capitalism's processes: Todd McCallum, "The Tramp is Back" (2005) 56 Labour / le travail 237. He found that most of the "scribblers in hobo jungles were sociologists in disguise" at 245.

Take for example *Sullivan's Travels* (1941).[520] The protagonist Sullivan (Joel McCrea) is told by his producers that he has insufficient knowledge of "hard luck" to make a powerful social problem drama. He decides to don the attire of the 'hobo.'[521] With ten cents in his pocket, he takes to the road in order to learn "what it's like to be poor." One endeavour could be to fixate on conventional iconography of street law: What does Sullivan's arrest tell us about formal state-based regulation of migrants in depression-era America? We can also consider films that achieve "greater sophistication" in the treatment of street law that suggest more meaningful interactions with the 'other' and the possibility of self-transformation through the encounter.[522]

The film is rich intertextual references to prevailing leftist values in the industry at the time ("What's the matter with Capra?"), extra-diegetic references to informal regulation (by the Hollywood system through the figure of the producer) and self-reflexive and layered interrogation of the relationship between authority, objectivity, and representation (a movie about making a movies about 'the poor'). The film inspires interrogation of the interplay between the implicit governance of leftist politics and shifts in explicit governance of cinematic institutions and practices and interactions that shape and reflect a cinematic artifact.

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[520] Preston Sturges, *Sullivan's Travels* (1941).

[521] The hobo is the figure of transients that remained archetypal at the time the film. See Paul DePastino's social and economic history of homelessness between the late 19th and early 20th centuries through the figure of the transient worker (the 'hobo'): *Citizen Hobo: How a Century of Homelessness Shaped America* (Chicago: University of Chicago Press, 2003).

[522] Bazin has similarly suggested that while the subject matter of 'religious film' genre and its hagiographies and biblical epics especially, "does indeed show specific affinities with the cinema considered as a formidable iconography," more sophisticated films work against the exploitation of such affinities and invite a broader openness to the 'other:' André Bazin, *Bazin at Work: Major Essays and Reviews from the Forties and Fifties* (New York: Routledge, 1997) at 67.

3.3 LAW IN FILM

Despite the richness of exploring these modes of governance, the overwhelming majority of law– film thinking situates itself within the study of 'law *in* film' (cinematic representations of official legal processes, legal doctrine and formalized modes of law enforcement). While there have been shifts in thinking toward an expansive and pluralistic view of representation,[523] a survey of law school curricula and legal inquiry – in English common law jurisdictions at least – suggests a focus on the realist depiction of law *in* film endures.[524] Broadly speaking, law in film concerns itself with films 'about' law.

Films are considered popular and accessible *legal* texts. In practice, students are asked to turn their minds to the truthfulness of 'the' law – limited to formal, state-sanctioned, written rules and legal practices – as represented within the film world's narrative.[525] By engaging in legal reasoning through film, law students build on their existing skills and gain new tools to 'think like lawyer': piecing together relevant facts, determining legal rules, and

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[523] Namely that neither law nor film exists in a one-to-one relationship of representation to reality and that rather than simply documenting facts without idealization, both processes produce and constitute contested meanings and world-views.

[524] The seminar description for Andrew Sheppard's "Law and Popular Culture" (Spring, 2006: Hofstra University School of Law) is representative of the 'law in film' approach: "We will discuss the accuracy and inaccuracy of the way that lawyers and the legal system are portrayed in popular culture, particularly whether the portrayals are consistent with good legal practice and the codes that regulate lawyer behaviour." On the development of 'law and film' courses in legal academy: Philip Meyer & Stephen Cusick, "Using Non-Fiction Films as Visual Texts in the First-Year Criminal Law Course Symposium: Law in Film/Film in Law" (2004) 28:4 Vermont Law Review 895. For a recent discussion of law-film scholarship in francophone and civilian institutions in Canada, see: Marie-Claire Belleau,Valérie Bouchard & Rebecca Johnson, "Droit, cinéma et doute : Rapport minoritaire" (2009) 14:1 Lex Electronica. Interestingly, Belleau *et al* highlight how in the 'law / film' dyad that organizes much law-film scholarly, law remains the privileged pole of the dichotomy: at 3.

[525] This focus is unsurprising given that 'fact-determination' remains a fundamental strategy of legal method and that much of law's claim to legitimacy and authority is conventionally thought to depend on its ability to divine truth from competing claims. However, as Ruth Buchanan and Rebecca Johnson argue, films can be used because they confront the jurisprudential belief that law and legal processes can divine such truth: "Getting the Insider's Story Out: What Popular Film Can Tell Us About Legal Method's Dirty Secrets" (2001) 20 Windsor Year Book of Access to Justice 87.

generating legal solutions to complex social problems.[526] Students are asked to recognize law as a pre-existing referent and one that remains within the institutionally dominant paradigm: law as a separate social and cultural entity, embodied in rules and procedure, and imposed by the state.

Film is relevant to law only insofar as it tells an already 'legal' story[527] from which an accurate legal interpretation can be offered by people with legal training.[528] Such narrative content-analysis eschews the interpretivists' insight that meaning is contingent and that it is ultimately derived from the experience it generates in readers;[529] that the relation between law and film is never purely mimetic or a unilateral reference from one artifact to another; and that film and law consciously or unconsciously quote one another in infinite, contradictory, and potentially transformative ways.[530]

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[526] Using film for experiential learning that gives new blood to the Langdellian method of Socratic exchange, professors ask students to track down the legal references and compare and contrast the representation in film with official and authoritative sources of law (namely doctrine, private law arrangements, formal procedure and institutional competence). Usually, they proceed to correct or critique the representation of formal legal apparatuses and conventionally recognizable legal actors. One of the more interesting academic explorations of law *in* film is Diane Waldman's discussion of *Civil Action*
(1998). She claims that the film asks whether, given the legal system's bedrock of private law and individual rights and responsibilities, it can ever adequately respond to injuries, harm and illness that result from environmental degradation. It also asks whether punishment, deterrence and compensation are the proper avenues for achieving justice: Diane Waldman, "A Case for Corrective Criticism: A *Civil Action*" in Austin Sarat, Lawrence Douglas & Martha Merrill Umphrey, eds., *Law on the Screen* (Stanford: Stanford University Press, 2005) 201-230.

[527] Jane Baron offers a similar reading of scholarship that compares and contrasts literature and law with techniques that suggest the former's capacity to come to the service of the latter: Jane B Baron, "Law, Literature and the Problems of Interdisciplinarity" (1999) 108 Yale Law Journal 1059.

[528] On the hermeneutic impulse to find a text's meaning, see: Hans-Georg Gadamer, *Truth and Method* (New York: Continuum, 2002).

[529] Interpretation of legal texts (reader-response) occurs through and within 'interpretive communities'; a text's meaning does not exist outside its cultural context (which includes authorial intent and the expectations of the members of particular interpretive communities). See for instance: Stanley Fish, *Doing What Comes Naturally: Change, Rhetoric, and the Practice of Theory in Literary and Legal Studies* (Oxford: Clarendon Press, 1989); James Boyd White, *The Legal Imagination: Studies in the Nature of Legal Thought and Expression* (Boston: Little, Brown, and Co., 1973) [hereinafter, White (Imagination)].

[530] Filmmakers can, for instance, exploit the narrative potential for tension and resolution (or lack thereof) that formal adjudicative processes (and trials especially) offer. They can also use symbols of formal law and other

A related 'law in film' project is to establish a consistent method of inquiry, namely, descriptive and content-based analysis of films that contain sufficient legal elements.[531] Without clearly defined guidelines, proponents of this view argue, the analysis of 'law films' will "dissolve into film studies," which is of "limited interest" to legal scholars.[532] The apprehension is the expression of a two-fold anxiety in legal scholarship and pedagogy:[533] fear and dismissal of film's power.

First, thinking about law through film – a medium which blurs entertainment, memory, dreams, facts and fiction - is dangerous insofar as it can undermine disciplinary order, institutional legitimacy, and especially its vocation for truth.[534] Second, in contradistinction to law's sobriety and 'real effects' in the world, film is frivolous, trivial, and subjective; attention to it will detract from 'more important' political, social, and economic problems 'the law'

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normative sites to aestheticize the crass exercise of power, to expose faulty processes of justice, to signal transgressions of dominant legal norms.

[531] These elements include "the geography of law, the language and dress of law, legal personnel and the authority of the law:" Greenfield *et al*, *supra* note 194; Osborn, *supra* note 194; Steven Machura, "An Analysis Scheme for Law Films" (2007) 36:3 University of Baltimore Law Review 329; Peter Robson, "Law and Film Studies: Autonomy and Theory" in Michael Freeman, ed., *Law and Popular Culture:Current Legal Issues Volume 7* (London: Oxford University Press, 2005) 21-46. The notion of an established 'canon' of law films raises familiar questions as to whose world view is promoted and reinforced in 'classics' or 'great' art. Authors point out how the exclusion of certain books from the canon contributes to the marginalization of women's and racialized groups' perspectives in legal academy: Richard Delgado, "Storytelling for Oppositionists and Others: A Plea for Narrative" (1989) 87 Michigan Law Review 2411; Judith Resnik, "Convergences: Law, Literature and Feminism" (1990) 99 Yale Law Journal 1913.

[532] Namely, film's "aesthetic or technical" specificities - which they reduce to cinematography - while "intrinsically interesting," is "peripheral to any *serious* consideration of law and film." Robson, *ibid* at 33 [emphasis mine]. Similarly, James Elkins, "Popular Culture, Legal Films, and Legal Film Critics" (2007) 40 Loyola of Los Angeles Entertainment Law Journal 745.

[533] Margaret Thornton refers to the apprehension in relation to popular culture as 'legal vertigo:' "Law and Popular Culture: Engendering the Legal Virtigo" in Margaret Thornton, ed., *Romancing the Tomes: Popular Culture, Law and Feminism* (London: Cavendish, 2002) 3.

[534] For instance, Richard Sherwin has cautioned against an overly 'postmodern' or deconstructionist view of the film's relation to law. It is valuable for legal thinkers to wrest with cinematic images that irritate law's self-representation as the embodiment of objective truth, rationality and universal justice. However, when this analysis converges with communications technology and market demands (the 'aestheticization' of legal processes through the reliance on visual media) law risks becoming meaningless: *supra* note 221 at 227.

should resolve.[535] However, engagement with film, media and communications studies would reveal a taken-for-granted assumption from many scholars in those disciplines, and as I illustrate in my framing of 'film law': film is a historically-situated, materially-grounded social practice embedded in power relations, political forces and economic dynamics.[536]

Even remaining within the realm of dominant modes of legalities, we can consider how films inform what is deemed a social problem warranting official and institutionalized legal intervention;[537] they can suggest formal and informal legal strategies to counter discrimination;[538] they can be used to evaluate the material impact of legislative symbolizations of norms;[539] they can be anecdotal evidence of how people perform the role of lawyer; [540] and can play a role in shaping legal subjectivity.[541]

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[535] In Common law jurisdictions generally, and in the United States especially in part due to its unique relationships to the dominant 'Hollywood' system, courts have been suspicious of film as potentially deceptive medium. For a genealogy of the judicial decision permitting filmic evidence in the United States, see: Schwartz, *supra* note 204.

[536] Indeed, like any representation, filmic meanings are derived, at least partially, from practical, material concerns: Ian Hacking, *Representing and Intervening: Introductory Topics in the Philosophy of Natural Science* (Cambridge: University Press, 1988).

[537] Stuart Hall *et al* discuss the emergence of moral panics around 'mugging' in the U.K. stems in part from images disseminated in the mass media: Stuart Hall *et al*., *Policing the Crisis: Mugging, the State, and Law and Order* (New York: Holmes & Meier, 1998).

[538] *North Country* (based on the events documented in *Jenson v. Eveleth Taconite Co* and the book *Class Action: The Story of Lois Jenson and the Landmark Case that Changed Sexual Harassment Law,* 2002) invites spectators to consider how a litigant was being "retraumatized" in a sexual harassment case when acting as an individual and suggests that a collective response to such discrimination may bring about more just results: Rebecca Korzec, "Viewing North Country: Sexual Harassment Goes to the Movies " (2007) 36 University of Baltimore Law Review 303.

[539] For instance, the relevance of the *Seneca Falls Declaration Settlements* (equality under the law) can in part, be assessed, through the cinematic depictions of female lawyers: Louise Everett Graham & Geraldine Maschio, "A False Sentiment: Narrative and Visual Images of Women Lawyers in Film" (1995-96) 84 Kentucky Law Journal 1027.

[540] For a discussion of the ways in which depictions of lawyers in films shape clients' expectations of effective lawyering and may also contribute to lawyers 'forgetting' generally shared normative assumptions around acting lawyerly, see: Nancy Rapoport, "Dressed for Excess: How Hollywood affects the Professional Behaviour of Lawyers" (2000) 14 Notre Dame Journal of Law Ethics & Public Policy 49. On the ways in which the cinematic construction of female lawyers can promote, just as it undermines, women's social power and their status as legal agents: Cynthia Lucia, *Framing Female Lawyers: Women on Trial in Film* (Austin: University of Texas Press, 2005).

[541] Peter Drexler, "The German Courtroom Film During the Nazi Period: Ideology, Aesthetics, Historical Context" (2001) 28:1 Journal of Law and Society 64.

Meaningful interaction with film, media and communications studies might also reveal long-standing debates as to how cinema *does* have these effects in the world: whether through the activation of mental, psychological, or emotional responses in a (passive) spectator through embedded ideologies in individual artifact.[542] It may also remind us that the historically-situated spectator is in active engagement with narrative and cinematic techniques[543] - whether or not the film itself is intended to provoke critical thought.[544] It may also suggest how the cinematic process is informed by the normative expectations and relative social power of the filmmaker constituting a worldview.[545] Finally, it might hint at film's capacity to symbolize power through complexity and ambiguity.[546] To wrestle with multiple normative modes, sites and instruments that commingle and collide *through* films, we should, consequently consider how editing techniques restructure spatio-temporal laws and invite

[542] To Metz, cinema is akin to Lacan's mirror-stage: Christian Metz, *The Imaginary Signifier: Psychoanalysis and the Cinema* (Bloomington: Indiana University Press, 1982). It is noteworthy that courts have grappled with the power of films to guide individual spectator's responses. For instance, according to the Motion Picture Producers and Distributors of America's *Production Code*, film's essence lies in its ability to bring about change in those who consume it. It can improve humanity or, conversely bring about its moral decay: "If motion pictures present stories that will affect lives for the better, they can become the most powerful force for the improvement of mankind (sic)." Similarly, the U.S. Supreme Court held in *Mutual Film Corporation* v. *Ohio Industrial Commission*, 236 U.S. 230, U.S. Supreme Court (1915) that state governments were constitutionally entitled to censor films prior to exhibition because films "could be used for evil" at 224.

[543] Relying on ethnographic studies of audiences to argue the ways in which films neglect or obscure the lived reality of particular audiences: Barbara Creed, *The Monstrous-Feminine: Film, Feminism, Psychoanalysis* (London: Routledge, 1993).

[544] For instance, associative montage mandates that viewers draw their own psychological connections through juxtaposition and metaphor: Stan Brackage, *Metaphors of Vision* (New York: Film Culture, 1963); Sergei Eisenstein, *Film Form and Film Sense* (Cleveland: Meridian, 1957).

[545] Auteur theory, or the significance of specific filmmakers' normative positioning, approach to and understandings of the world, and who is her imagined audience – while relevant to questions of authority, judgment, and interpretation - is infrequently considered in law-film inquires. Karen Turner's discussion of censorship and filmmaker's Duc Hoan's rendering of the Vietnam war in *The Story of A Phy* is a rich exploration of such questions: Karen Turner, "Shadowboxing with the Censors: A Vietnamese Woman Directs the War Story" in Corey Creekmur & Alexander Doty, eds., *Cinema, Law and the State in Asia* (New York: Palgrave, 2007) 101-122.

[546] To Rancière, film is always already political insofar as it recasts and reconstitutes relations between what is perceived, communicated and thought. It can interrupt aesthetic and political hierarchies; it can destabilize systems of representation and modes of governance. Film is the realm of ambiguity, negotiating between the "readability of the message that threatens to destroy the sensible form of art" and the "radical uncanniness that threatens to destroy all political meaning. Film risks becoming meaningless when political or transformative meaning is imposed upon it: Rancière (Aesthetics), *supra* note 347 at 63.

new understandings about who has the authority and legitimacy to govern interactions on the streets.

For instance, cinematography and allegory are deployed in Fritz Lang's *M*[547] to establish that the usual suspects (police and lawyers) do not have legal authority to enforce the rules that govern interactions on the street. The film follows the police's ineffectual attempts to find the man who is stalking, sexually assaulting and murdering little girls. Intense police crackdowns, fueled by public outcry and pressure from the government, create conditions that render organized crime incapable of running their affairs. Faced with dwindling funds and a blow to their reputation, the 'Union' (a cluster of organized crime factions each, according to regulations, with a representative authorized to vote on their behalf) determines to find and prosecute the "non-member" who is "screwing up." There is a series of rigid, drawn-out, almost identically framed cross-cuts. The men in suits sitting around a board room tables are indistinguishable and ineffectual bureaucrats: formal legal agents on the one hand, and Union members on the other.

The juxtaposition of police officers strategizing how to find the murderer ("search every house", "fingerprinting, enforce i.d. cards"), and sequences of the mob doing the same ("we need spies," "the girls must take more notice") builds tension and gives the film a rhythm. However, it also suggests potentially disturbing or potentially normalizing - which will vary depending on one's expectations as to appropriate agents of governance - the connections or parallels between the police to mob and of mob to police.[548] It also highlights how these

[547] Fritz Lang, *M* (1931)
[548] For a discussion of the shot structure in *M*, see: David Bordwell & Kristin Thompson, "Chapter Eight: The Relation of Shot to Shot: Editing", *Film Art: An Introduction* (New York: McGraw-Hill, 2008) at 275.

expectations may shift in relation to the norm-generating communities to which we believe they belong.

Whereas police decide to search every prison and asylum for clues, the Union representatives decide that "every square foot" of the city must watched and by "people who can go everywhere, not be noticed, and can follow children without arousing suspicion." This task they bestow upon the 'Beggars' Union' – offering a hefty reward to whomever tracks the killer. Contrary to the static camera reserved for the bureaucrats, however, spectators are introduced to the Beggar's Union by way of a long, unbroken sequence through headquarters which encourages attention to the interactions within and through the lived space. A man counts cigarette butts and takes in the smell of a cigar, another which peels potatoes, others still play cards, wash dishes and sleep. Two men tabulate and price found food items to be resold to members.

Rather than cutting, the camera tracks up from the 'underworld' to the mob's headquarters, suggesting that the two unions have formed an alliance: whereas the mob will parallel the police and combs the city for suspicious personalities, the network of beggars are given zones of surveillance and given the task to watch over the children in these spaces.[549] Whereas police and mob members are shot primarily in tight frames of interior shots, the beggars, practically invisible to passer-by, can inhabit, move through, know and organize vast swaths of their city space. Ultimately the street law in *M* is expressed in terms of the normativity ascribed to the beggars' mobility and at times their relative immobility.

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[549] Associations of beggars are also a recurring trope in other cultural forms. See for instance Brecht's *The Three penny Opera* (1928), itself an adaption of John Gay's *Beggar's Opera* (1728), and of course, Dickens' *Oliver Twist* (1838), and "Baker Street Irregulars" who assist Sherlock Holmes with clues in Conan Doyle's series since *A Study in Scarlet* (1886).

Through their spatial and legal practices, they ways in which they act in and through city spaces, the Homeless Union members determine what is and what should be appropriate behaviour in the street. It is, after all, the blind street vendor who identifies and ultimately sentences Hans Beckert as the killer. When he hears him whistling,[550] the experience was sufficiently uncanny to rouse his suspicion and his own expectations of normal encounters on the street. When he hears it again, it will be to determine the killer's identity. Thus, the blind beggar is constituted through *M* as the site of moral perception: the only person with the specific knowledge required in order to enact (ethical) judgment.[551] Whether or not his rendering is ethical will ultimately depend on each viewer's personal assessment of his judgment; these in turn are based on that viewer's belief, interpretations, analyses and own judgment. As a consequence, what viewers believe they expect of other street users, what they believe those street users expect of them, commingle with other symbolizations of these beliefs and expectations, through formal legal texts but also through myths, including those constituted within and circulated through *M.*

[550] Edvard Grieg's composition 'In the Hall of the Mountain King' for Henrik Ibsen's play entitled *Peer Gynt* (1876).

[551] In mythology, the blind seer / prophet is a figure who, with the loss of one sense, acquires greater acuity in the others and correspondingly otherworldly abilities, such as paranormal psychic or intuitive powers and knowledge of the past. There are many examples in mythology, philosophy and literature: Teresa (from Greek mythology, the blind prophet of Thebes), Odin (from Norse Mythology, who gave up sight for wisdom) and even Geordie (the moral authority in the *Star Trek* television series). See also: Tim Burton, *Sweeney Todd: The Demon Barber of Fleet Street* (2007) in which the 'blind beggar woman' is all-knowing and dangerous to the protagonist. See also: Leos Carax, *Les amants du Pont-Neuf* (1991) in which Michele (Juliette Binoche) is an artist (who has fallen in love with a vagrant) is slowly losing her vision from a congenital condition. She embodies memory for her lover and for the audience.

3.4 LAW AND FILM

Law *and* film scholarship endeavours to highlight the mutually constitutive and inter-textual relation between two socio-cultural artifacts, discourses, practices and fields of inquiry).[552] The assertion that film is a *legal* text – even if it is limited to one with a fixed content to be discovered or described - is in itself provocative. It is insofar as it destabilizes what counts as legal authority, legal sources, and the skills and attributes necessary for good lawyering. However, examining the work of legal thinkers who engage with law *and* film helps address some of these more troubling features with some of the more decorative[553] or taxonomic[554] approaches to the field.

Less concerned with questions of methodological unity or of factual depictions, law *and* film scholars call attention to how these two socio-cultural formations, discursive practices and modes of representation can share a number of features such as: narrative strategies; a desire for truths – whether factual, analogous, or metaphorical; interpretive techniques; and world-building functions. They can also retain their own modes of communicating, technologies, apparatuses, and unique sensory, spatial and temporal means of persuasion.[555] In highlighting these continuities and disjunctions, scholars wrest with the

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[552] I point out gaps and absences in some 'law in film' inquiries and I refer to a 'shift' or 'a move towards' an alternative 'law and film.' This is not to say that I believe there has been a cavalcade of thinking in this field. Law *in* film scholarship weaves through law *and* film to ask questions about how film can be descriptive and normative at once, how it shapes and reflects law, and how the law-film entanglement is one of mutual resistance, adaptation and interdependence.

[553] We might, following Tushnet, call this approach "*film studies*$_2$:" Mark Tushnet, "Interdisciplinary Legal Scholarship: The Case of History-in-Law" (1996) 71 Chicago-Kent Law Review 909. He jabs at legal scholars "decorating" texts with quotes from philosophers without "a serious effort to use philosophical authority to support the author's conclusion" at 913.

[554] For a trenchant critique of taxonomic approaches to law *in* film: David A. Black, *Law in Film: Resonance and Representation* (Urbana and Chicago: University of Illinois Press, 1999).

[555] Though according to some, these differences are 'vanishing' as law becomes increasingly cinematic: Sherwin, *supra* note 221.

inter-textual dialogue between law and film which permits each narrative regime to shed light on how the other functions.[556] Navigating and trying to move beyond what Schlag has called the "de-differentiation problem" (the inability to articulate any positive relation between law and culture),[557] I imagine how film and law, like a palimpsest, are 'grafted' onto one another. They are mutually constitutive in myriad ways. Through structural or thematic references to normativity, for instance, films mediate our lives in law and our legal lives. Legal discourse and practices, concurrently, mediate the films through which our complex legal lives can be translated into cinematic discourse.[558]

Films and law may be in a semi-autonomous relation. They can, as a result, potentially irritate formal law's hegemony by examining the interactions or interactive relationship between official and unofficial law as expressed through film.[559] More often than not, film is offered as the 'corrective' to the rigidity, exclusions and injustices of positivist and centralist conceptualizations of law. [560] The Beggar's Union is not, for example, the first instantiation of a formal adjudication performed by members of the community deemed the appropriate interpreters of justice. The 'underworld' trial in *M* is prefigured by (or may have

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[556] To Black, films about law are always already inter-textual because they are "at one and the same time, both film (one narrative regime) about law (another)" at 1. David A. Black, *Law in Film: Resonance and Representation* (Urbana and Chicago: University of Illinois Press, 1999).

[557] Pierre Schlag, "The De-Differentiation Problem" (2009) 41 Continental Philosophy Review 35. Note that Naomi Mosey queries whether we should talk of "relationships between law and culture at all:" Naomi Mezey, "Approaches to the Cultural Study of Law: Law as Culture" (2001) 13 Yale Journal of Law and Humanities at 36. Finally, to Coombe, it is more interesting to consider law and film in a process of "ongoing and mutual rupturing" rather than in terms of relationships or rejoinders: (Contingent), *supra* note 187 at 21.

[558] White (Translation), *supra* note 4 at 266.

[559] An early articulation of the symbiotic relationship between law and film can be found in Friedman's assertion that popular culture both gets its ideas about law from, and reflects ideas of law through, legal culture: Lawrence Friedman, "Law, Lawyers and Popular Culture" (1989) 98:8 Yale Law Journal 1579.

[560]For instance, Brooks argues how films by Black American directors on the urban realities faced by male youth "portray" how the rules of the formal criminal justice system "collide" with "the rules of the neighbourhood justice system: Justin Brooks, "Will Boys Just be Boyz N the Hood? African American Directors Portray a Crumbling Justice System in Urban America" (1997) 22:1 Oklahoma City University Law Review 1.

been inspired by) the comedic scene in *Beggars of Life* (1928).[561] In that film, a group of "hobos" create a "kangaroo court" with a judge demanding: "Disorder! Disorder! in the court" and a "persecutin' attorney." Without hearing from the accused and threatening to "disbar and dismember" the defence lawyer, the judge passes sentence: "the court will dispense with justice." While *Beggars of Life* can be more easily read as an explicit commentary on the criminal justice system's inability to perform justice, especially when it concerns street-involved communities, *M* also, as noted above, grapples with the construction of who may well be best authorized to dispense that justice.

Pinpointing the 'shadow' law in film draws attention to informal ways that we govern and are governed. As noted above in reference to *M,* formal law may be cast as an ineffectual tool for positive social and redistributive change; and films provide the evidence of law-in-action: whether demonstrating how law and legal processes mask and perpetuate exploitation and injustice along various markers of privilege and disadvantage;[562] allegorizing corruption in administration of justice,[563] or providing an antidote to the dominant vision of law as separate from morality, values and politics.[564] Casting 'film's law' as a shadow to 'law's law' or as something that chips away at law's sobriety also highlights a key insight of legal

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[561] William Wellman, *Beggars of Life* (1928).

[562] Elizabeth Conley's seminar entitled "Film and the Law: Courtroom Drama" (Fall 2008, University of Utah) is a "forum for examination of concerns of non-dominant groups regarding rights, representation, and opportunity in a democratic society" which focuses on ""minority or underpowered characters seeking justice in the face of inequality and discrimination."

[563] Jonathan Rayner, "Masculinity, Morality and Action: Michael Mann and the Heist Movie " in Paul Mason, ed., *Criminal Visions: Media Representations of Crime and Justice* (Portland: Willan Press, 2003) 73. He argues that in Michael Mann's oeuvre, the seductiveness of gangster life is partly due to the perceived ineffectuality of law enforcement mechanisms. See especially: *Deep Cover* (1992) and *Donnie Brasco* (1997).

[564] For instance, Christine Corcos reads Ivan Reitman, *Ghostbusters* (1984) as a story about an undisclosed environmental threat that tells us something about competing interests in the environmental regulation debate: Christine Alice Corcos, "Who ya gonna c(s)ite? *Ghostbusters* and the Environmental Regulation Debate" (1997) 13 Florida State University Law Review 231.

pluralism: jurisgenerative processes will always occur even without 'the' law.[565] However, the assumption remains that the law casting the shadow is fixed in formal and institutional sites rather than fluid and dynamic processes differently distributed within multiple and overlapping normative regimes (each with their own plurality in scales, modes and instruments of normativity). Furthermore, zones and moments of normative interaction do not only exist between the state and the non-state. In conceptualizing the law–film relation only in terms of confrontation between formal and informal normative sites, these approaches overlook insight from critical legal pluralism: law is constituted, exists within and through multiple interstitial spaces for personal, communal and societal negotiation and interaction.[566]

For instance, *Sullivan's Travels* may reveal little about the externally imposed formal law that governs our interactions on the street. It does, however, provide rich insight into the beliefs that may govern these interactions in far more profound ways. Following a series of events, Sullivan is mistaken for a legitimate tramp; he is transformed through his performance into that which he was masquerading; and he embodies what the presumed audience fears most: anyone can fall from upward mobility. The fear associated with becoming street-involved is normative; it guides our behaviour based on the belief that a life of poverty is a possibility that resides within us all; and street-involved people are fundamentally no different than non-street-involved people. In *Fisher King* (1991), this insight is foregrounded both implicitly and explicitly. The former is achieved by rhyming sequences in which Jack Lucas (Jeff Bridges) observes a panhandler through his car's tinted windows, is later mistaken for a homeless man and beaten but saved by a squatter (Robin Williams), a

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[565] Ewick & Silbey, *supra* note 74; Harry Arthurs, *Without the Law: Administrative Justice and Legal Pluralism in Nineteenth Century England* (Toronto: University of Toronto Press, 1985).
[566] Cover (Uses), *supra* note 66; Macdonald (Emergence) *supra* note 8.

university professor whose broken heart keeps him in a state of altered consciousness. The latter is achieved through the cameo by musician Tom Waits, also iconic and romanticized as symbolic of a generation's collective imagination. Waits embodies the reflexive beggar/philosopher calls himself the "moral traffic light" for passers-by. In a Close-up, he explains:

> The people who work nine to five in soul-sucking jobs are one step from stabbing the asshole bosses in the warm when they think of the people they pass on their way to work, 'At least I'm not begging for a living'. Sure enough, Bob's gonna put those scissors down and pucker up.

The sequence invites us to consider the four levels of interactions that film expresses. Three are within the diegesis: Jeff Bridges' character is in dialogue with Tom Waits' character over the norms that guide his encounters with relative strangers; he is also in self-reflexively assessing his own normative commitments and how they materialize in similar interactions; and Tom waits, through analogy, directs our attention to the norms that guide day-to-day survival strategies which in turn function to maintain distinctions between street-involved people and their 'others'. The fourth is extra-diegetic: Tom Waits' iconicity and the uncanniness of his role may invite those who recognize him to further grapple with *their* interpretations of *his* perceptions of the relationships between street-involved people and their interlocutors.

3.5 Cinematic Law and Legal Cinematics

In order to understand how films capture our legal imaginations and also become a fundamental aspect of legal lives and our lives in law, we should, contrary to more orthodox law-film approaches, turn our attention to the aesthetic and affective dimensions of law, and of film. While content analysis and close-reading still hold currency in both film and legal

studies, moving *beyond the text* nudges us to think about how films works on us, and how they may produce "structures of feeling that help to cohere [or destabilize] contemporary legal and political institutions" [567] Thinking about law cinematically (cinematic law) and cinema legally (legal cinematics) may bring us closer to such an endeavour. I argue that cinematic law should be conceptualized in terms of the plurality of normative commitments and expectations that each individual viewer navigates. In the next sub-section, I elaborate how legal cinematics are best conceptualized in terms of the production of norms through the interpretation, evaluation and reconfiguration of generic conventions.

3.5.1 CINEMATIC LAW

Blurring any assumed boundary between law and film, cinematic law refers to how cinematic practices are already embedded in legal practices and symbolization. To some cinematic law is the deployment of audiovisuals as rhetorical strategies that 'speak' to jurors (who will be, it is assumed, more receptive to such media), which have been dismissed as dangerous encroachments on law's legitimacy.[568] Similarly, media coverage of trials has long been suspect as a source of misinformation and distortion of legal facts, concepts and procedures.[569] Finally, cinematic law is often justified as a way of discouraging coercion in

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[567] Ruth Buchanan and Rebecca Johnson encourage law–film scholars to move beyond narrative deconstruction to consider the affective dimensions of film. Scholarship, they explain, should develop a "more robust vocabulary for discussing how films work on us." This includes attention to the cognitive, affective and embodied dimensions of thought and constitution of subjectivities: Buchanan & Johnson (Strange), *supra* note 227.

[568] Sherwin, *supra* note 227.

[569] See for instance: Isabel Karpin & Margaret Thornton, "She's Watching the Judges: Media Feedback Loops and What Judges Notice" in Thornton, *supra* note 533 at 47. Compare Nobles and Schiff's view that it may not be the media's function to communicate the inner workings of law (and consequently reinforce the predictability of legal norms), but rather to construct and circulate accessible information: Richard Nobles & David Schiff, "A Story of Miscarriage: Law in the Media" (2004) 31 Journal of Law and Society 221.

formal legal structures and permitting adjudicators to better evaluate the truthfulness of the claims before them.[570] Cinematographic technology is increasingly common in various American jurisdictions and adjudicative settings through taped evidence and confessions, video-conferences, video settlement brochures, and victims' impact statements, and more recently still, through forensic animation and re-enactments of events.[571] Though, as Silbey notes, it sees "preposterous" that such mediated evidence be any less vulnerable to "manufacture or intervention" than viva voce or written testimony.[572]

Another way of understanding cinematic law is to interrogate the ways in which law, like film, constitutes 'interpretative' audiences that evaluate, reconfigure and apply norms.[573] As explained above, one of the laudable aims of much law-film scholarship (and the pedagogy the field encourages by extension) is to activate law students' imaginations, to generate learning conditions in which empathy is prized over confrontation, and ultimately to deploy legal pedagogy in ways that will induce "political self-actualization." [574] The belief is that films can bind students viscerally and provoke them to cast a critical lens on their

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[570] Silbey weaves evidentiary doctrine and film theory to examine the shift from traditional testimony to the use of video and film technology based on such assumptions: Jessica M. Silbey, "Filmmaking in the Precinct House and the Genre of Documentary Film" (2005) 29:2 Columbia Journal of Law & the Arts 107.

[571] In *People* v. *McHugh,* 476 NYS2d 721 (NY 1984) the defense attorney attempted to introduce computer animated images of an automobile accident to illustrate the theory that the accident was attributable to weather conditions. The images were admitted on the grounds that they were being used to further illustrate the opinion of an expert witness, and that they were "more akin to a chart or diagram than a scientific device" at p. 722.

[572] Jessica Silbey, "Criminal Performances: Film, Autobiography, and Confession" (2007) 37 New Meixco Law Review 189 at 191.

[573] James Boyd White, *When Words Lose Their Meaning: Constitutions and Reconstitutions of Language, Character, and Community* (Chicago: University of Chicago Press, 1984) [hereinafter, White (Words)]; *Heracles' Bow: Essays on the Rhetoric and Poetics of the Law*, 1985) at 199; *The Edge of Meaning* (Chicago: University of Chicago Press, 2001).

[574] Elkins, *supra* note 532 at 747. This endeavour is not unlike early law and literature scholarship which recalls John Henry Wigmore's humanizing project (law students ought to read 'universal' and 'timeless' work as part of their broader moral education): John H. Wigmore, "A List of One Hundred Legal Novels" (1922) 17 Illinois Law Review 26. See also Martha Nussbaum, *Poetic Justice: The Literary Imagination and Public Life* (Boston: Beacon Press, 1995). Robin West responds to Nussbaum on this point in: Robin West, "Law and Fancy" (1997) 95 Michigan Law Review 851.

assumptions and beliefs about law, legal subjectivity, justice, ethics and morality.[575] Through film, students "by-pass" the analytical reasoning so fundamental to their legal education and allow themselves to be "enchanted" by new images of law.[576] While the transformative potential of performance and creation has been suggested,[577] the impact of transforming 'law viewer' into ethical 'law interpreters' through new modes of identification remains elusive. However, the argument that cinematic practices *shape* (without completely determining) law and legal consciousness is a powerful one. Put more explicitly, cinematic law refers to how films can constitute judging audiences.

Within this orbit of thinking, some law–film scholars ask how legal subjects (in moments where they are governed by rules) and legal agents (in moments when they generate and enforce rules) are constituted through filmic processes. Some emphasize the ideological function of film in interpolating audiences into traditional subject positions which reinforce legal myths.[578] Others argue that film's formal and ideological operations "rhyme" or "parallel" the stages, logic, narrative processes, and regulatory features of the trial:

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[575] I have argued elsewhere that the ''Women in Prison' genre is a shifting and complex feminist jurisprudence. Namely, individual films in inter-textual relationship with a broader body of films present women who negotiate formal and informal legal structures that frame and limit their autonomy and agency: Suzanne Bouclin, "Women in Prison Movies as Feminist Jurisprudence" (2009) 21:1 Canadian Journal of Women and the Law 19.

[576] Sherwin, *supra* note 227 at 93.

[577] To Pelias, for instance, performance is a way of knowing: Ronald Pelias, "Performative Inquiry: Embodiment and Its Challenges" in Gary Knowles & Andra Coles, eds., *Handbook of the Arts in Qualitative Research: Perspectives, Methodologies, Examples and Issues* (Thousand Oaks, CA: Sage, 2008) 185. To Ziarek, art is transformative 'forcework:' Krzysztof Ziarek, *The Forces of Art: Cultural Memory in the Present* (Stanford: University Press, 2000).

[578] Young argues that the cinematic techniques in Alfred Hitchcock's *Psycho* (1960) and Jonathan Demme's *Silence of the Lambs* (1990) "suture" viewers into a collusive relationship with the law by encouraging identification with the moral and social rectitude of the law's 'agents' at the expense of the morality of law's 'subjects:' Alison Young, "Murder in the Eyes of the Law" (1997) 17 Studies in Law Policy and Society 31. While I find her analysis compelling, as I discuss throughout this disseration, the clear distinction between law's subjects and its agents is one I aim to dismantle.

viewers actively adjudicate an "unofficial trial of the legal system."[579] Others still argue that cinematographic processes - espeically of framing, shot sequences, montage - operate indistintinguishably from the juridical processes – namely, censorship, sovereignty, and logic.[580] Yet, as rich as these discussions are, the assumption sometimes remains that in performing these functions (defining, ensuring legitimacy, and constituting order), film does so through as aesthetic, cultural and popular medium, whereas law does so as a formal, positive and institutional medium.[581] Film remains positioned as an ethical supplement outside law that guides it towards values of "beauty and truth and justice";[582] law's beauty, its common place in our lived reality, its affective lives, and its own modes of ambiguity are devalued or ignored altogether.

In what follows, I discuss how filmmakers symbolize interactions between street-involved people and their others in ways that are less easily read as providing ethical guidance on how to live. And yet, these films are nonetheless constitutive of street law. I discuss Varda's *Sans toit ni loi*[583] and Renoir's *Boudu sauvé des eaux*[584] because both refuse to reward audiences with satisfying answers to complex social problems. Neither film relies on primarily narrative cues to give insight into the source of their protagonists' wandering. Instead, both turn rely on normative geography (a set of rules generated and

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[579] Carol Clover, "Judging Audiences: The Trial Movie" in Christine Gledhill & Linda Williams, eds., *Reinventing Film Studies* (London: Arnold, 2000) 244 at 252. Building on Clover's insight, Orit Kamir explains how some films mirror legal proceedings that enact honour-based judgments of female rape victims: they deploy sexist myths and stereotypes which render the woman's conduct (rather than the alleged rapist's) the filmic legal system's narrative focus: *supra* note 227.
[580] Leslie Moran *et al.*, eds., *Law's Moving Image* (London & Sydney: Cavendish, 2004).
[581] Leslie Moran "Introduction" in Moran *et al.*, *ibid.* xi.
[582] White (Words), *supra* note 573 at 275.
[583] Agnès Vardas, *Sans toit ni loi* (1985).
[584] Jean Renoir, *Boudu sauvé des eaux* (1932).

interpreted the authority to determine who is 'in' and 'out' of place)[585] and use space to convey legal meanings. Further, both films deploys aesthetics of ambivalence and of pluralism rather than refine recognizable 'tramp' narrative structures; they edge viewers to question the boundaries between self and the other, and consequently, their relationships and responsibilities to real, relative or imagined strangers.

Sans toit ni loi unfolds in twelve linked Tracking Shots and each starts with an image that rhymes with the previous shot's ending. Mona (Sandrine Bonnaire) is a young, educated, middle-class "*vagabonde*" who has relinquished all material possessions. Aside from these details, she remains inscrutable to spectators who learn of her mythically nomadic life through third person accounts, anecdotes, interviews and observations by people who knew her, and if at all, merely in passing during the few weeks before her death. An opening sequence of the film – a slow zoom of barren snowy field to a ditch where a young woman has frozen to death and the overall unstructured feel of the narrative, draws attention to the material conditions of Mona's existence.[586]

She resembles earliest instantiations in the late 1800s of the tramp in the sense that her existence, and especially her inability or refusal to integrate into the various normative communities she encounters, is disturbing.[587] Unlike the caricatures that stood in for fears

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[585] Tim Cresswell, *In Place/Out of Place: Geography, Ideology and Transgression* (University of Minnesota Press, 1996).

[586] For a rich discussion of the function of space in *Sans toit*, see: Udris, *supra* note 497.

[587] In the earliest Hollywood cinematic instantiations around the 1870s to early 1900s, in a context of economic depression, major waves of immigration, and unemployment, the tramp – distinguishable by a slouch hat, torn jacket, round-toed shoes and a dirty face - is often male, a villain, a thief, and a sexual predator. Thomas Edison created a series of short films that informed later depictions of the tramp: *A Tramp's Dinner* (1897) (trying to steal a baby's bottle for sustenance and is beaten); *The Tramp and the Muscular Cook* (1898) (trying to kiss the cook and is hit over the head); *The Tramp Caught a Tartar* (1898) (a tramp begs for food but is beaten); *Meandering Mike* (1901) (steals a pie but the cook turns his dogs lose on him); *The Tramp's Unexpected Skate* (1901) (boys attach roller skates to an unsuspecting tramp who is asleep then violently wake him). David W. Griffith also produced a cluster of films featuring tramps. See for instance: *The Girls and Daddy*

about nationhood and citizenship, immigration, and race (expressed through action editing), the camera treats Mona in long-shots. Indeed, the film has been referred to as one long tracking shot separated into pieces.[588] Audiences witness her interactions with others and the camera invites interrogation as to whether meaningful inter-subjective relations can occur without the ability to articulate shared understandings of how to inhabit the world.

Audiences and her interlocutors alike are confronted by her uncompromising world-view and her embodied marginality. Mona (from the Greek *monos,* for solitary, singular, one)[589] is also in dialogue with Chaplin's tramp, the light-hearted, mischievous yet generally harmless vagrant who breaks all conventions of the Fordist work ethic and attempts to behave with grace and dignity notwithstanding his socio-economic status. While Mona breaches the norms associate with middle-class respectability (such as particular modes of femininity or cleanliness), unlike Chaplin's Tramp, she also, breaches norms that make up the '*Code of the Road*' but that are less easily marked as embedded in class relations (such as courtesy, respect and gratitude for generosity).

Rather than inviting a quick judgment of her actions, her rejection of these norms is contextual. She insults a truck-driver ("Everything but a radio. What a Heap!"), but only after he makes sexual advances toward her; when offered to share a lifestyle with an intellectual-cum-farmer who attempts to narrate her existence for her ("You have total freedom but total

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(1909) (tramp tries to steal money from two young women); and *The Lonedale Operator* (1911) (a pair of tramps try to rob a train); and *The Girl and her Trust* (1912) (tramp tries to steal from a girl). All these films feature visual cues such as the tramp costumed as 'villain' in a slouch hat and often recognizable as a drunkard through gestures. As I have mentioned earlier, Chaplin's tramp shattered these symbolizations.

[588] Susan Hayward, "Beyond the Gaze and into Femme-Film Ecriture" in Susan Hayward and Ginette Vincendeau, eds., *French Film Texts and Contexts* (London & New York: Routledge, 1990) 290-303 at p. 292.

[589] This connection is drawn by Françoise Aude: "Sans toit, ni loi" (1986) revue *Positif* 65 at 65. It is interesting to note, that the name Mona bears the same meaning in Sanskrit; however, Mona means 'noble' in Gaelic; in Persian the name stems from Mana, meaning that which lasts for eternity.

loneliness … if you want to live you must stop"), she refuses ("I don't care. I move"). She articulates her own laws; she conceptualizes conditions that foster inter-subjective exchange rather than power struggles (whether or not her interlocutors cooperate). That is, she interprets the gifts from her interlocutors, the values and the gestures that underlie them (an expectation of reciprocity), as modes of symbolic domination. She refuses to engage in with interlocutors who deny her agency, refuse her singularity, or whose interactions are not embedded in the values that give structure to her nomos – freedom, dignity, and autonomy. Throughout these interactions, Mona maintains authority over the diegetic normative universe; she is the also moral geography of the screen: her actions are an implicit invitation to her interlocutors in the extra-diegetic normative universe to interpret, evaluate and ultimately approve of her perspective.

In *Boudu sauvé des eaux,* we meet Boudu (Michel Simon) a ragged "clochard sauvage" who has, unremarkably, (as we learn from a blasé onlooker) attempted to take his own life. Edouard Lestingois (Charles Granval), a gentlemanly, intelligent, morally sure, middle-class bookseller, first encounters Boudu, teetering on the edge of the *Pont des Arts* through a visual apparatus: his telescope. This sequence suggests one the film's key themes: the negotiation of proximity and distance between the urban poor and their 'others.' A variation of the familiar class transvestitism of the Hollywood 'social problem' films,[590] Lestingois gives Boudu his clothes in an effort to inculcate him into the world of civilized.

Boudu, however, is ruled through his body. He operates by instinct, motion, impetuousness, irreverence; his impulses cannot be assimilated. Like Chaplin's tramp, who

[590] Other instantiations of the tramp taking on the attire of his or her wealthy 'other' include Charlie Chaplin, *City Lights* (1931) in which Chaplin's tramp befriends a drunken millionaire and is later mistaken for him.

relied less on narrative than on movement (physical comedy and other devices including pratfalls and fights), camera angles (for comical effect), and associative montage (which mandates that viewers draw their own psychological connections),[591] Boudu organizes his world through his body.

Unlike the Tramp who exhibits depth of character, tenderness, and fear, Boudu is an *id* incarnate. Rather than subverting norms infused with middle-class values, he is impervious to any normativity based in habits or shared assumptions: social conventions around personal distance (invading people's private spaces, he is unkempt and emits a bad odour) and of decorum (he only seeks the immediate gratification of his basic needs – food, rest and sex). The responses he elicits from his interlocutors are invariably a desire to apprehend mixed with confusion, disdain, and irritation.

Renoir and Varda each admit, embrace, and invite us to reflect the tension between attraction and repulsion, proximity and distance. Like Mona, Boudu's ambivalence and even disregard toward the kindness of others, gestures viewers towards new understandings of relationships. Neither film is a complete indictment of the generosity of others:[592] characters who attempt to help the wandering protagonists remain sympathetic and their acts of 'ethical

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[591] Indeed, to some, Chaplin stands in for cinema itself. He shatters the barriers of linear time, does away with conventional mimetic appeal, and radically develops new techniques to conquer "the spirit of weight" through a "spirit of lightness," of space and of movement: Jean Cocteau, *Professional Secrets: An Autobiography* (New York: Farrar, Straus & Giroux, 1970) at 81. Similarly, to Shklovsky, "Chaplin's movements and all his films are not conceived as words or sketches but in the flashing of white and shadows": Viktor Shklovsky, *Literature and Cinematography* (Urbana-Champaign: University of Illinois Press, 1985) at 57.

[592] Of the two films, *Boudu,* which takes place in Depression era France at a time of dramatic increase in the visibility of people where living in parks and city streets, certainly has been read as, at least, a *partial* judgment of the hypocritical middle-class: Christopher Faulkner, "Boudu Saved From Drowning: Tramping in the City" (2005) Notes to the *Criterion Collection* Edition.

caring.'[593] Their attempts at meaningful exchanges, while not entirely dismissed, are at least relativized in relation to the protagonist's own commitments, desires and agential practices.

Unlike the blind seer, whose narrative function and character motivations we understand through memory and interactions with this mythological trope, neither protagonist's motivations are accessible. We cannot easily assess either's normative expectations or commitments. We are sometimes forced into the uneasy position of relying on the interpretations of their interlocutors (a series of strangers in Mona's case and Lestingois in Boudu's). While these are the explicitly privileged interpretations their ability to generate conditions of mutual responsibility are limited because their assessments are based on conjecture rather than on the specificity that can be perceived in relations of proximity.

Ultimately, these other norm entrepreneurs do not see their interlocutors, but the viewers see what they have overlooked. As a result, we are invited to look to the less explicit norm entrepreneurs for guidance on how to interact with street-involved people: the protagonists themselves.

3.5.2 Legal Cinematics

Neither *Sans toit ni loi* nor *Boudu* follows the generic conventions of films that feature interactions with the street-community. Failing to do so, they bring into sharp relief another aspect of the law–film relation: cinematic law. That is, audiences have a normative expectation of some predictability with the right amount of variations.

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[593] "Ethical caring" is the mode of care we perform when "moral caring" – which is sustained through love, sympathy, generosity and reciprocal attention – fails: Noddings, *supra* note 176 at 54.

Legal cinematics can also refer to the generic systems that orient audiences, and shape and reflect expectations that emerge from the interactions among the film industry, the viewing subject, and the artifact itself. Genre is a set of stylistic, thematic and narrative rules; it is one of film's normative modes. A spectator's expectations of a film are, to some measure, produced, encouraged or destabilized in relation to what she expects will happen. These expectations are equally based on her prior interactions with similar narrative, stylistic and thematic conventions. Through the following definitional process and the expectations that give them shape, genre explicitly, formally, informally, and implicitly governs film. First, generic conventions can be arbitrarily and externally imposed system of rules (for instance by censors).[594] Second, they can be used rhetorically, harnessing the normative power of taste and fashion by producers and advertisers who want to market to specific populations. Third, they can operate in ways that further dialogue between cinema and other modes communication: filmmakers rely on audiences' assimilation of myth and assumptions in order to infer specific values and traits to recognizable tropes and figures in their films. Finally, generic convention can generate conditions of agency, by inviting spectators to make new associations based on learned perceptual categories and memory.

A genre can never conclusively be defined and even when its conventions seem fixed, one film can upset its standards and undermine its integrity. Genre is implicitly self-reflexive (it is aware and makes plain its referential flaws) and is a series of continually shifting practices: reference, inclusion, exclusion and adaptation. These practices provoke

[594] Recall that Derrida argued that no text ever "belongs" to a genre. Rather, "contamination" is inherent to any generic demarcation because to mark or to impose a "citation" of genre on a text simultaneously "unmarks" it. While every text participates in one or many genres, "such participation never amounts to belonging:" Jacques Derrida, "The Law of Genre" (1980) 7 Glyph 176 at 187.

spectators to draw new connections between similar events and create dialogue between multiple artifacts.[595]

Some law-film scholars have focused on patterned and recognizable (generic) films such as trial films to demonstrate how cinema cultivates expectations in its viewer-subjects" that "perpetuate the law's promise."[596] During audience engagement with a cinematic legal text there operates multiple unconscious processes "caught up in," "formed by," and constituting meanings.[597] Through interaction with generic conventions, a spectator may position herself ambivalently, for instance, both identifying with and enacting judgment of a victim.[598] Rather than attempt to develop a 'street law' genre, however, I argue that it is more fruitful to think about how conventions, and our expectations that inform and flow from them, are always in flux. And yet, I suggest that looking broadly at films that engage with the question of relationships between street-involved people and their others (such as how do we co-exist and how should we deal with conflicts), it is often by considering them in terms of genre, in terms of their relationships to other similar cultural expressions, that meaning emerges.

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[595] The literature on genre theory is immense. For a helpful introduction, see: Stephen Neale, *Genre* (London: British Film Institute, 1980). For critical engagement with genre, arguing that it must be understood in light of cinematic practices, see: Rick Altman, *The American Film Musical* (Bloomington & Indianapolis: Indiana University Press, 1987). On the ideological character of genre: Barbar Klinger, "Cinema/Ideology/Criticism Revisited: The Progressive Genre" in Barry Keith Grant, ed., *The Film Genre Reader III* (Texas: University Press, 2003) 75. On the fiction of sustaining a definition of 'genre': Christopher Morris, "The Reflexivity of the Road Film" (2003) 28:11 Film Criticism 24. For a critical appropriation of genre: Cavell, *supra* note 270.

[596] Trial films can fulfill or disappoint subject-viewer expectations and thus enable a relationship between audience and film that "both critiques the discursive practices of law and of film as disciplining forces on their subjects and relies on those practices as they designate their subjects as integral to their meaning-making:" Jessica M. Sibley, "Patterns of Courtroom Justice" in Stephan Machura & Peter Robson, eds., *Law and Film: Journal of Law and Society* (Oxford: Blackwell Publishers Ltd., 2001) 97 at 97.

[597] Annette Kuhn, *Women's Pictures: Feminism and the Cinema* (London: Verso, 1994) at 44.

[598] Kamir illustrates this beautifully in her reading of *Death and the Maiden* (1994): *supra* note 227 at 185.

Consider *Ryan*.[599] This film is constructed as a series of animated images rhyming with extensive conversations between two Canadian animators, Ryan Larkin and the film's director Chris Landret. *Ryan* may share some generic features of documentary films made about or 'with' street-involved people. However, by virtue of its bending of genre, *Ryan* emerges as not simply a new mode of instantiating documentary film or even a new mode of instantiating homelessness. The film plays with and ultimately shatters the normative conventions of documentary in order to tell a more specific story about an artist who happens to panhandle from time to time. It is ultimately a film that wrests with broader questions: the limits of agency, our ethical obligations to our interlocutors, and the possibility that our other's agency will ultimately result in a rejection of our attempts to establish caring relationships.

There is a romanticized figure of the self-sufficient wander/philosopher/poet that dominates popular literature of the early twentieth century (in the work of Josiah Flynt and Jack London for instance).[600] This image also features prominently in documentary films that feature a tramp/panhandler breaking social conventions because of a higher calling as artist/philosopher.[601]

Ryan tells this familiar story from a different point of view through the mediation of experimentation and animation. In making the film about Ryan Larkin, a visionary animation genius, who struggles with alcoholism and declines into depression and homeless, Landreth

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[599] Chris Landereth, *Ryan* (2004).

[600] On the desire to embody vagrancy through one's art, see: Greaney, *supra* note 437; Kristin Ross, *The Emergence of Social Space: Rimbaud and the Paris Commune* (Minneapolis: University of Minnesota Press 1988).

[601] See for instance, Earl 'Snake' Richards (Jim Birdsell) as the homeless songwriter: Richard Brill, *That Tennessee Beat* (1966) In *Les amants du Pont-Neuf* (1991), Alex is a circus performer addicted to alcohol and sedatives and Michele is a painter driven to a life on the streets because of a failed relationship. Stanley Tucci, *Joe Gould's Secret* (2000) is a fictionalized account based on two *New Yorker* profiles written by Joseph Mitchell. Gould was a homeless Harvard graduate and Greenwich Village fixture writing *An Oral History of the World*, providing a venue for the voices of everyone he encountered, including the disposed and downtrodden. Rhyming the trope of the blind seer, Gould is a (acerbic perhaps) truth-teller.

breaks with most received conventions of biographical documentary. The only reference points for viewers to evaluate the truth-claims of the statements made are taped interviews reconstructed through jolting animation effects and disembodied 3D generated and animated characters. The film's richness can be summarized through one especially difficult interaction. In a Shot/Reverse sequence, Landreth condescendingly discusses his concern about Ryan's alcohol consumption. An animated halo appears above Landreth's head which serves as striking commentary on the power relations at play in some forms of charity and rescue narratives that are features of many films 'about' street-involved people. The Reverse shot features Ryan, annoyed with Landreth's attempt to meddle in his affairs. It repositions him as judge: with careful and detailed animation techniques, Ryan's pulsating brain explodes all over Landreth face. Landreth collects Ryan's brain, hands it back to him; his halo peters out and eventually disappears. The final (return) shot in the Shot/Reverse sequence is deferred to the additional footage that accompanies the animated short. In real documentary footage of Ryan watching the animated film, he is visibly disturbed, confused and wounded. He is uncertain as to Landreth's intentions: "it is always easy," he says "to show the grotesque version of reality".

On one level, this sequence put into sharp relief the constructed nature of truths generally and some of the violence that can occur through externally imposed definitions of how to relate with the world. On another, the sequence gets at some of the most difficult paradoxes that interactions between street-involved people and their interlocutors will raise, and more broadly, that any interaction between self and other will bring about. On another level still, it suggests, through its explicit self-reflexivity (like *Sullivan's Travels*, it is a film about a film and a film about making film) that caring for our others requires that we be

prepared to constantly re-evaluate our normative assumptions. And on a final level, the film is a powerful reminder that concern and care may be insufficient to bring about meaningful conditions for the exercise of agency: without doubt, Landreth wants to help his intellectual and artistic mentor, and is deeply disturbed by (but ultimately powerless to prevent) Ryan's self-destructive behaviour.

Agency, that said, is always relative and for street-involved people (as for anyone else) subjectivity can resist even its own determinations of agency. The film symbolizes some of the most difficult aspirations and fears that we have when imagining how to live with one another, those which are most difficult to express in written or in spoken modes: if one accepts the agency of our real or imagined others, that recognition must include the possibility of the rejection of one's own values, beliefs and intentions; if one accepts the agency of our real and imaged others, one must also recognize that agential actions may take the form of distortions, self-harm, and other survival mechanisms; if one accepts the agency of our other, we may be confronted with the reality that recovery-oriented intervention models of care, if even they exist, can be ineffectual.[602]

[602] Recovery models of care abide by a number of guidelines including: collaboration among multiple assistance programs in multiple fields (housing, medical and dental care, mental health, substance use, depression and anxiety, nutrition, education and training and so on). Fostering agency (by addressing these concerns and through peer support and developing other supportive relationships) is the cornerstone of recovery process. See generally: Laura Gillis, Gloria Dickerson & Justine Hanson, "Recovery and Homeless Services: New Directions in the Field" (2010) 3 The Open Health Services and Policy Journal 71.

3.6 BEYOND INTERPRETATION

I have illustrated through my interpretation of films that feature moments of interaction between street-involved people and their interlocutors, how a critical legal pluralist hypothesis of the law–film relation does not limit itself to films which are explicitly about law. Cinematic expressions of street law can be symbolized through people's navigation of canonical legal instruments such as legislation and cases, coercive institutions such as the prison, or official legal actors like judges, lawyers, and police. I choose instead to focus on films that engage implicit and inferential normativity: conceptions, values and beliefs (about more recognizable markers of law such as judgment and legal subjectivity) but more elusive ones as well (such as the ideals of community, belonging, autonomy, and agency) without necessarily resorting to the direct representation of formal and state-based legal institutions, actors or processes.

To the extent that film is a space through which we can ask questions about fairness, hierarchies, and interpretations and the multitudinous ways these relate to one another in viewers engaging in agential practices, it is normative. Film is at once regulated by law and is one of many sites in which legal rhetoric and iconography are constituted.[603] Law is visually organized through rituals, paraphernalia and symbolism. These images and symbols of the legal processes (dress, architecture, and iconography) organize law as much as it attempts to organize them. They convey meaning and can elicit feelings such as alienation,

[603] As Douzinas and Nead remind us, law both "loves and fears images"; it will regulate images while reordering its own processes and practices in a visual manner. It renounces images as frivolous and devoid of reason, as potentially contamination forces that will dupe, seduce, or corrupt. Yet, it has always been rich with iconography and visual paraphernalia (wigs, stages, and images of justice): "law has always had a visual policy and understood the importance of the governance of images for the maintenance of the social bond:" Douzinas & Nead, "Introduction" in Douzinas & Nead, *supra* note 193 at 8-9.

disempowerment, anxiety, awe and relief.[604] The ideas about law which are circulated through film are consequently already invested in these existing frameworks through which we construct cinematic and legal meanings.[605]

Film is more than a container to be filled by individual directors with images of legal themes or recognizable (formal, explicit) legal actors and institutions. Nor does it merely add new meaning to law's traditional artifacts, such as legislation, judgments and contracts. Of course, it can, and does, serve these functions. To borrow from W.J.T. Mitchell, filmic symbolization of law is "a complex interplay between visuality, apparatus, institutions, discourse, bodies, and figurality."[606] Films are not taken to represent law but to generate a *sense* of our multiple legal selves and the myriad sites of normativity we navigate daily and they offer a semblance of existing norms and the material realities that inform and produce them. Law and film are both media.[607] Both are expressive forms that attempt to symbolize how to conduct ourselves. Both are matrices of rules embedded in institutions and processes. Both are dynamic and inherently plural. Both are comprised of multiple and shifting sites of meaning-making. The interactions that constitute the legal and the filmic event both occur at the intersection of reality as represented, mediated and contained within the irreducible site of the individual. Film is, then, a normative symbolization of street law as it suggests alternative ways to govern relationships through rules.[608] Put differently, film

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[604] Goodrich, *supra* note 233 at 184.
[605] *Id.*
[606] Mitchell (Pictures), *supra* note 238 at 87.
[607] At its simplest and most explicit level, film is a recording on material strip or flickering lights on a screen, whereas law is the words that make up legislation, judgments and contracts.
[608] James Boyd White has for several decades argued that law is art: (Imagination) *supra* note 529 at 5. The corollary point has been made in reference to other artifacts that are not communicated through (formal law's) natural language such as architecture, dance, painting, music yet are normative in and of themselves: Anker (Painting), *supra* note 52; Kasirer (Dance), *supra* note 185; Macdonald & MacLean, *supra* note 78; Manderson (Songs), *supra* note 25.

constitutes law in the broadest and more pluralist sense of imagining our interactions on the streets in their complexity and in ways that further relationships that make that law meaningful to the people most embedded in its exigencies.

In the next chapter, I explore another mode of conceptualizing film as law. I discuss my production of a film through the Korsakow hypermedia program. This rule-governed, explicitly interactive, and dynamic visual media poses a challenge to positivist, logocentric, and chirographic legal discourses by suggesting other modes of apprehending meanings about street law.

CHAPTER FOUR: FILM AS LAW AS FILM

The Three Goals

The first goal is to see the thing itself
in and for itself, to see it simply and clearly
for what it is.
No symbolism, please.

The second goal is to see each individual thing
as unified, as one, with all the other
ten thousand things.
In this regard, a little wine helps a lot.

The third goal is to grasp the first and the second goals,
to see the universal and the particular,
simultaneously.
Regarding this one, call me when you get it.

– David Budbill[609]

In Chapter Three, I held up films that feature the potential conflict as well as the inter-subjective possibilities that inhere in any encounter between street-involved people and their interlocutors. The symbolization of these interactions, I suggested, is one of the multiple ways in which film is street law. Some stories, *Boudu* for instance, show the complexities, challenges and possibilities of relating to inscrutable others. Such street law stories are sometimes often better told in a 'fictional' register. The caricatured nature of certain protagonists may create a space to grapple with negative affective responses (including frustration, indifference and anger) in ways that might not work were the characters' motivations, habits, and modes of generating law attributed to 'actual' people. Other stories show how conditions that promote the exercise of agency may nonetheless be insufficient to generate situations in which individuals can receive the care they require. These stories may

[609] David Budbill, *Moment to Moment: Poems of a Mountain Recluse* (Port Townsend: Copper Canyon Press, 1999) at 151.

require a 'realist' feel in order to relate them to embodied material practices or to suggest relational conceptions of autonomy between street-involved people and their interlocutors. Yet, as in the case of *Ryan*, sometimes the painful visceral and affective responses such a film may elicit (including guilt, uncertainty and powerlessness) require the mediation of experimental film and animation to make these stories bearable.[610] Others still, such as *Sullivan's Travels*, which operate on multiple intertextual, contextual, and self-reflexive levels require a 'fictional' but 'linear' narrative in order to maintain, and thereby disrupt, audience's expectations. Finally, some stories about street law, which may be more tentative and exploratory, may be best cast in a 'realist' register that is 'non-linear.' Building on what Budbill suggests above, when such films attempt to invite new perceptions, attend to singularity, and ultimately express more universal understandings, there must be space for expression, abstraction, symbolization. To this end, I grapple with some of the implicit and inferential law that governs interactions on the street through the production of a non-linear, associational, mélange of fictional, realist, classical and experimental registers.

In this chapter, I discuss how making a film that thinks about street law through an explicitly interactive structure without a predetermined narrative path which is also a way of symbolizing street law, and within the broader critical legal pluralist ethos, all law. In Part One, I describe the *Korsakow* hypermedia program which has permitted me to make such a

[610] I use realism here in the sense of materialist aesthetics. Film, while not a purely mimetic or indexical media, can register the everyday, the contingent, and the unpredictable. It *registers* but not in a narrow, positivist, or literal sense. Rather, film's photographic properties enable it to inscribe an image with moments of temporality and contingency: Seigfried Kracaeur,*Theory of Film: Redemption of Physical Reality* (Princeton: Princeton University Press, 1997). See also Miriam Bratu Hansen's reading of Kracaeur's oeuvre in "Introduction:" *Ibid.* at vii-xiv.

film. The '*Korsakow System*'[611] enables a kind of organized contingency (with varying possible outcomes that depend, to a significant extent, on filmmakers' definitional practices) in a process of flux and continual change (in light of the implicit and explicit audience engagement). In Part Two, I discuss some of the methods (filmed interviews, modified auto-cinematography and collaborative filmmaking) that inform and help me convey the aim of my film: an endeavour to express multiple conceptualizations of street law. I conclude with the claim that the production of a *Korsakow Film* (K-Film) furthers my critical legal hypothesis of street law: it symbolizes encounters between street-involved people and their interlocutors as governed by rules.

4.1 THE KORSAKOW FILM

Korsakow is an open source project for creating non-linear interactive films.[612] A *K-Film* is produced through the *Korsakow* hypermedia software application referred to as the "*K System*."[613] Such films are published and accessed on-line. They are rule-governed, explicitly and implicitly interactive, dynamic media. Each of these characteristics is considered below.

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[611] I use the term 'system' because it is the qualifier used by its creator. However, as will be made more evident in the ensuing discussion, I believe the term has unfortunate positivist connotations. On the one hand, Patrick Glenn reminds us 'systems' (he refers to legal systems especially) are temporally fixed, "momentary" in nature, with each moment constituting a new system and correspondingly the death of the previous one (whereas traditions rely on their 'pastness' for their normative thrust): H. Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law*, 4th edition (Oxford: University Press, 2010). *Korsakow*, on the other, relies of *vusers*' memories and lived experience, deriving its normative impulse from associations they construct between and among these. Moreover, system works less well to convey the dynamic and non-linear quality of the software.

[612] The *K System* has been released under the GNU public license: http://www.gnu.org/copyleft/gpl.html

[613] The software was invented by Florian Thalhofer - a digital filmmaker and (then) graduate student from Concordia University, Montreal - in 2000. It is open-source and available for free on the internet. CINER-G (Concordia Interactive Narrative Experimentation and Research Group) 'houses' the *Korsakow* project and published Version 5 of the *K System* in 2009: www.*Korsakow*.org.

4.1.1 THE *K-FILM* AS RULE-GOVERNED

A *K-Film* is organized around definitional and interactional practices. The filmmaker completes and selects a number of *SNU*s (Smallest Narrative Unit) which comprise the audiovisual data for the broader film project.[614] Each *SNU* may express meaning in multiple modes (usually through film, but also through still images and sound files), in variable narrative forms (whether *cinéma verité*, fiction, home video, archival footage, or experimental sounds and images), and through a myriad of instruments (such as continuity, realist, or associational editing techniques).[615] *SNU*s are then '*tagged*.' Each narrative unit is assigned a number of keywords which are inputted by the filmmaker into the *K System*. Keywords can refer to substance (characters, spaces, location, moods, dialogue), form (colour, line, orientation, contrast, camera movement), and metaphor (juxtapositions, associations and abstraction). The keywords permit the filmmaker to 'link' *SNU*s to one another based on shared language: there are 'I am' terms (those with which the *SNU* identifies) and 'You are' terms (those that the *SNU* will seek out). The 'links' between the self and other are neither fixed nor stable, however. The *K System* designers refer to them as '*Points of Contact*' (POC) which suggests they are more than links: they represent the possibility of a link.[616]

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[614] A *SNU* is an audiovideo file whose duration can be up to approximately three minutes.

[615] *SNU*s are prepared by using other editing software applications; these media files are then imported into the *Korsakow System*.

[616] The concept of "points of contact" in this context is attributed by *Korsakow* administrators to filmmaker and theorist Heinz Emigholz: CINER-G, "Korsakow: Home of the *SNU*: FAQs", online: <http://Korsakow.org/learn/faq>. The POC recalls Deleuze and Guattari's rhizome and especially its principle of multiplicity whereby, there are "no points or positions in a rhizome … only lines. When Glenn Gould speeds up the performance of a piece, he is not just displaying virtuosity, he is transforming the musical points into lines, and he is making the whole piece proliferate:" Gilles Deleuze & Felix Guattari, *A Thousand Plateaus: Capitalism and Schizophrenia*, trans. by Brian Massumi (Minneapolis: University of Minnesota Press 1987) at 7 and 13.

Through definitional and associational processes, the filmmaker establishes rules through which *SNU*s will relate to one another.

The *K-Film* works best when there is a tension between relative degrees of order and chaos. The points of contact between narrative units can neither be overly direct and explicit (which would destroy the variable and associational nature of the film) nor so implicit and indirect (which would render any associations so abstract that they would frustrate a *vuser*'s[617] engagement with the film). For instance, the program works according to the general guidelines established by the filmmaker (e.g., *vuser*s can only view each *SNU* once; or the *vusing* experience must begin with a specific audiovisual file) and allows for the development of more detailed and fixed rules (e.g., a *SNU* will end a film by being coded the last media file possible to access; a particular *SNU* must be watched entirely; or narrative units in certain formats will not speak to one another).

If too detailed and prescriptive, these rules can constrain conditions of agency for the *vuser* by limiting her choices. There must, as a result, be enough randomness to maintain the database quality of the film.[618] Yet, there must also be enough consistency so that

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[617] As noted, *vuser* is Bill Seaman's concept that gets at the processes through which the viewer / users co-constitutes the incessantly possible interactive artistic experiences when they engage with interactive media: *supra* note 212.

[618] In "database cinema," the story develops through the viewer's selection of a scene from a larger corpus of scenes. To this end, it rattles the fixed linearity often attributed to traditional cinema: Lev Manovich, "Soft Cinema", online: (1999) <http://softcinema.net/form.htm>. *Korsakow*, however, is not pure 'database' because the corpus from which the *vuser* chooses is in constant flux (the 'content' of the film itself, as I elaborate, may change) and the options available for vusing will vary with every individual interaction with the media. Compare the K software and YouTube©. Both rely on user-generated content. However, YouTube is a database to the extent that the program randomly selects clips from a pre-existing pool of images organized according to externally defined criteria (as most videos have a generic title, description and some user generated tags). It is also an algorithm because it creates a map of video relations, enables 'real time' content and ranks video according to the frequency with which they are viewed (the more frequently people interact with a particular video, the more frequently it will appear in the list of generated content suggestions). The *Korsakow System* distinguishes itself from YouTube in the following ways. It will not determine which may be of interest to viewers

meaning is generated through the associations *vuser*s make between narrative units regardless of the order in which they are experienced.[619] The *K System* then automates the probability that a *SNU* will interact with another based on their shared language (or keywords).[620] To speak of automation does not mean that the links between *SNU*s are pre-determined. The encounter or point of contact is contingent upon a complex interplay between at least three features of the *vusing* experience: the external definitional process (in turn shaped and reflected by an individual filmmaker's normative expectations and commitments), the internal program's functions that search for images that share a language (in turn shaped and reflected by the designer's normative expectations and commitments), and the aesthetic preference of the *vuser* (in turn shaped and reflected by the individual *vuser*'s normative expectations and commitments). The points of contact cannot be reduced to whether two images will 'speak' to one another; rather, they make up the multiple matrices of possible interactions between multiple normative agents. The *K-Film*'s mode of governance is, consequently, neither coercive, nor predetermined, nor instrumental. It is facilitative and organized around rules that symbolize self-directed action on the part of the *vuser*.

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based on their previous selections (but based on the rules generated by the filmmaker) and importantly, these guidelines remain regardless of how many times a particular *SNU* is experienced.

[619] I rely on Manovich's conceptualization of the database as "endless and unstructured". We inhabit, he argues, a world that is an "endless and unstructured assemblage of images, texts, data." The database is, correspondingly, the symbolic form of our current cultural moment. He adds that equally appropriate is that we develop "a poetics, aesthetics and ethics of this database: Lev Manovich, *Database as a Symbolic Form* (Cambridge: MIT Press, 1998) at 219. The *K-Film* is not then a pure database because it defies object-oriented hierarchies and enables its *vuser*s to assemble (and disassemble) new relationships

[620] As noted earlier, in "algorithmic cinema," the system of rules entirely determines the sequence of the media files and often ranks and generates content suggestions: *Ibid.* However, with *Korsakow*, *vuser*s retain a relative agency over the order of the images she will experience.

4.1.2 THE *K-FILM* AS EXPLICITLY INTERACTIVE

The *K System* facilitates the crafting of web-based films that, in addition to being implicitly interactive (as any film) are explicitly interactive in that they are organized in ways that permit *vusers* to make choices based on their aesthetic interests and expectations. To return to a point made in Chapter Two, the engagement a *K-Film* encourages is akin to that which the Tracking Shot invites. Both generate conditions for the exercise of agency by viewers, letting them choose – based on preferences, desires, interests etc. – where and to what to direct their attention. However, the *K System* adds a more overt and explicit interaction with *vuser*s by letting *vuser*s choose – based on aesthetic tastes, time-constraints, investment in a story – whether or not to engage with an image at all.[621]

The *K-Film*'s model for spatial navigation is not labyrinthine. It is rhizomatic.[622] Rather than mapping out fixed, linear and pre-determined set of pathways such as in a flowchart or a 'choose your own ending' format, it operates within principles of possible interactions, assemblages and connections through time and space. Because it is the *vuser* who ultimately decides which *SNU*s she will look at, there can be no privileged mode – whether imposed by the filmmaker, the media, or general social conventions - of experiencing the film. The non-linear structure may well disturb common sense understandings and expectations of narration. But it simultaneously suggests new modes of narrational agency. The assumed default mode of structuring (and thereby constituting)

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[621] Obviously, this is not to suggest that film viewers are 'subjected to' a Tracking Shot; they can close their eyes, turn off the television, or eject the DVD. But to the extent that they are invested in and committed to experiencing the audiovisual data before them, unlike the *K-Film*, the sequence of events they encounter are pre-determined through ordinary cinematic processes, such as narrative construction and editing.

[622] I use rhizomatic in the sense that "any point … can be connected to anything other" and indeed, as Deleuze and Guattari state, it "must be:" Deleuze & Guattari, *supra* note 615 at 24.

stories is the linear narrative (in law and in film). The Korsakow process puts into sharp relief how filmmaking, like law, is an on-going process of definition, imagination and creation. As noted above, there are only suggestions of paths and relationships between images that have been facilitated by a filmmaker using the software. As will be discussed below, those rules are always being negotiated, evaluated and thus reconstituted by a community of *vuser*s.

4.1.3 THE *K-FILM* AS ALWAYS UNFINISHED

The *K-Film* is always unfinished in several senses. First, given the fluidity of its governance through rules and the *vuser*'s relative agency is determining the *SNU*s she will experience within that malleable structure, the *K-Film* will never be the same event twice. The designers of the *K-Film* encourage people to use the program creatively as an open-ended tool that can itself be interpreted and used against its own purposes: used and vused in unintended or previously unimagined ways.[623] Filmmakers are also invited to be self-reflexive about the filmmaking process, to publish *SNU*s 'in progress,' and constantly modify *SNU*s and the rules which link them based on *vuser* responses. Second, in constituting a community of *K-Film* makers and *vuser*s, the Korsakow website encourages the continued development of the System by requesting that people create and share new features and codes.[624] Rather than what we may refer to as the 'modernist' aesthetics of order, fixity and closure as embodied in some orthodox understandings of film and of law, Korsakow

[623] For instance, *Korsakow* designers are currently developing a way in which *vuser*s can leave comments on specific *SNU*s: correspondence with Matt Soar, director of CINER-G (on file with author). Further, at a *Korsakow* workshop I attended in the winter of 2010, filmmaker Mel Hogan created (over a period of two days) a *K-Film* that only featured text-based stills (going against the system's database and cinematic qualities).
[624] CINER-G, "*Korsakow*: Home of the *SNU*: FAQs", online: <http://*Korsakow*.org/learn/faq>.

embodies the critical aesthetics of pluralism, mutability, indeterminate transformation, and malleability.[625]

4.1.4 THE *K-FILM* AS CRITICAL LEGAL HYPOTHESIS OF LAW

These three identified features – its symbolization of relationships as governed through rules, its explicit and implicit interactivity and its on-going becoming - make the *K System* itself a metaphor for imagining law within a critical legal pluralist ethos. Nonetheless, my very cataloguing of these qualities is necessarily reductionist.[626] It is so because other critical legal pluralist hypotheses might emphasize its chaotics (the film's unpredictability, complexity and promise of surprise)[627] or its teleidoscopic features (the *vuser*'s unlimited perspectival range).[628] As pluralist hypotheses are irreducibly pluralist themselves, mine is necessarily but one of many. In what follows, I discuss my process for creating a *K-Film* which attends to the features I identify and which in part symbolize my critical legal hypothesis of street law.

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[625] For scholars developing conceptualizations of critical legal pluralist aesthetics, see: Kleinhans & Macdonald, *supra* note 37; Davies (Ethos), *supra* note 7 at 37; and Manderson (Songs), *supra* note 25. For the rich potential of *K-Film*s in other disciplines, see: Wilson (Moving Camera), *supra* note 482.

[626] As I note in my discussion of radical legal pluralism, not everyone dwelling within its ethos will necessarily challenge each of the tenets conventionally associated with Western common law: Chapter One, 1.1 ("Critical Assumptions").

[627] Manderson (Songs), *supra* note 25 at 177.

[628] Macdonald develops the teleidoscope – hybridized telescope and kaleidoscope - as legal analogy in: (Jamais deux), *supra* note 200. See also: Roderick A. Macdonald, "Kaleidoscopic Federalism" in Jean-François Gaudreault-DesBiens & Fabien Gélinas, eds., *The States and Moods of Federalism: Governance, Identity and Methodology* (Montreal: Éditions Yvon Blais, 2005) 261.

4.2 PERFORMING STREET LAW: METHODS AND METHODOLOGIES

The *Korsakow Film* I have produced is my own symbolization of street law. Yet, it can never only ever be my personal symbolization of street law. The expression of street law which has been conceptualized through my *K-Film* emerged from the intermingling of at least three practices: filmed semi-structured interviews, auto-cinematography, and the implicit and explicit collaboration that inheres to any filmmaking

4.2.1 INTERVIEWS

I have relied on interviews to ground my critical legal hypothesis of street law.[629] Over three years, I conducted twenty-five semi-structured interviews, of which fourteen were filmed with (and sometimes by) street-involved people. While it may be tempting to consider my film an attempt to provide new evidence of street law, I do not use filmed interviews in this manner. They are not a means of discovering, recording and archiving raw (truthful, untouched, authentic), reliable (legitimate, interpreted by experts, scientifically proved) evidence (official facts or hitherto unknown facts) about street law. As I argue in Chapter One, street law is not an identifiable and autonomous body of rules and principles contained within a single institutional framework. Nor do the filmed interviews establish the truth-value

[629] As noted in my Introduction, I recruited participants primarily through my volunteer work with a mobile legal clinic offering legal information and support services to the street community with la *Clinique Droits Devant*, *Bon Dieu dans la rue* (an organization serving youth living on, or at-risk of living on the streets), *RAPSIM* and *HomelessNation*. Other individuals who work and volunteer for these organizations also put me in contact with people they believed would be interested in my project. Finally, I draw extensively on the multiple informal conversations I have had in my daily interactions on the street with multiple street-users and with various street law constituents at conferences, rallies, and parliamentary commissions grappling with the complexities of street-involvement and the appropriate means, methods, and visions for the governance of interactions on the street as imagined through rule. For a more detailed discussion of the ethical concerns and guidelines, see Appendix: Ethics Application & Templates.

of the claims about street law which I have made earlier through other modes of perception I deploy in earlier chapters. The interviews do not prove what I have claimed elsewhere through other symbolic discourses (cinematic metaphors and cinematic artifacts).

Nevertheless, they do constitute a form of legal knowledge. They are, consequently, also jurisgenerative. I consider the interviews to be performative, historically and contextually specific, dialogic processes through which participants (including myself) co-construct meanings about how street-involved people govern and are governed. That being said, I agree with some critics who have pointed to the overly romantic view of a dialogue between a 'sensitive and self-aware researcher' and a research participant 'exercising full agency' and recounting a non-contentious description of her experiences. The narratives that emerge during the filmed interviews are not unproblematic and unequivocal statements about street law. Interviews are iterative and interactive; they can be mutually transformative narrative constructions of normative expectations and commitments. During the filmed interviews, participants engage in a retroactive construction of meaning around street law by examining and ordering their experiences, explaining, confirming, interpreting, feeling, contradicting, defending them to me, to themselves, to other interlocutors (albeit in very specific spatio-temporal and aesthetic contexts).[630] At the same time, I articulate, challenge, and revisit my own conceptualizations or their experiences, or my assumptions about their experiences, what I believe those assumptions say about me, and how I consider they are interpreting my

[630] Each interview took place in its own unique context and interactions are informed by, among many other variables, physical location (some individual interviews took place on the street while participants were working, another in a café, another in a participants' apartment; a group interview with ten participants took place at a service-provider), who was behind the camera (myself or a collaborator – whether a participant or an artist), and whether people – and if so, who - could overhear (such as in a focus group session or when interviewed in more public locations).

responses. To this end, like any other mode of interaction, there is the possibility that all participants are reconstituted through the encounter.

Approximately half of the *SNU*s produced for my *K Film* use portions of these interviews – whether directly (the interview as filmed forms part of or the entire *SNU*) or indirectly (the voice of the participants is associated with another image). When possible (given, as discussed in Chapter Two the complexities of street-involved peoples' movements in and through city spaces), participants were shown any *SNU* that featured them or their voice (as well as any other *SNU* they were interested in *vusing*) to assess whether they approved of their representation in each clip. While, as I will discuss below, I attempted to draw on footage that emerges more directly from participants' perspective, my expectations and aesthetic assessments were constantly being informed, challenged, refined and (re)created through my interactions with participants and other collaborators.

4.2.2 Modified Auto-Cinematography

As I point out in Chapter One, there is a vexing relation between written texts, on the one hand, and power and authoritative knowledge on the other, in both law and in film. Non-textual methodologies, such as filmmaking can favour the understandings that are sometimes marginalized in canonical accounts of street law. They can also invite new associations among what may at first blush feel like divergent standpoints.

Some filmmakers who produce ethnographic artifacts also attempt to engage in self-reflexive filmmaking practices. They invite, for example, their film's subject to be integral to the data-

collection process. This research method is sometimes referred to as auto-cinematography;[631] it is a kind of 'inside-out' approach. [632] Advocates of auto-cinematography argue that established modes of communication deployed by researchers in interviews and other research methods constitute conceptual frames that influence the form and the content of participants' responses. They believe that, as a self-reflexive research method, auto-cinematography can democratize scholarship by training research subjects as 'critical' data gatherers who appropriate and interpret multiple meanings. Intended as an embodied critique of false distinctions, auto-cinematography is a mode of what Michael Jackson calls "radical empiricism" and makes "the interplay" between the "domains" of researcher and researched, the focus of scholarly interest.[633] According to this perspective, rather than relying on external representations and ordering of their experiences of street law (such as in other cultural artifacts like case law and legislation for instance), I should ask

[631] The use of auto-photography and more recently auto-cinematography in social sciences is often attributed to Worth and Adair's innovations in documentary ethnography. They trained members of the Navajo nation to use 16 millimeter cameras in order to collect and recollect traditional stories and myths. In the manuscript they published as a companion piece to the footage, they suggest that the films offer viewers "a rare opportunity to see through the eyes of persons with a different cultural background:" Sol Worth & John Adair, *Through Navajo Eyes: An Exploration in Film Communication and Anthropology* (Albuquerque: University Press, 1972) at 1.

[632] According to some ethnographic researchers (especially in linguistic anthropology), a researcher / documentary filmmaker can express perspective on a phenomenon by standing in one of two relations to her subject of enquiry. First, she may begin from her own conceptual frameworks and take the position of 'insider looking in' based on the view that members of a culture constitute valid knowledge of their own social practices. This is the emic (from *phonemics*) perspective. It is considered valid when it expresses shared normative expectations and a consensus view of the community. Second, she may start from the conceptual frameworks of an interpretive and analytic community that is taken to exist beyond the members of the culture. This perspective is called etic (from *phonetics*) and is usually expressed through large case studies: Kenneth Pike, *Language in Relation to a Unified Theory of the Structure of Human Behaviour (Volume I)* (Glendale, C.A.: Summer Institute of Linguistics, 1954). The emic-etic duality has been destabilized. The etic view is more commonly thought of as an 'outside in' perspective (whereby researchers or filmmakers attempt to gain access to the insider' lived reality) and the emic view more commonly an 'inside out' perspective (whereby participants guide the researcher in her process) through self-reflexive and collaborative research and filmmaking practices. These practices highlight how the outside always inheres to the inside and the inside is always already embedded in the outside. As Elizabeth Grosz writes, "the subject's exterior is psychically constructed" conversely "the processes of social inscription of the body's surface construct a psychical interior:" Elizabeth Grosz, *Space, Time and Perversion* (London Routledge, 1995) at 104. Finally, to Vico, we must always become a part of the things we study, just as they must become a part of us: Giambattista Vico, *The New Science* (Ithaca: Cornell University Press, 1968).

[633] For instance, on how Anthropology must be reciprocal in nature and in enterprise: Michael Jackson, *Paths Toward a Clearing: Radical Empiricism and Ethnographic Inquiry* (Bloomington: Indiana University Press, 1983) at 3.

research participants to speak for themselves through the camera and articulate and ascribe meanings to the footage they collect.

There are potential pitfalls to auto-cinematography as a research method, however. While critically engaging with beliefs in transcendental observations and objective and scientific judgments about a distanced other, auto-cinematography can also reinscribe established power relations. It may enable me to position myself as non-interventionist and as merely providing a 'vehicle' for my participants' expression (and ultimately as a legitimate medium for further articulating their concerns). Auto-cinematography can also be used in ways that assume and maintains the false distinction between the inside (the personal narratives of participants) and the outside (my 'sensitive but ultimately more objective' interpretations of their stories), researcher and researched, observer and observed. While at least one filmmaker[634] and one service-provider in Montreal[635] have used this version of auto-cinematography by street-involved people in ways that do not seem to reinforce such hierarchies, I have nonetheless opted for a more tacit approach to inviting active involvement of research participants. My modified version of auto-cinematography is a blending of two modes of expression of street law.

THE *HOMELESSNATION* ARCHIVE

My *K Film* is in part comprised of images and footage produced by street-involved people for their own purposes. Two of the *SNU*s are borrowed from the *HomelessNation*

[634]See for instance: Daniel Cross & Eric 'Roach' Denis, *Squeegee Punks In Traffic [S.P.I.T.]* (2001). The film includes several scenes that use footage taken by 'Roach,' the film's protagonist.
[635] Spectre de Rue, an outreach organization for street-level injection drug users is currently compiling photos taken by their members with disposable cameras as part of a larger art-based intervention strategy: http://www.spectrederue.org/photos-des-projets.php

archive of images compiled 'for and by' the street community. Despite my desire at the beginning of this research project, [636] my intention is not act as 'witness' or to seek out and document brutality (whether inflicted on or by street-involved people - such as police misconduct, cruelty from passers-by, or altercations between various people using the street to generate income). *Copwatch*, as noted in Chapter Two, already performs this function. Much like *HomelessNation*, its members may well be in a unique position to produce the kind of footage that would make audiences "want to kick and yell," and "do something" about the injustices that the street community negotiates daily.[637] In retrospect, I am no longer of the view that film will or should bring about law reform. It can, as I have argued throughout this dissertation, engage us to think about what counts as street law. Nor is it my desire to provide a direct corrective of other documentary films on street-involvement that seem to promote a less substantive and relational conception of agency to which I subscribe.[638] While literary critic, Janet Staiger has argued that "[i]mages that disrupt norms, that display

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[636] In my Thesis Proposal, I was "instrumentally driven … to produce a different kind of artifact that might be a useful tool to anti-poverty activists." I wanted to "engage with a shift in leftist activism toward filmmaking as resistance tactic" and believed in the possibility that my film could "engage people who hold social power [to engage] in a conversation of a different register." Moreover, through this dialogue, I hoped that "formal legal actors and bureaucratic agents [would] question and perhaps even move toward dismantling regulatory systems that create offenses against street-involved people." I believed my research might engage multiple law-generators on an emotional level to contemplate the ways in which formal and informal legalities operate to 'other' certain social groups and render them more vulnerable to criminalization: "Thesis Proposal", McGill University, Faculty of Law: 2008 (on file with author).

[637] For a rich discussion on the utopian aspirations that documentary film will contribute to leftist political struggles, see: Jane Gaines, "Political Mimesis" in Jane Gaines & Michael Renov, eds., *Collective Visible Evidence* (Minneapolis: University of Minnesota Press 1999) 84.

[638] This is not to suggest that such artifact should not be so challenged. For instance, Fredericton-based filmmaker Doug Sutherland is completing a documentary which follows Brian Jones, a 40-year-old bank executive who has made the decision to live 'on the street' for one week. Without doubt, both the filmmaker and his subject are well-intentioned, but there are surely other ways of generating attention around the complexities and immediacy of street-involvement that stem far beyond not having a 'home.' For a sample of some of the (albeit mixed) responses the film has received, see: http://www.cbc.ca/canada/new-brunswick/story/2010/01/29/nb-bank-manager-streets-600.html

current norms" can also "set agendas for change,"[639] I would nuance this statement somewhat to further a cinematic and pluralist conceptualization of law.

Cinema does not directly incite institutional reform (legal or otherwise). It can invite each of us to ask more fundamental questions about our relationships with our multiple interlocutors in various sites and in myriad interactions. Consequently, it can enjoin us to evaluate our own values, commitments, and expectations that govern those relationships. With that understanding of the function of film, I chose sequences from *HN* that I interpreted as particularly poignant expressions of street-involved people's expectations of their interlocutors and what they believe those expectations are of them.

Participants as Cinematographers

The second aspect of my modified auto-cinematography was to invite participants to direct the camera's movement in the context of our interviews and to request their feedback during post-production. To this end, I consider them cinematographers *tout court* rather than auto-cinematographers.

Participants were asked if they were interested in taking the camera during the interviews. It merits mention that only a small number of participants – three in fact – decided, for reasons I can only conjecture based on each individual's complex normative lives, against such interventions.[640] Subsequently, once footage was compiled and edited, I

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[639] Janet Staiger, *Bad Women: Regulating Sexuality in Early American Cinema* (Minneapolis: University of Minnesota Press, 1995) at xvii

[640] Some preferred to let the 'experts' (my filmmaker colleagues) direct the camera's gaze; others were delighted to be provided a venue to express their concerns directly, others seemed to be indifferent to the process. And to be sure, 'Why not?' was not a question that I always felt comfortable pushing. I believe that had this project been structured more explicitly as collaboration (in the sense of the auto-cinematographic methodologies discussed above) that participants may have felt a greater sense of ownership and creative direction. This is but one of the many learning moments I had in post-production.

met with as many of those participants as I was able to contact for their feedback and advice.[641] Even with these attempts at generating conditions for street-involved people to be formally and explicitly engaged in the filmmaking practices, I reserved for myself the task of selecting what interesting images, moments, and expressions would comprise the *SNU*s.

Research participants' engagement with the film was more implicit and informal: through their own existing symbolizations and conversations (whether actual or my attempt to imagine their responses to particular images). These processes of mediation and selection render the symbolization of street law through my *K Film*, as I elaborate, entirely filtered through my (shifting) subjectivity but still cannot be reduced to my singular vision of street law.

4.2.3 COLLABORATION

As narrative regimes, film and law reveal as much about their storytellers as they do the stories they constitute and circulate. However, whereas 'auteurism' reclaims the director or judge as creative agent constituting meaning through her singular and individual 'vision,' pluralism foregrounds how film, law and other modes of meaning-making are always a collaborative, interactive processes. The accessible format of the *K System*, detailed tutorials, and collaborative impulse of Korsakow's designers generate conditions that

[641] Given the often temporary nature of street-involvement, this was in itself a difficult task. However, some of my research participants and I were able to remain in contact through electronic mail. For these participants, I posted *SNU*s-in-progress onto a closed YouTube© site and asked for their thoughts and comments. I also facilitated a follow-up session at Spectre de Rue (where a group interview was conducted) during which participants were shown clips and asked for feedback and direction.

facilitate filmmakers with little programming experience to create non-linear films.[642] This structure destabilizes conventional understandings of expertise (who counts as a filmmaker, creative, lawmaker).[643] It also highlights and helps foster better conditions for the use of collaborative and non-dominant research methodologies discussed above.

Just as the interviews that comprise my *K Film* and give it shape are not a collection of *facts* about street law, but are themselves one *quality* of street law, there is no single human agent to whom the overall feel or vision of the film can be attributed. And yet, in my role as 'filmmaker,' I impose my interpretation of street law first, through editing choices and second through the denotative (literal, descriptive, explanatory words) and connotative (symbolism, metaphors) keywords. These processes are the product of my own normative commitments and expectations. For instance, I can never fully 'bracket' my thoughts about street-involved people and what I believe may be some of their understandings, interpretations and modes of generating street law.[644] In spite of this reality, I can strive for what Latour refers to as "artificial distance" from my research.[645] I can attempt to keep in check my more immediate

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[642] The *Korsakow* website is intended to constitute a community of *K-Film* creators. It provides multiple modes of support including discussion fora and interactive instruction manuals. CINER-G also provides intensive training sessions and on-going peer-to-peer support: http://*Korsakow*.org/learn/faq

[643] On the rise of 'amateur' artists in part as a consequence of new digital technologies and new opportunities to publish and circulate work and the different kinds of creativity have emerged, see: Lawrence Lessing, "Forward", *FreeSouls* (On-line: http://freesouls.cc/essays/00-foreword-lawrence-lessig.html, 2010).

[644] Early and established phenomenologists advocate what Husserl calls *epoché* - from the Greek for cessation - the suspension of judgment in their search for meaning and a return to intuition, imagination and universal structures to capture experience. The starting point of transcendental phenomenology is that the individual makes sense of her experiences that exists prior to any interpretation and theorizing of an 'outside' observer. Edmund Husserl, *Ideas: A General Introduction to Pure Phenomenology* (Evanston, IL: Northwestern University Press, 1931). Recall that in Chapter Two ("Cinematic Legal Metaphors"), I do propose a kind of 'bracketing' a withholding of commitment to what we know or what we think we know about street law to reflect upon it from a different perspective. Bruno Latour has argued that we can bracket "our familiarity with the object of study" in order to adopt a position of "artificial distance": Bruno Latour & Steve Woolgar, *Laboratory Life: The Social Construction of Scientific Fact* (Beverley Hills: Sage, 1979) at 277.

[645] See Chapter Two in which I provide an overview of some of the critical legal scholarship that provides important insight on the regulation of street-involved people.

and visceral responses to the regulation *of* street-involved people in order to understand how they also govern interactions in the street and are agents of street law.

The media through which I attempt to do so is cinema – whether through its concepts in Chapter Two, its fictional form in Chapter Three, or in my own deployment of its strategies, modes and instruments through the production of a film about street law in Chapter Four. There are hazards to be avoided when performing 'artificial distance.' My self-reflexive filmmaking and research practices are informed by the following matrices of commitments to which I adhere and by which I attempt to abide. I have tried to avoid voyeuristic or objectifying practices directed at street-involved people. I have endeavored to reveal the underlying epistemological assumptions which have lead me to ask particular questions or seek out particular stories. I continue to believe that participants have multiple, shifting and sometimes conflicting viewpoints. I have attempted to express my interpretation of these viewpoints in all their complexity. Finally, I have approached my interactions with research participants with the aspiration of developing on-going relationships.

At least two *SNU*s (individual audiovisual files) exhibit as subtle indictments of the research methods I have employed. This effect may have emerged from the camera's consciousness, by which I mean, what was expressed in the frame emerged irrespective of my intentions or explicit editing choices. It may also have been heightened through the collaborative editing process itself. These *SNU*s express moments in which I believe that I do not live up to my guiding principles, or at least where certain normative commitments were temporarily set aside for the more pragmatic commitments (such as finishing my research). I note my (clearly subjective) responses to these *SNU*s not to excuse my moments of insensitivity but in an attempt to reframe them as opportunities for further self-reflection. Yet,

ultimately, it is to the *vuser* to speculate (or not) as to the ethical perception (or lack thereof) that these images generate (or fail to generate).

That being said, my own normative aims are but one aspect of the street law expressed through my *K Film*. I collaborated with many people throughout this project: implicitly and informally with my colleagues and teachers working in a University environment dedicated to pluralist and transdisciplinary enterprises; more explicitly and formally with my research participants; and explicitly and informally with the artists without whom I could not have produced such an artifact.[646] Each of these collaborators co-constructed my *K Film* and consequently the concept of street law which it embodies and expresses.

To return to one of the key insights of critical legal pluralism, authority, in the sense of who has the power to define, interpret and ascribe meaning lies less in any individual author's claim. My *K Film*'s authority, for instance, rests in the responses of its audience – those individuals who are themselves the film's "authors, compilers, and samplers."[647] On one level, *vuser*s engage in an implicit and informal collaboration by filling in gaps in the non-linear narrative, extrapolating stories from truncated sequences with their memories and desires, their fears and aspirations, their imaginations and other critical faculties, their lived experiences, their relationships and commitments.[648] On another, individual *vuser*s make choices – which are informed and refracted through these same features of self - to engage with particular images based on aesthetic interest in (or lack thereof) and normative expectations in relation to each *SNU*. By drawing connections among and interpreting *SNU*S

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[646] I worked directly but informally with eleven of my friends who work full-time at their craft: six filmmakers, four musicians, a performance artist, a playwright and two web designers.
[647] Macdonald & Kehler Siebert, *supra* note 168 at 394.
[648] Iser coined the term 'implied reader' to grapple with how a reader responds to certain textual cues (gaps) and how she constructs and uses interpretive strategies and schemata to derive meaning from what she perceives: Wolfgang Iser, *The Implied Reader* (Baltimore: Johns Hopkins University Press, 1974).

in and through their lives in law and their legal lives, *vuser*s collaborate in constituting street law through the cinematic event.

4.3 Beyond Representation: Korsakow Film as Street Law

The *K Film* I produced puts into sharp relief some methodological and epistemological discussions regarding law, such as: How is legal knowledge constituted? How does it circulate? How it is embodied and performed? Neither law nor film merely represents lived reality; they both constitute and embody it. The meanings and values they circulate do not emerge only at the level of signs. They emerge throughout a complex mix of interactions in and through space and time; these interactions are themselves jurisgenerative.

These encounters, or points of contact, are contingent upon a complex interplay between at least three features of the *vusing* experience. First, there are assemblage of speculative and tentative selections and definitional processes by multiple collaborators who are all socio-spatial, self-monitoring, complex normative agents negotiating multiple demands, desires, and aspirations. Second, the *K System*'s internal dynamics enables it to be mechanized and automated yet ultimately a chaotic process; this effect can be attributed to the reality that the *K System* emerged as an expression of its designer's normative commitments and expectations and continued to develop due to the ingenuity and creative potential of its heterogeneous community of filmmakers (who range from neophytes to dedicated and established artists). Third, the implicit and explicit engagement of *vuser*s shape and reflect their interests, familiarity with the media, memories, desires, expectations, and capacities that permit them to organize, interpret and make creative inferences from a network of disjunctive sequences.

These three features suggest that the *Korsakow System* generates conditions in which films informed by pluralist aesthetics can be produced. For our purposes, a *K Film* embodies cinematic thinking that demands a rejection of positivist, monist, centralist, binary, chirographic, and/or linear modes of thinking about street law (and indeed law generally). Namely, every *SNU* emerged through the interactions in multiple sites and in various modes of a matrix of socio-spatial, self-monitoring, self-reflexive agents. Each is a new encounter. Further, because of the *K Film*'s overall disjointed and improvisational feel, in our various engagements with audiovisual narrative units, we are reminded of their specificity and singularity. Through the *vusing* experience, which is explicitly and implicitly interactive, we are also reminded that we are actively engaging in the constitution of a community. The street law that is expressed through my *K Film* has far less to do with my intended outcome or vision than with the non-linear, interactive and unfinished nature of the software that generates conditions for new encounters and consequently, new understandings.

The production of a *Korsakow* film has also been a process of self-reflexion. Producing a film about street law has enabled me to open lines of inquiry that are not adequately answered within law faculties. Specifically, why do we still privilege one representation of law (canonical, explicit, and institutional) over others (symbolic, inferential, and implicit)? To argue that a film is law, and to perform law through film, reminds us that any representation is not merely a reflection of phenomena. It is also its own unique mode of perception, symbolization and conceptualization. By extension, it enjoins us to represent, perceive, symbolize and conceptualize law differently than we have done so conventionally.

CONCLUSION: A CRITICAL LEGAL PLURALIST HYPOTHESIS OF STREET LAW

In this dissertation, I have advanced a critical legal pluralist hypothesis: street law is on-going process of imagining and expressing interactions on the street as guided by rules.[649] I have relied on the lexicon and concepts of cinema to move away from inherited ways of describing street law, especially those that are inherently repressive. I have found that there are other ways of expressing street law. I have, as a result, attempted to cinematically symbolize interactions between street-involved people and their interlocutors as governed by rules. I did so through traditions of thought associated with symbolizing aspects of social life (film and law) in ways that might help us reflect on how to pursue more meaningful relationships between interacting legal agents on the street. Consequently, I have described street law in ways that engage with its facilitative and relational potential.

The vision of street law I propose reflects attitudes and understandings that may challenge the expectations and commitments of some other critical anti-poverty scholarship and activism. It requires that we use words, images and other modes of symbolization that reflect the belief that street-involved people are both subjects and agents of street law. This view of street law affirms street-involved people's self-understanding as legal subjects – as members of a community which is regulated in oppressive ways. It also affirms street-

[649] For a review of some the principle critical legal pluralist works, and for an elaboration of this hypothesis, see my discussion of critical legal pluralism and especially the work of Roderick Macdonald in Chapter One, especially subsection 1.1.3 ("Critical Legal Pluralism").

involved people's self-understanding as legal agents – as members of a community who demand meaningful and respectful interactions on the street.

Framed as such, my divergence from other anti-poverty work does not undermine or to minimize their platforms, mobilization, and scholarship aiming at law *reform*. I agree with Margaret Davies and Susan Armstrong that sometimes we are required to think about law in positivist terms for purely pragmatic purposes.[650] Law reform – even when conceptualized in orthodox ways - can make "significant, albeit incremental, differences" to people's daily and nightly lives.[651] Thus to advance a critical legal pluralist hypothesis that law is not limited to written texts enacted by formal and institutional jurisgenerative agents, is a commitment to a multi-dimensional approach to street law.[652] Such a hypothesis may use formal and explicit forms and modes in ways that will effect material changes in the lives of street-involved people (e.g., the recognition, by the Commission des droits, of social profiling against street-involved people, and the subtle shifts in police practices as a result).

That being said, the purpose of my research was not simply to articulate or to rearticulate concerns about law as (only ever) an ideological apparatus of dominant interests

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[650] They point out that to takes as starting point the definition of law as an autonomous system and fixed entity may be a "pragmatic necessity" even though law reform may not address broader social problems or embedded biases in legal institutions. Davies, *supra* note 7 at 29 (citing Susan Armstrong, "Is Feminist Law Reform Flawed? Abstentionists and Sceptics" (2004) 20 Australian Feminist Law Journal 43).

[651] See other representational and agential strategies deployed by feminist groups in constitutional reform: Andrea Dobrowlsky, *The Politics of Pragmatism: Women, Representation and Constitutionalism in Canada* (Oxford: Oxford University Press, 2000). See also Annelise Riles' pragmatic humanist study of law. She claims that it is a mistake for cultural legal theorists to ignore "the technical aspects of legal thought" because "the kind of politics that they purport to analyze is encapsulated there, along with the hopes, ambitions, fantasies, and day-dreams of armies of legal engineers": Annelise Riles, "A New Agenda for the Cultural Study of Law: Taking on the Technicalities" (2005-2006) 53 Buffalo Law Review 973 at 975.

[652] For a multi-dimensional approach to poverty, see : Amartya Kumar Sen, "Conceptualizing and Measuring Poverty" in David B Grusky, S. M. Ravi Kanbur & Amartya Kumar Sen, eds., *Poverty and Inequality* (Stanford: Stanford University Press, 2006) 30.

or as an instrument for subjugation of the poor. Rather, my research is an invitation to consider more symbolic (and for my purposes cinematic) dimensions of street law.

Imagining street law cinematically is not about identifying a body of rules that guide behaviour on the street. Street law is often implicit, uncertain, and, consequently not articulated in orthodox, linear, written principles. Imagining street law cinematically is, however, about using an alternative conceptual structure (cinema) to interrogate street law's modes of defining interactions between street-involved people and their interlocutors. My starting assumption has been (and continues to be) that there are interactions on the street in which certain 'law' (such as the discretionary practices of official and unofficial decision-makers and vagrancy- type legislation) "directs the hermeneutical dialogue" with other forms of normative regulation (such as the self-reflexive engagement between an askor and an askee in the panhandling encounter).[653] This kind of formal and explicit legal framework does not protect street-involved people when they are vulnerable or otherwise marginalized. It may even exacerbate the conditions that contribute to their vulnerability and marginalization.

Imagining street law cinematically is one way we can rely on other symbolic means at our disposal to reconsider the values that inform how we govern interactions on the street. One critical legal pluralist impulse is to bring about a shift in values that structure our interactions in ways that may foster conditions of more meaningful relationships. In an attempt to show how such an impulse may translate into the realm of what I call street law, I have suggested three alternative symbolizations of street law: metaphor, myth, and film production. First, metaphors, such as the four cinematic legal metaphors I suggest, help us get at the material conditions of street-involved people without resorting to revanchist

[653] Macdonald (Governance), *supra* note 56 at 19.

discourses. Second, myths, such as those circulated in films, tell us something about interactions between self and other. Third, collaborative filmmaking process can express law.

Through these symbolizations, I have explored how various constituents of street law give structure to particular beliefs and commitment through symbolic means. These include *RAPSIM*'s role in assisting informed and engaged legal agents; education platforms and research conducted by anti-poverty scholars; Ryan's refusal of externally imposed expectations through his gestures; and my editorial choices in terms of what images may invite particular responses from my real or imagined audience. These expressions of normativity may be harnessed to further adherence to street law that is based on shared expectations rather than coercion, that promote nurturing relationships and environments for vulnerable individuals, and that generates conditions in which street-involved people can exercise agency in their daily negotiations on the street.

I have used such symbolizations to perceive those sites and sights of street law that embody gift relations based on reciprocity, according to some understandings of street law, or singularity, dignity, respect, compassion and love, according to other versions.[654] Understood in such terms, street law requires us to acknowledge that there will be some life conditions faced by street-involved people that will vitiate their autonomy and agency. Consequently, such conditions also vitiate their ability to gift and have an impact their law-making capacities. These conditions may include (to varying degrees and for varying

[654] For a review of various gift theorists and the subtle differences in these two understandings, see Chapter One, especially 1.2.4 "Street Law."

durations): severe addiction as well as mental, emotional and/or physical deterioration to the point of not being able to make meaningful life choices.

I do not offer a clear roadmap for reforming these life conditions. I argue, however, that better relationships between street-involved people and their interlocutors may be a good starting point. I believe that in structuring these new relationships, we must engage with law's plural, interpenetrating, interacting modes, forms, instruments and registers. Such efforts will include more pragmatic work such as: halting regulative regimes that target the urban poor; working within existing formally created and recognized legal institutions to generate the possibility of new legal subjectivities; and mobilizing against police brutality. It will also include more tangential, subtle, speculative, implicit, indirect work such as: facilitating better conditions of inter-subjective engagement during the panhandling moment (whether through education or opportunities for interaction outside of that event); facilitating the exercise of agency and autonomy (by funding resources that meet the needs of street-involved people as they define them – whether in terms of community gardens, medical attention or wet shelters); by promoting the view that street-involved people (except in the rare instances when their life conditions vitiate their agency) are already self-monitoring normative agents negotiating multiple demands, desires, and aspirations; by making personal commitments (and building norm-generating communities which are also committed) to eradicating the social conditions that have normalized forms of street-involvement that do not contribute to street-involved people's autonomy and agency; and perhaps most importantly, creating conditions for self-transformation by re-evaluating of our common sense beliefs and assumptions about our 'others.'

The cinematic register can, in short, remind us that street law is about human creativity and our ability to engage in self-directed behaviour and the pursuit of both individual and shared goals. To think about law cinematically gestures towards the ways in which some street-involved people and their interlocutors have created conditions in which relationships can be constituted, reconstituted or abandoned through interactions based on reciprocity, recognition, and inter-subjective understanding. Individuals in their daily interactions do create conditions that further justice and do embody alternative conceptions of the institutions through which those conditions may be generated. Moreover, thinking legally about cinema invites us to consider how recurring definitional tropes - such as the tramp and the vagrant - can be a canvass for exploring other symbolic fields from which street-involved people may be excluded but also the symbolic fields that they themselves create: moral and social geographies, alternative expressions of normativity, moments of inter-subjective exchanges, and performances of legal agency. Finally, it enjoins us to consider our own assumptions and expectations of street law: the cinematic legal register demonstrates that street law already points to abstract standards that help us recognize the responsibilities we share for each other. It also suggests how we may further attend to those duties with the understanding that people have the capacity to know how to behave justly, how to live morally, and care for one another.

APPENDIX: ETHICS APPLICATION & TEMPLATES

ETHICS APPLICATION

1. Purpose of the Research

Describe the proposed project and its objectives, including the research questions to be investigated (one page maximum). What is the expected value or benefits of the research? How do you anticipate disseminating the results (e.g. thesis, presentations, internet, film, publications)?

Proposed Project

My research is about the law that people who panhandle create, negotiate, and subvert. People who panhandle reach out to others - often relative strangers who are located along different axes of privilege - in shared public spaces. Unstable housing, intellectual and physical disabilities, addiction and health concerns, poverty, and unemployment are some of the challenges that increase experiences of marginalization among this heterogeneous group. In addition, people who panhandle experience criminalization through legislative regimes - such as Ontario's Safe Streets Act which creates the offense of aggressive panhandling - and judicial decisions - such as R. v. Banks which upheld the Act's constitutionality. Several socio-legal scholars have argued that a person's engagement in panhandling reflects and reinforces the individual, institutional and structural marginalization and criminalization experienced by the urban poor. While I agree that behaviour can be shaped by social context and I am critical of material structures that govern panhandlers' everyday lives, I diverge somewhat from this earlier work to centre the informal law or guidelines that people who panhandle negotiate, challenge, subvert, and create. My research asks two kinds of questions.

First, in relation to law: How are people who panhandle constituted by (subjects) and constituents of (agents) rules around panhandling? What strategies do they deploy to negotiate, resist, transform rules around panhandling? In so doing, do they also provide new conceptions of public space? Is the concept 'panhandling' linked to issues of identity and autonomy? Is the identity 'panhandler' one to which most people who request small change to generate income ascribe? Is it used against those same people in a manner that creates boundaries, excludes, marginalizes? Is there shared recognition among panhandlers as to the rules and possible sanctions for transgressing those rules? Are there hierarchies among panhandlers?

Second, in relation to film: If film can reflect, intervene on, transform, pervert, romanticize reality, can it also assist in grappling with the tensions between determination (material structures) and freedom (agency)? What about for people who panhandle in particular? Can a film for and about people who panhandle shed light on perceptions and experiences of law's violence, its weaknesses, and its creativity? How can film foster meaningful dialogue between individuals who differ but who can nonetheless gain from inter-subjective understanding from such differences?

This research draws on the insight from critical legal pluralism and deploys reflexive documentary practices. A legal pluralist view of law reminds us that the 'rules' around panhandling are constituted both on the 'formal' and 'informal' levels. Rule-making agents tolerate one another or they can be in conflict; more often than not they lie somewhere on a spectrum between the two. As law-creating agents, human beings pursue their own purposes within these frameworks of rules while struggling for recognition and respect from others perusing similar or conflicting purposes. Reflexive film theories remind us that attempts to represent others (and our relationship to them) and a desire to

be loyal to people's self-representation inevitably raise questions about: the difference between fact/fiction, the universal/the local, objectivity/subjectivity, self/other, belonging/being an outsider.

I am critical of receive assumptions in law and other disciplines about objective observers making reasoned judgments about their distanced other. But my aim is not to 'give voice' to people who panhandle. Rather, I invite participants to speak for themselves and include my own distinct voice as researcher/filmmaker in order to engage in dialogue. This approach will (I hope) advance a more meaningful understanding of the (externally imposed) rules that they must negotiate daily and the rules they themselves create during that process of negotiation.

I use documentary film to open up conceptual paths to different ways of thinking about the how the panhandling relation is governed. My research methods include: open-ended interviews with, and observations of, people who panhandle; interviews with other key informants; discourse analysis of formal and informal laws around panhandling; and close reading of filmic representations of the panhandling moment. The goal of the interviews and observations is to provide as representative a sample as possible of people who panhandle (accepting the limitation in identifying a true sample of such a transient and diverse population).

The documentary film and the written thesis will stand on their own as separate artifacts in a relation of metissage. They will emerge in dialogue with one another.

Anticipated Contribution:

My aim is to contribute to the work already being done by street-involved people and other anti-poverty activists who are countering stereotypes and stigma surrounding life on the street. I start from the view that people who panhandle are legal agents able to generate their own rules around panhandling: they are full and active members of our social, economic, legal, political worlds.

View a view to quell the concern that ethnographic research is vulnerable to "giving little and taking more than little" (Minh-ha, 1991: 68), I will engage in a collaborative research approach. Participants are integral to the direction of my work. I want to explore ways to involve people who panhandle as researchers (rather than limiting their role to that of 'the researched'). Further, my hope is that my legal experience and analysis can be a useful resource to participants. To this end, I strive to enhance relationships based on reciprocity (information-sharing, empathy and mutual identification).

In addition, a film made in collaboration with people who panhandle can be a valuable pedagogical tool. True, it may elicit feelings of compassion and empathy; but film also has the capacity to 'release the imagination' and transcend what we think of as the 'known' (Greene, 1995). While I am not of the view that film necessarily leads to direct social and political change, it can be produced in a way that generates community-building and that can potentially bring seemingly different people together - despite social, political, economic, cultural differences – to grapple with panhandling and broader issues of poverty and social exclusion.

Finally, with the backdrop that film is a normative site, my research will be a valuable contribution to critical legal pluralist scholarship. Instead of viewing the law as words on paper (case law and legislation) or simply as an institution of social control (wielded by those marked by social and cultural privilege), I further the view that law can be thought of aesthetically and in terms of relationships and values. Thus, there are multiple sites of normativity or values that organize our ways of being; these norms or values may be in conflict; and they may not always be ranked according to a universal standard. Insight from critical legal pluralism will assist me in asking new ontological, epistemological and axiological questions and perhaps provide new insight about the experiences of people who panhandle and about my own experiences with people who panhandle. Specifically, self-

reflexive in design, this research project invites openness to my own personal transformation and the development of more meaningful understanding of the strategies favoured by the urban poor.

Dissemination:

I will publish work in the form of peer-reviewed journal articles, fact sheets for organizations working with people who panhandle, and my final (bound and electronic) doctoral dissertation. I will also give lectures, seminars, and workshops with other researchers and policymakers. My thesis also includes the production of a film which will be accessible to people who panhandle, agencies working with street-involved people and other academics. Ideally, research participants will also be involved in its dissemination of this research, especially at screening in educational and community settings. For instance, HomelessNation, a website run by and for street-involved people, has expressed interest in posting portions of my written and filmic texts once completed.

2. Recruitment of Subjects/Location of Research

Describe the subject population and how and from where they will be recruited. If applicable, attach a copy of any advertisement, letter, flier, brochure or oral script used to solicit potential subjects (including information sent to third parties). Describe the setting in which the research will take place. Describe any compensation subjects may receive for participating.

Subject Population:

The adult (over the age of eighteen) subject population can be divided into three related and sometimes overlapping groups. Group A includes people who panhandle or who have panhandled. While heterogeneous, participants from Group A may be perceived as vulnerable because of overwhelming of criminalization and marginalization, the prevalence of physical and intellectual disabilities, economic disparities, particular forms of racialization and addiction concerns among this heterogeneous population. They will be asked how they understand the rules around panhandling. Group B includes representatives from service-providers for street-involved people. These participants will be asked about how they perceive people who panhandle to be governed by formal and informal rules around panhandling. Group C will include anti-poverty activists and academics. These participants will be asked about how they perceive people who panhandle to be governed by formal and informal rules. There may thus be overlap with members of these various groups.

Recruitment:

A recruitment form will be sent electronically or by mail to members of Groups A and C. The research proposal, interview guide and consent form will be attached in order to allow potential participants to be fully informed on the process and the nature of the study. The recruitment form has been worded in accessible language. It is in English and will be translated in French if participants prefer to conduct the interview in that language. Participants from Group A sometimes have no fixed address and are difficult to contact directly. They will be recruited through snow-ball sampling, word of mouth, and other contacts, especially through the researcher's on-going affiliation with Groups B and C and volunteer work with members of Group A. I will contact a few members of Groups B and C who are already known to be and I will ask my initial contacts to ask people they know who might be interested in participating to contact me. In my recruitment form for Group B, I will also request that I set up regular drop-in hours (e.g., from 2:00-3:30 on Mondays) that are convenient for the organization

and convenient for potential participants. These regular drop-in hours will permit potential Group A participants to approach me if interested, to ask questions, and to assess whether they would like to participate. It will also assist me in developing a greater sense of connectedness with participants by keeping in regular contact with members of Group A, many of whom are transient. Importantly, it will provide me with the time required to meaningfully assess whether or not interested individuals are capable of consenting to participate in this research project. Finally, it will be during these drop-in hours that I will conduct my interviews, unless participants prefer to have an interview take place at another time.

Research setting

Participants from Groups A and B who accept to have an interview with me will be interviewed in a private and neutral site. Interviews will take place in as comfortable surroundings as possible. They will be held in English unless participants prefer to have the interview conducted in French. Participants from Group C will be interviewed in a private and neutral site of their choice. Footage from these interviews will serve as data-gathering and may be included in the documentary film portion of my thesis.

I will ask participants for permission to observe their panhandling interactions on the streets. Footage from these observations will serve as data-gathering and may be included in the final filmic component. I want to observe how people who panhandle are governed by formal rules when they engage in this income-generating activity. I also want to observe how they create their own rules among themselves and in relation to other rule-making agents (such as the police, shop-owners, and other people using the street). The camera will remain focused on my informants but it may, in order to challenge realist conventions of traditional documentary film, from time to time be focused on me. This method is intended to destabilize the researcher/researched dyad. The conditions under which the participant observation is conducted can and should then be negotiated orally between key informants and myself in an on-going way. Participant observation will be long-term and will likely occur over a period of one year.

Participants will not be compensated.

3. Other Approvals
When doing research with various distinct groups of subjects (e.g. school children, cultural groups, institutionalized people, other countries), organizational/community/governmental permission is sometimes needed. If applicable, how will this be obtained? Include copies of any documentation to be sent.

Participants from Group B (service providers) may require the expressed consent of the organization for which they work or volunteer. Participants from Group C (anti-poverty activists) operate on a consensus-based model and will require the consent of the entire organization before accepting to participate in this research project. Three separate consent forms have been carefully crafted to address the concerns that arise for each research group. A copy of the consent form, also signed by me, will be left with each research participant. I will retain another copy for my files.

Certain people may not in a position to decide whether to consent until immediately after their participation (e.g. inadvertently being in the documentary as they walk down the street) Most people are not likely to object to being filmed in this way. However, during the filmed observations of select members of Group A, it is possible that passers-by and on-lookers are captured by the camera when they do not want to be. Strict precautions will be taken to address such consent issues. First, like any

other documentary filmmaker, I will disclose and advertise as broadly as possible that filming is taking place within a particular radius on the street. I will erect a sign behind myself and my informant that "Filming in Progress." I will have similar posters within two meters of myself and my informant alerting passersby to the filming process. Second, if a passer-by objects to his or her filming, I will immediately stop the camera and none of the footage capturing their image will be used for the purposes of my research. My goal is not to collect pejorative or demeaning footage of people who respond to panhandlers. Should people respond in this manner, however, I will take notes of their responses and use this as data-gathering for my analysis.

4. Methodology/Procedures

Provide a sequential description of the methods and procedures to be followed to obtain data. Describe all methods that will be used (e.g. fieldwork, surveys, interviews, focus groups, standardized testing, video/audio taping). Attach copies of questionnaires or draft interview guides, as appropriate.

In September 2002, I began volunteering with Ottawa's Ticket Defence Program [TDP], a coalition of activists, service providers, and students acting as agents before the provincial court and contesting tickets issued to panhandlers under Ontario's Safe Streets Act. I remained an active member of TDP until 2005 when I moved away from Ottawa. I intended to continue this work in a more formal research-based capacity. However, as I became more involved in the anti-poverty community in Montreal (where I was studying), especially with RAPSIM (Réseau d'aide aux personnes seules et itinérantes de Montréal), Equity Access (McGill University), and HomelessNation, I felt that I could ask similar questions while remaining based in Montreal.

My research methods are primarily qualitative semi-structured interviews. Data will be collected through approximately twenty-five videotaped in-depth semi-structured interviews. They will last no more than 1 ½ hours. They will be conducted by me in English or French if participants prefer. Before the interview takes place, the participant will be advised that his/her informed consent is necessary. I will go over the consent form, its content, review the purposes and aims of my research and answer questions I will highlight the following points:

- ***Voluntary Participation:*** *Participation is strictly voluntary; there are no repercussions for non-participation or withdrawal from participation at any time. Should a participant choose to withdraw, any data collected from that participant will be destroyed without question.*
- ***Anonymity:*** *Participants can use a pseudonym to preserve anonymity during the entire interview.*
- ***Right to refuse:*** *Participants have the right to refuse to answer any question and that s/he can stop the interview at any time should s/he no longer wish to continue*
- ***Right to withdraw:*** *Participants have the right withdraw entirely from the research at any time.*
- ***Permission to Film:*** *I will request permission to film the interview. The interview is intended as part of a documentary film and that it may be used for educational or other academic purposes in public or semi-public venues (such as schools, universities, community groups). I will provide them with a copy of the documentary upon its completion. If a participant elects not to have the interview videotaped, I will request permission to take careful notes instead.*
- ***Anonymity during filming:*** *If a participant chooses to use a pseudonym, it will be used throughout the interview. I will also position the camera in a way that their face will not be revealed. If there are concerns about his/her voice or face being recognized, I will explain that their face can be blocked out and their voice altered during editing to preserve their anonymity.*
- ***Review of the Transcript:*** *I will transcribe the interviews and the participant will be able to review the transcript. There may be, for instance, passages to omit because they divulge personal information that render comments easily attributable to him / her. Should the participant choose to review the transcript I will offer three ways of forwarding them back to me: (1) in person; (2) by mail (with a self addressed postage pre-paid envelope provided by me); or (3) electronically. In the first and second*

instances, I will ask him / her to cross out any portions to omit and to initial each page of the transcript (indicating that s/he gives me permission to use the transcript as edited by him / her). If the participant chooses to forward the document back to me by e-mail, I will ask that s/he indicate the deleted or edited passages and forward the edited transcript as an attachment to me with a message stating (i) that s/he has reviewed the transcript and (ii) consents to the use of the transcript as edited.

- ***Transparency and Reflexivity:*** *I will engage in research and documentary practices that emphasize transparency (using research / film to look outward at the world) in addition to reflexivity (using research / film to examine aspects of myself evoked by that world). I am not of the view that participant observation, and filmed observation in particular, is an objective means of recording experiences. I recognize and grapple with the fact that filming, like other research, is about selectivity and subjectivity and that I will constantly be making choices about what does and does not fall into the camera's frame and what will and will not remain in the final edited version of the documentary and written thesis. I will also draw on principles of direct cinema which requires filmmakers / researchers to build strong relationships with their subjects / participants. To this end, I will take several precautions to ensure that my observations are as non-voyeuristic and as respectful as possible. I will attempt to have participants as engaged with the observations and offer them the opportunity to observe at any point during the filming process.*
- ***Collaboration:*** *Participants will be encouraged to ask me questions, to offer insight, and to be involved in the various stages of the editing process. I will invite them to turn the camera on me, to ask me questions, or even – should they want to - film my responses to their answers. Moreover, during my weekly drop-in time. I will bring footage to show it to the participants who were filmed and who are interested in providing feedback on the editing process.*

5. Potential Harms and Risk

5 a) Describe any known or foreseeable harms, if any, that the subjects or others might be subject to during or as a result of the research. Harms may be psychological, physical, emotional, social, legal, economic, or political.

The most substantial potential harm is for members of Group A who may experience marginalization and criminalization and to whom I will be asking to share personal narratives about their experience while they engage in panhandling. Panhandling is not illegal in Canada. However, answering these questions may increase the risk of legal or social harms such as backlash from particular police officers, unwanted publicity, or judgment by friends. Similarly, psychological or emotional risks may arise such as self-image issue, loss of confidence, regret for disclosing personal information, unpleasant memories or disruption. Economic inconveniences may include expenses incurred for participation (i.e. not being able to panhandle) or long travel to research site. Some physical inconveniences for all participants include muscle pain or fatigue from an interview that has gone too long.

5 b) In light of the above assessment of potential harms, indicate whether you view the risks as acceptable given the value or benefits of the research.

Research engaging with individuals and groups who experience marginalization and criminalization is of fundamental importance because they are often denied proper venues to voice their concerns. As noted, my research aims to countering stereotypes and stigma surrounding life on the street and the documentary aspect of my thesis can be an valuable pedagogical tool that can bring seemingly different people together - despite social, political, economic, cultural differences – to grapple with panhandling and broader issues of poverty and social exclusion. Additional benefits to participants include: having their stories heard, feeling empowered, contributing to a larger discussion on how people who panhandle experience the law in their daily interactions, and providing crucial

insight to a research project that will potentially learning and teaching new skills related to documentary production. The research will benefit me as well; I will be part of a project that will enable me to develop a more nuanced understanding of relationships among people who panhandle and between people who panhandle and people who do not. The likely benefits to the broader community include alternative and possibly more empathetic responses to people who panhandle and movement towards the breakdown of barriers between people who share the city street space. The risks listed above are those that emerge during any honest intellectual inquiry. Though every effort will be made to avoid them, these risks remain acceptable given the value and benefits of the research.

5 c) Outline the steps that may be taken to reduce or eliminate these risks. If deception is used, justify the use of the deception and indicate how subjects will be debriefed or justify why they will not be debriefed.

There seem to be minimal risks of the harms mentioned above; however, that minimal risk is recognized and additional safeguards will be taken.

Psychological / emotional / social / legal harms:

A number of precautions will be taken to avoid potential psychological / emotion or social / legal harms and inconveniences to members of Group A, which includes obtaining their informed consent. Group B's representatives all have accountability procedures in their organizations and a participant from will be asked to obtain the full support of his or her boards or organizing committees before participating. He or she will also be reminded of her rights.

Lack of deception or coercion on my part and an approach founded upon trust and respect for participants will also greatly reduce the likelihood of these harms. Establishing a trusting and lasting relationship with participants will help diminish the possibility that they (especially those from Group A) will be further marginalized by virtue of their work on this project.

Trust can be established and maintained by sufficiently explaining my purposes. I will, to the extent that I am possible, be overt with participants about the purpose of my research. I have decided to present myself as a graduate student in law who has worked for anti-poverty associations and who is concerned about how people who panhandle are governed. However, as other researchers with an 'emancipative' paradigm, highlighting the experiences of people who have suffered marginalization, I recognize that the unique context of my informants' lives may require a "re-definition" of my presented self in order to enable me to hear often "unheard stories of troubled lives" in order to "prevent a perpetuation of the stereotyping, stigmatization, and marginalization" my informants' face (Paradis, 2000; Li, 2008: 101). This may, for instance, require that I downplay my academic background or professional status or my overall privilege by virtue of that social, cultural, and economic capital. This is not to suggest, however, that I will present an identity other than my own or be deceptive.

A second indicator of a trusting relationship is respectfully explaining to participants the potential consequences of being filmed during the interviews and participant observation. Third, I recognize how I am situated in relation to the research participants. I am a white graduate student with a formal education in a professional program. Participants who have not been privy to the bundle of rights and privileges that come with my social location may perceive me as a threat or may be less inclined to trust me as an 'outsider.' Indeed, there is often a lack of trust on the part of people who experience marginalization and criminalization in outsiders' ability to tell their stories in a respectful way. Despite almost ten years of work with anti-poverty groups, I am not a person who panhandles in order to generate income and I have biases and assumptions about people who do. I will attempt to recognize these assumptions, question them, critique and account for them throughout my research.

A final component of a trusting and respectful relationship is to recognize the individuality of each participant. While exposed to similar forms of oppression, homeless and street-involved people are not a homogenous group. Research participants may be from a culture, ethnic group, class, sexual orientation or gender that is different than my own and from each other's. To prepare for this eventuality, I will engage in research that is mindful of the diversity of people's experiences which can

vary along class, gender, race, sex orientation, and cultural lines. This is not to say that I will approach my research by indexing people's relative disadvantage but by focusing on people's individual experiences and how they relate to broader structures of inequality.

Economic harms:

It is unlikely that members of Groups B and C will suffer economic inconveniences as a result of their participation in this project. Members of Group A may suffer economically during field observations while they are engaging in panhandling. Because the participant observation will involve a long term relationship with research participants, I must ensure that my informed consent process is dynamic and on-going. I will therefore ask whether or not my presence is hindering their ability to work and remind them that we can stop filming at any time.

6. Privacy and Confidentiality

Describe the degree to which the anonymity of subjects and the confidentiality of data will be assured and the specific methods to be used for this, both during the research and in the release of findings. This includes the use of data coding systems, how and where data will be stored, who will have access to it, what will happen to the data after the study is finished, and the potential use of the data by others. Indicate if there are any conditions under which privacy or confidentiality cannot be guaranteed (e.g. focus groups), or, if confidentiality is not an issue in this research, explain why.

Anonymity and Confidentiality during interviews and other filming and in the release of findings

Participants from Group A may have the legitimate fear that using their real name will result in backlash from particular police officers, unwanted publicity, or judgment by peers. Anonymity is also important for individuals working within organizations that provide services and support to street-involved people (Groups B and C). They may feel more inclined to express personal and perhaps critical views about the work they do and the communities they work within without fear of reprisals from funding agencies or other community partners. Participants may thus wish to remain involved in the research project in an anonymous manner. A potential participant will immediately be informed that s/he may choose to use a pseudonym. When a participant uses a pseudonym, other identifying information will be fictionalized in the research report and in the documentary to protect his/her privacy and anonymity. S/he will be thereafter be referred to by the pseudonym in all transcriptions and for the remainder of the research. Identifying information such as names, age, unique traits and uncommon experiences will be modified immediately following transcription. Further, identifiable speech patterns or idiosyncratic sentence structure will be rendered unrecognizable. If s/he is concerned about his /her voice or face being recognized, I will explain that their face can be blocked out and their voice altered during editing to preserve their anonymity. The need for anonymity must be balanced with the requirements of qualitative research of the kind endeavored here, which will necessitate the use of quotations from the participants. Participants will have the opportunity and the right to review their transcripts and withdraw any statements that they consider inappropriate.

Only my advisor and I will have access to the raw data. Any computer files will be stored electronically on my personal computer under password. Typed transcripts and computer files will be destroyed ten years after the completion of the research project. Videotapes and other data will be conserved for five years following the end of the research project. Some of my findings will be in the form of my PhD thesis. Participants will be referred to during the interviews, in all raw data, in the documentary, and in my written thesis by their pseudonym.

7. Informed Consent Process

Describe the oral and/or written procedures that will be followed to obtain informed consent from the subject. Attach all consent documents, including information sheets and scripts for oral consents. If written consent will not be obtained, justification must be provided.

Principles of Informed Consent

Informed consent is a process of communication; it should be an open exchange between potential and / or actual participants and me. The signed form is intended as a summary and written record of the participant's participation but written consent should not automatically be understood as informed consent. Discussions about consent should be in simple, understandable language; it should be accurate enough so that the participant can assess whether the risks in getting involved outweigh the potential benefits. It is my obligation as a researcher to adequately and understandably communicate these risks or inconveniences without romanticizing the benefits. Informed consent is on-going and relational. It is important that participants feel they can ask questions at any time during the process especially because questions may only arise once they have already begun to participate (or for instance if I ask a question that relates to sensitive personal information). The individual life experiences of potential participants should be taken into consideration when requesting informed consent.

Assessing Ability to Consent

Attention to clear communication, respect, trust, on-going comprehension, and good decision making must be at the fore of the informed consent process. These concerns are all the more important when dealing with a vulnerable population that may struggle with issues around mental illness and addictions. I am reluctant to focus on these issues that people who panhandle may face because of the potential for stereotyping or for reinforcing stereotypes that already exist about his population. However, I am very aware and take very seriously the real concerns that research participants, especially those from Group A, may well be dealing with issues related to intellectual disability or addictions. The ability to assess whether a potential participant is suffering from mental illness or has addiction issues is imperative when determining whether someone can provide informed consent. For almost ten years, I have worked in the anti-poverty field with people who have experienced social marginalization and criminalization. I have undergone, among other things, training in crisis management and counseling for addictions and trauma. I believe that my experience in the field will allow me, through informal conversations, to assess whether a person has the capacity to consent. An informal conversation, my experience has shown, will usually reveal whether a person is dealing with intellectual disabilities or addiction issues that may vitiate their consent. When in doubt, I will err on the side of caution. Further, I will also defer to the judgment of service-providers from Group B and may ask them for their counsel from time to time without disclosing the identity of the potential participants. For instance, I can ask service providers whether x or y behaviour might indicate a serious addiction that would render a person incapable of providing consent. Informed consent in an on-going communication and must be dynamic. I will continually be assessing and re-assessing whether any participant is able to consent. Should I at any moment be of the view that a participant is no longer able to consent, they will be withdrawn from the project (insofar as being interviewed and filmed).

Written Consent

Individual written consent will be sought from research participants from each Group. Before engaging in semi-structured interviews or video-taped observations, each participant will be asked verbally and in writing to agree to have the content of the interviews and video tapes used for the purposes of my doctoral research. I will then go over the consent form with the participant. The form will include my name, my advisor's and our contact information, a brief description of my research project and anticipated disposition for the results (through my thesis, publication, conferences and a short documentary), how the data will be stored, the potential benefits of my research, a statement that participants are under no obligation to participate and that they may withdraw at any time. It will also clearly indicate (in a separate approval line) that I am requesting permission to video-tape and directly quote participants (with or without attribution). I will also sign the consent form. A copy of the form will be left with the participant and I will retain a copy for my files.

Before the interview process begins, I will go through the entire document with each participant and highlight the most salient points. Subjects who agree will be asked to sign the consent form. The content of the form will be explained and the subject asked if s/he has any questions. Free and informed consent also includes the adaptation of language so as to be understood by participants. The consent form and all other materials have thus been written in accessible language.

Verbal Consent

Informed consent with participants from Group A may well be given verbally, rather than in writing. . For instance, participants may be unable to read English or French, or it may be otherwise culturally inappropriate for me to request written consent. In these cases, I will obtain verbal consent from research participants. The principles listed above will be adhered to when obtaining verbal consent. Ideally, I will have their verbal consent documented on film. Importantly, I will only film their consent if they have already provided it. I recognize that to ask someone to consent while the camera is running can be daunting, intimidating and may be a form of coercion. I will follow a verbal consent script and will read the entire informed consent document to them and explain each section as I go through the document. If the participant agrees, I will have one of his/her trusted friends or colleague witness the verbal consent. I will sign the Verbal Consent Script and give them a copy of it. Even if consent is provided verbally, I will give potential participants a copy of the written consent form (which includes research purposes and procedures); this form will be signed by me.

8. Other Concerns

a) Indicate if the subjects are a captive population (e.g. prisoners, residents in a center) or are in any kind of conflict of interest relationship with the researcher such as being students, clients, patients or family members. If so, explain how you will ensure that the subjects do not feel pressure to participate or perceive that they may be penalized for choosing not to participate.

Participants are not a captive population and they will be informed that participation is on a voluntary basis.

b) Comment on any other potential ethical concerns that may arise during the course of the research.

Filmmaking Practices

In classical documentary, the voice of the filmmaker transcends the visible field and comes from the (indeterminate and undisclosed) space off-screen; positioning the filmmaker thus reinforces his/her role as infallible 'knower.' This tendency is especially true in documentary where the film is perceived as offering first-hand 'evidence' or 'facts.' More recently, there has been a shift toward self-reflexive documentary-making through which the filmmaker asks him or herself a number of ethical questions. These include: Is my approach one that centers transparency (using the camera to look outward at the world) in addition to reflexivity (using the camera to examine aspects of myself evoked by that world)? How can I make my research as non-voyeuristic and as respectful as possible? In asking myself these questions, I reject a positivist approach to research that assumes that the phenomenon called 'panhandling' and the people who panhandle exist independent of me. Instead, I acknowledge and will be critically aware of the fact that I am actively mediating, interpreting and defining events and people through my broader research and through my documentary in particular.

Communication

All documents are currently in English. Should participants feel more comfortable in French, I will conduct the interview in that language. In that event, I will also translate all the attached documents. These will be forwarded to the Research Ethics Board Office for approval before sending them to potential participants.

TEMPLATES

PRESENTATION TEXT

*My name is Suzanne Bouclin. I am writing a doctoral thesis on the formal and informal rules around panhandling. I have been involved in work, volunteering and research with street-involved people and people who panhandle for almost ten years. I am a lawyer and a graduate student at McGill University. I write to you in your capacity as ***. I am particularly interested in the perspective of service-providers from your adult drop-in centre because of its holistic, life management, and empowerment-based approach to issues around homelessness, poverty and social exclusion.*

I have two requests. First, I would like to invite you and your co-workers to participate in a filmed interview about your perceptions on how people who panhandle experience rules around panhandling. The data from these interviews will be used in my doctoral thesis. Part of my research includes the production of a short documentary on these rules, primarily from the perspective of people who panhandle but also from the perspective of people who work with people who panhandle. Footage from these interviews may thus also be used in the documentary. Second, because my goal is to centre the voices of people who panhandle, I would like to interview people who panhandle and potentially film individuals as they engage in panhandling. I am aware that people who panhandle are a diverse group with diverse experiences but that most face issues of unstable housing and homelessness. They are thus often transient with not fixed address. It can be challenging to maintain regular contact with people who panhandle. I request your (and your board's) permission to establish regular drop-in hours (such as 2:00-3:30) on a day that is convenient for your organization and that would not interfere with your programs and services. These regular drop-in hours would allow me to explain my research project to your clients who express interest in it.

My research question

The object of my research is to understand - from the perspective of people who panhandle and also from the perspective of people who work with people who panhandle - the formal and informal rules around panhandling. I am interested in how people who panhandle are subject to particular rules that do not apply to people who do not panhandle; how they can and do negotiate these rules; and how they can and do create their own rules when engaging in panhandling.

Why I believe this research is important

I hope to contribute to the work already being done by panhandlers, street-involved people and anti-poverty activists who are countering stereotypes and stigma surrounding life on the street. I believe that people who panhandle are agents able to highlight their own concerns. I believe that participating in research and in the production of a documentary film that centers their voices and experiences can be an empowering experience for people who panhandle. I also believe that my legal experience and analysis can complement and provide an additional perspective to their understanding of the rules around panhandling. This project can, I hope, be a source of information-sharing and mutual learning. Finally, I believe that this research and the documentary film that will emerge from it can be a valuable education tool. A documentary film for, by, and about people who panhandle can be

perceived as a form of community building that can potentially bring seemingly different people together - despite social, political, economic, cultural differences – to grapple with panhandling and broader issues of poverty and social exclusion.

The interviews with service-providers

As a service-providers, you will be asked if you feel comfortable having the interview recorded on film. If you agree, the interview will be recorded and transcribed. If you prefer not to be filmed, I will tape record our interview. Upon your request, the full transcript will be forwarded to you. Should you prefer not to be filmed or tape recorded, I will take detailed notes. In this case the processed notes will be made available to you as soon as possible. In either case, you reserve the right to delete any information which you consider to, in any way, endanger yourself, co-workers, employers or friends, family or associates. You would be entitled to a follow-up interview should you feel that clarification or additional information is required.

Interviews with Attendants

During my regular drop-in hours, I hope to meet people who are interested in my research. Should someone express interest in being involved in this project, I would first ascertain whether she or he is capable of providing informed consent. Interested attendants would be asked to sign a consent form or would provide verbal consent (witness present) indicating that they agree to have an interview with me and that the content of those interviews used as research materials for my thesis. The same procedure indicated above will be followed during interviews attendants. I understand the importance of stressing to any potential participant that they are under absolutely no obligation to agree to the interview. I will only interview attendants who are over 18 years of age. I will not interview people who do not have the capacity to provide informed consent to being interviewed.

Observing Attendants as they engage in panhandling

Part of my research will also include observing some attendants on the street as they panhandle. After assessing whether or not the potential participant can provide consent, I will request permission to film him or her while they engage in panhandling on the street. I will explain that the footage collected is intended as part of a documentary film and that it may be used for educational or other academic purposes in public or semi-public venues (such as schools, universities, community groups). Before filming takes place, the participant will be advised that informed consent is necessary. I will go over the consent form's content, review the purpose and aim of my research, and answer any they may have. I will explain that participation is voluntary; that there are no repercussions for non-participation or withdrawal and that s/he can stop the filming at any time. I will also explain that she /he can use a pseudonym. During filming, I will use a hand-held camera. My goal is to have participants as engaged with the project as possible and to offer them the opportunity to give me feedback or ask questions at any point during the interview and / or filming process. Moreover, during my weekly drop-in time, I will bring raw and edited footage to show it to the participants who were filmed and who are interested in providing feedback on the editing process.

RECRUITMENT FORM

This recruitment form is for you and other staff. If you and /or other staff would be interested in participating in this research, please fill it out. I will contact you as soon as possible to further discuss my research with you. Please find attached my research proposal, which has been approved by the McGill University's Research Ethics Board. Please feel free to ask me any questions. My phone number is 514 482-1432. I can be reached at: Suzanne.bouclin@mail.mcgill.ca. My supervisor's name is Professor Macdonald. He can be reached at Roderick.macdonald@mcgill.ca.

NAME: _____

CONTACT INFORMATION (If applicable):

Phone: _____
E-mail: _____
Cellular: _____

I PREFER TO BE CONTACTED BY (Please circle):

Phone
E-mail
Cellular

IT IS BEST TO CONTACT ME IN THE (Please circle):

Morning
Afternoon
Evening

INFORMED CONSENT

Researcher: *My name is* ***Suzanne Bouclin****. I am a graduate student at McGill University. My supervisor's name is* ***Professor Roderick A. Macdonald****.*

Project Description: *I am writing a doctoral thesis about how people who panhandle are subject to rules around panhandling but how they also create their own rules around panhandling. Part of my project is the production of a film. For my written thesis and for the film, I would like to interview people who panhandle and people who work with people who panhandle. I am required to obtain your* ***informed consent*** *before you can participate in an interview and before I can film you during your interactions on the street.*

What am I asking you to do? *You are being asked to agree to an interview and to have me film you during your interactions on the street. I will ask you questions about what you believe are the rules regarding panhandling, how you experience these rules, and whether you have your own rules around panhandling.*

Confidential and Anonymous: *Both the written and audiovisual parts of my thesis will be available to the public. I may present data at conferences or give information to other organizations working with street-involved people. I may also screen parts of my film at schools and universities and distribute copies to other service-providers, anti-poverty activists and academics. Should you agree to participate in this study, I will not refer to you at any point by your real name unless you tell me that I you prefer me to do so. If you wish to remain anonymous, you will be asked to choose a pseudonym. I will only refer to you by that name in both parts of my research. No one (except for me and my advisor) will have access to the interview transcripts or the interview tapes. You can review the written transcripts or the actual footage and tell me if there are parts you would like omitted (for instance, they may reveal sensitive information) for any reason. During our interview, I may take notes. These notes will also be confidential.*

No Obligation to Participate: *You can refuse to answer any question and you can end the interview or the filming at any time you choose.*

No Compensation: *There is no financial compensation for participation in this study.*

Questions/ Clarifications: *Informed consent is on-going and you should feel comfortable to ask me questions at any point before, during or after the interview or the filming. There can be some risks involved in participating in this research (unwanted publicity, negative feedback from your friends, backlash from police or regret for disclosing personal information, for instance). I want to be sure that you understand these risks and/or inconveniences and that you still feel that participating in this project is interesting to you.*

Please stop the interview or the filming at any time, offer feedback on the questions I ask, and ask me any questions that you might have any time during this research.

Statement of Consent:

By signing this form, I consent to Suzanne Bouclin ***interviewing and filming*** *me. I also consent that she uses what I say in this interview or in any of the footage for her written thesis and / or in the documentary on the rules around panhandling. I understand that she will not use my real name unless I tell her that she can. I understand that I do not have to consent to this interview and that I can stop the interview at any time. I understand that if I change my mind and no longer want to do the interview that she will not use anything that I say for her thesis and her documentary film. I understand that I will not be compensated for this interview. Suzanne Bouclin has read and explained this consent form to me and I consent to this interview.*

Please place a check in the boxes that apply:

Suzanne Bouclin has gone through this form and explained this consent form to me	
I have read and I understand this consent form	
I consent to have an interview with Suzanne Bouclin	
I consent to Suzanne Bouclin sitting with me, talking to me, and filming me while I engage in panhandling	
I consent to have a filmed interview with Suzanne Bouclin	
I consent to have footage of me used for Suzanne Bouclin's thesis and documentary	
I consent to having images of me in the form of footage show in public places including schools, universities and community organizations	
I consent to Suzanne Bouclin taking notes during our interview	
I will use a pseudonym during the interview *[Please refer to me as: _____*	

Name: (Printed) _____

Signature: _____

Date: _____

Interviewer

I have read and explained this consent form to the participant. I have answers all of their questions to the best of my ability.	

Name: ***Suzanne Bouclin***

VERBAL CONSENT SCRIPT

I would like to talk to you about my research on the rules around panhandling. I would like to have an interview with you about your experiences while panhandling. I will be filming you with a hand-held camera while you engage in panhandling. I will talk to you and ask you questions.

You can film me too, ask me questions anytime, or to make suggestions about what you think should be in the film. The footage might be part of a film that makes up part of my thesis. I may use it for educational purposes in schools or with community groups. Do you have any questions for me before I go on?

To interview you and / or to film you, I need your informed consent. There are some risks involved in participating: unwanted publicity, negative feedback from your friends, backlash from police and regret for disclosing personal information, to name a few. I will take strict precautions to limit these risks such as ensuring your anonymity, deleting particular names of police, and reminding you that you can always refuse to answer a question. I want to be sure that you adequately understand these risks and / or inconveniences and that you still feel that participating in this project would interest you. It's up to you to weigh the possible risks with the benefits.

Participation is totally voluntary and that there are no repercussions if you do not want to participate or if you withdrawal at any time. You may be worried about being recognized in the documentary or in my written thesis and that some of the information you share could get you into trouble with police or your friends. You can use a street name or pseudonym if you would like. I'll use that name throughout our interviews and the filming. If you would rather that your voice or face not be recognizable, I will make sure that your face is not on camera (or if it is, I will block it out during editing). I can also have your voice altered electronically during editing.

If you are interested in reading the transcripts from your interview or having me read the transcripts of your interview, I can meet you at your convenience. You can tell me if there are parts you would like removed or if there are things you would like to add. I can also show you any footage that I have taken of you, before or after it has been edited. You can tell me if you would like things taken out of the documentary or if you think there are things I have forgotten or things I should look into.

Do you have any questions for me? Do you understand what I have just explained? Do you consent to being interviewed by me? Do you consent to that interview being filmed? Do you consent to me sitting with you, talking to you, and filming you while you engage in panhandling? Do you consent to me using that footage and other things that you say for my written thesis and / or for my film? Do you consent to me using images of you or your words and showing those images of you in public places (schools, universities and community organizations)? Do you mind if I take notes while I talk to you or film you? Would you like to use a pseudonym? If so, what would you like it to be?

INTERVIEW GUIDE

Pseudonym / Name of participant: _____

Date: _____

Location: _____

Duration: _____

Background information

- Before we begin, do you have any questions for me?
- Can you tell me your (chosen) name and age?
- Can you tell me a bit about yourself?
- Where do you currently live?

The Street

- How much of your time would you say you spend on the street?
- Are there rules that you follow when on the street?
    - If so, who makes these rules? Where do they come from?
- Do you know of anyone who has ever broken a rule? What happened?

Panhandling

- What is panhandling?
- Are there rules that you follow when panhandling?
- Do you use the word panhandling?
- Do your clients panhandle?
    - Are there rules that they follow when panhandling? Where do they come from? Who makes these rules?
- What are your thoughts on panhandling?
- Do you have any thoughts on the problems faced by panhandlers in Ottawa?

Interactions on the Street

- Have you ever witnessed someone reacting to something you were doing on the street?
- How often do police officers talk to you? What do they talk to you about?

Thinking about change / Wrap up

- Is it possible to change the rules on the street?
- If so, what would you change?
    - If not, why not?
- Is there anything you would like to add?
- Do you have any questions for me?

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