

PERFORMING AN ANTI-HOMELESS CITY: A LEGAL GEOGRAPHY ANALYSIS*

Abstract

In the time of globalization, many cities, including the city of Victoria in British Columbia, have engaged in a development model fueled by investment, tourism, and economic immigration. This model requires public authorities to implement policies that contribute to making cities worthy of capital, tourists, and immigrants. Digital connectivity, real estate development, local amenities, and revitalized neighbourhoods are essential ingredients for economic development. In contrast, poverty and urban decay are not good for the way of life that politicians, entrepreneurs, tourists, and urbanites desire. Therefore, all visual manifestations of urban decay, including homelessness, should be restricted by law. In response to this development model, homeless people are forced to perform actions that are banned like building tent cities in parks. In doing so, homeless people challenge exclusionary legal and spatial orderings that support anti-homeless cities. This paper develops a performativity-based approach to legal geography to contribute to the debate about homelessness in Canada. Rather than focusing on the social right to housing, my argument in this paper zeroes in on the right to use urban space without being excluded. To this goal, I explore interactions between local authorities, homeless people, and other social actors in Victoria to explain that reiterated human interaction is the means to perform and rectify legal and spatial orderings that segregate homeless people. Thus, the performativity-based approach to legal geography developed throughout this paper illustrates not only how anti-homeless cities are socially performed, but also how they are collectively contested.

Keywords: Homelessness, Cities, Victoria, Legal geography, Performativity

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Résumé

À l'heure de la mondialisation, de nombreuses villes, dont la ville de Victoria en Colombie-Britannique, se sont engagées dans un modèle de développement axé sur les investissements, le tourisme et l'immigration économique. Ce modèle exige que les pouvoirs publics mettent en œuvre des politiques qui contribuent à rendre les villes aptes à recevoir capitaux, touristes et immigrants. La connectivité numérique, le développement immobilier, les équipements locaux et la revitalisation des quartiers sont des ingrédients essentiels du développement économique. À l'inverse, la pauvreté et la détérioration du milieu urbain ne sont pas propices au mode de vie souhaité par les politiciens, les entrepreneurs, les touristes et les citoyens. Par conséquent, toutes les manifestations visuelles de la détérioration urbaine, y compris l'itinérance, sont susceptibles d'être limitées par la loi. En réponse à ce modèle de développement, les personnes en situation d'itinérance sont contraintes d'accomplir des actions qui sont interdites, comme la construction de villes composées de tentes dans les parcs. Ce faisant, les individus en situation d'itinérance remettent en question les ordres juridiques et spatiaux d'exclusion soutenus par les villes anti-itinérance. Afin de contribuer au débat sur l'itinérance au Canada, cet article développe une approche de la géographie juridique basée sur la performativité. Plutôt que de se concentrer sur le droit social au logement, mon argument dans cet article se concentre sur le droit d'utiliser l'espace urbain sans être exclu. Pour atteindre ce but, j'explore les interactions entre les autorités locales, les individus sans domicile fixe et d'autres acteurs sociaux de Victoria pour expliquer que l'interaction humaine répétée est le moyen de performer et de rectifier les ordres juridiques et spatiaux qui ségrègent les personnes en situation d'itinérance. Ainsi, l'approche de la géographie juridique basée sur la performativité, développée tout au long de ce document, illustre non seulement la façon dont les villes anti-itinérance sont le fruit de la performativité sociale, mais aussi comment elles sont collectivement contestées.

Mots-clés : Itinérance, villes, Victoria, géographie juridique, performativité

INTRODUCTION

Centuries before globalization, one of the most extraordinary dialogues in the history of humankind took place in the city of Corinth. That dialogue has become the perfect example of an unlikely interaction within cities immersed in the development model dictated by globalization that are hostile towards homeless people (*i.e.*, anti-homeless cities). Legend has it that, on a solemn occasion, many great statesmen, generals, and philosophers from all over ancient Greece gathered together in Corinth to pay homage to a sovereign who was chosen as the commander-in-chief of the Greek armies. All the eminent Greek men paid tribute to the great king. All but one. When the king noticed that one person was missing, he and his followers started looking for the absentee across the city. After hours in search of the distinguished absentee, the king found the person he was looking for in the suburb *Craneion*. The absentee was a homeless old man who, at that moment, was lying on the ground and, apparently, basking on the sun. In his magnificence, the sovereign approached to the old man and asked whether he needed something. Then, the homeless old man replied: *yes, could you move yourself a little bit out of my sun?* And so the king respectfully did. In this short but telling story by Plutarch,¹ the sovereign and the homeless are Alexander the Great and Diogenes the Cynic. Their story has been interpreted from different

¹ Plutarch, *Plutarch's Lives, in Six Volumes: Translated from the Greek. with Notes, Explanatory and Critical, from Dacier and Others. to which is Prefix'd the Life of Plutarch, Written by Dryden*, vol. 4, Alexander (J. Williams 1769) <<http://find.gale.com.ezproxy.library.uvic.ca/ecco/infomark.do?&source=gale&prodId=ECCO&userGroupName=uvictoria&tabID=Too1&docId=CB128064825&type=multipage&contentSet=ECCOArticles&version=1.0&docLevel=FASCIMILE>> 240 accessed 16 December 2020.

perspectives,² yet legal geography has said nothing about it. The indifference of legal geography to the story of Alexander and Diogenes is surprising because their story is an archetype of how authorities and homeless people could perform urban space and law. Unfortunately, this archetypal interaction between authorities and homeless people is not likely to happen in the city of Victoria in British Columbia (BC), which became an anti-homeless city.

In this paper, from a performativity-based approach to legal geography, I will briefly analyze interactions between local authorities, homeless people, and other social actors in Victoria to explain that anti-homeless cities emerge from reiterated social interaction that performs law and space in an exclusionary way. In doing so, this approach will contribute to two outcomes that challenge the apparent disconnection between legal geography and the theory of performativity: 1) law and space will be understood as consequences of social interaction which materializes an ideological discourse that has turned Victoria into a city that is hostile towards homeless people; 2) homeless people will be acknowledged as individuals who perform law and urban space to collectively challenge anti-homeless cities. I will proceed as follows. In the first two sections, I will introduce the notions of legal geography and performativity to clarify the role of human interaction in consolidating social views of law and space, which will differentiate this paper from existing literature on the same topic. In the third section, I will illustrate how human interaction has been the means to perform legal and spatial orderings that segregate homeless people in

² The story of Alexander and Diogenes has been interpreted as a clash of moral values, as a political encounter between power, liberty, and wisdom, or as a model of respect, admiration, and humility. See: 16. P.R Bosman, 'King meets dog: the origin of the meeting between Alexander and Diogenes' [2007] 50 Acta Classica <www.jstor.org/stable/24592465> accessed 16 December 2020.

Victoria. This approach will contribute to the discussion of how anti-homeless cities are socially performed and how they are collectively contested.

PART 1. LEGAL GEOGRAPHY

Homelessness in Victoria and, especially, the conflict between homeless people and local authorities are not new to legal scholarship. Both topics have been analyzed from a variety of perspectives. The by-laws enacted by authorities of Victoria to control homeless people's conduct have been explored from a formalist approach to municipal law that simply describes them.³ Homelessness in Victoria has been contested from a critical law perspective that argues for a social right to housing.⁴ Anti-homeless by-laws have been challenged from a critical criminal law view.⁵ Wrongful discrimination against homeless people in Victoria has been asserted from an equality and discrimination standpoint.⁶ Court decisions in relevant cases like *Victoria (City) v. Adams*⁷

³ See: Kendra Milne, 'Municipal regulation of public spaces: effects on section 7 Charter Rights' [2006] 11 Appeal 1.

⁴ See: Scott McAlpine, 'More than wishful thinking: recent developments in recognizing the right to housing under S 7 of the Charter' [2017] 38 Windsor Rev Legal Soc issues 1; Margot Young, 'Rights, the Homeless, and Social Change: Reflections on *Victoria (City) v. Adams* (BCSC)' (2009) 164 BC Studies 103; Mark Zion, *What is a right to shelter in the desert of post-democracy? Tracking homeless narratives from the courtroom to dissensus* (LLM Dissertation, University of Victoria 2015).

⁵ See: Terry Skolnik, 'Rethinking homeless people's punishments' [2019] Rev. 22:1 Buff Crim L Rev 73; Marie-Ève Sylvestre, 'The redistributive potential of Section 7 of the Charter: incorporating socio-economic context in criminal law and in the adjudication of rights' [2011] 42:3 Ottawa L Rev 389.

⁶ See for instance: Terry Skolnik, 'Homeless and Unconstitutional Discrimination' [2019] 15 Journal of Law & Equality 69.

⁷ *Victoria (City) v. Adams* [2008] BCSC 1363 (CanLII) (Adams, BCSC).

have been analyzed from a law and economics position,⁸ and the philosophical foundations of those decisions have been explained from a private property law viewpoint.⁹ Nevertheless, once more, legal geography has not participated in the debate about homelessness in Victoria even though there is research on this topic that has been conducted from a critical urban geography angle.¹⁰ The reason for this lack of direct involvement could lie in the way court litigation on homelessness has taken place in Victoria and other Canadian cities. For instance, court litigation related to the topic of homelessness¹¹ has led to an important debate about a social right to housing in Canada, whereas a serious discussion about the right to use urban space has not taken place yet.¹² Thus, legal geography can contribute to the debate in a significant way.

Legal geography is an interdisciplinary stream of legal scholarship based on the premise that law and space are mutually dependent concepts revealing and shaping social arrangements, structures, and interactions.¹³ Legal geography emerged from the combined efforts of critical

⁸ See: Sarah Buhler, 'Cardboard boxes and invisible fences: homelessness and public space in City Victoria v. Adams' [2009] 27 Windsor YB Access Just 209.

⁹ See: Sarah Hamill, 'Private property rights and public responsibility: leaving room for the homeless' [2011] 30 Windsor Rev Legal issues 91.

¹⁰ See: Sean Grisdale, 'Cultivating exclusion: homelessness and the neoliberalization of public space in the 'City of Gardens'' (BA Hons Dissertation, University of Victoria 2014); Thayne Vernon Werdal, 'When you're homeless your friends are like your home': street involved youth friendship in Victoria, Canada' (MA Dissertation, University of Victoria 2013); John Franklin Koenig, 'Spaces of denial and the denial of place: the architectural geography of homelessness in Victoria, BC' (MA Dissertation, University of Victoria 2007).

¹¹ See: Adams, BCSC (n 7); *Victoria v. Adams* [2009] BCCA 563 (CanLII) (Adams, BCCA).

¹² This does not mean that there has been lack of attempts to bring this issue to court in Victoria City. See: *Johnston v Victoria (City)* [2010] BCSC 1707 (CanLII) (Johnston, BCSC); and *Johnston v Victoria (City)* [2010] BCCA 400 (CanLII) (Johnston, BCCA).

¹³ See: Andreas Philippopoulos-Mihalopoulos, 'And for law: why space cannot be understood without law' [2018] Sage-Law Culture and the Humanities 1, 8; Irus Braveman, 'Who's Afraid of Methodology?'

geographers and critical legal scholars to explain how social, economic and cultural factors influence human interaction, which provides meaning to legal and spatial orderings.¹⁴ The earlier studies on how law and geography are related date from the 1980s.¹⁵ After that date, legal geography has considerably developed, although the Library of Congress Dictionary did not have an entry for ‘law and geography’ as Nicholas Blomley asserted in a paper published in 2002.¹⁶ Nowadays, the website of Library of Congress Catalogue generates 363 search results for ‘legal geography’,¹⁷ which illustrates (in a very limited way) the development of this interdisciplinary approach to the study of law.

The emergence and development of legal geography has contributed to making clear that law is not a discursive manifestation of ideologies that creates reality and social life. Likewise, it

Advocating a Methodological Turn in Legal Geography’ in Irus Braveman, Nicholas Blomley, David Delayney, & Alexandre Kedar, eds, *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford Law Books 2014); David T. Goldberg, ‘Polluting the Body Politic’: Race and Urban Location’, in David Delaney, Richard T. Ford & Nicholas Blomley, eds., *The Legal Geographies Reader: Law, Power & Space* (Blackwell Publishers Ltd 2001), Mariana Valverde, ‘Time Thickens, Takes on Flesh’: Spatiotemporal Dynamics in Law’, in Irus Braveman, Nicholas Blomley, David Delayney, & Alexandre Kedar, eds, *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford Law Books, 2014).

¹⁴ Nicholas Blomley, ‘From what? To so what?: law and geography in retrospect’ in Jane Holder & Carolyn Harrison, eds, *Law and geography. Current legal issues*, vol 5 (Oxford University Press 2002) 22; David Delaney, Richard Ford & Nicholas Blomley, ‘Preface: where is law?’ in Nicholas Blomley, David Delaney & Richard Ford, eds, *The legal geographies reader: law, power, and space* (Blackwell 2001) xvii; Jane Holder & Carolyn Harrison, ‘Connecting law and geography’ in Jane Holder & Carolyn Harrison, eds, *Law and geography. Current legal issues*, vol 5 (Oxford University Press 2002) 4.

¹⁵ David Delaney, *The spatial, the legal and the pragmatics of world-making: nomospheric investigations* (Routledge 2010) 9.

¹⁶ Blomley, From what? (n 14) 17.

¹⁷Library of Congress Catalogue, ‘You searched: ALL: Legal geography’ [April 21 2021] <https://catalog.loc.gov/vwebv/search?searchArg=LEGAL+GEOGRAPHY&searchCode=GKEY%5E*&searchType=0&recCount=25&sk=en_US> accessed 21 April 2021.

has contributed to demonstrating that geography is not limited to the material segments of the world that we call space. Instead, from a legal geography perspective, law and space are about human interaction and social relations that occur when each individual and community “negotiates”¹⁸ its material presence with other entities and contributes to generating collective understandings of law and space. From this perspective, human interaction provides law and space with content while shaping them as mutually dependent categories.¹⁹ As such, human interaction is indispensable to create law and to generate social understandings of space.²⁰ Since law and space are mutually dependent categories based on human interaction, legal geography explores how law contributes to the expression of social understandings of space while making clear that space represents human interaction that enacts, follows and reforms the law.

The interdisciplinary and critical analysis that legal geography fosters is usually illustrated within the field of property law, where landlord’s rights to exclude others are based on specific social understandings that become visible thanks to visual indicators of what private and public property are, such as fences or signposts. However, the analysis developed from a legal geography perspective is not limited to the field of property law. It can also be developed within the spheres of constitutional, labour, tax, administrative, criminal, or health law. For example, in the current COVID-19 crisis, legal geography could help us better understand not only how human interaction contributes to reformulating our understandings of personal space, but also how that interaction consolidates legal regulations of social distancing in cities, like Vancouver, which issued fines to

¹⁸ Philippopoulos-Mihalopoulos, (n 13) 5.

¹⁹ Blomley, *From what?* (n 14) 29.

²⁰ *ibid* 22; David Delaney, *The Spatial* (n 15) 9.

people and establishments that do not follow social distancing rules to control the spread of COVID-19.²¹ This example illustrates two important premises of the approach to legal geography proposed in this paper: law does not create reality, and space is not frozen in time. In fact, both law and space are mutually dependent notions that evolve dynamically due of human interaction, which constantly shapes social understandings of each one. Thanks to human interaction, social understandings of law and space reflect evolving collective values which inspire what people call law and space within each period of the ongoing collective process that is social reality. This is why the notions of law and space are so closely interconnected that “it becomes hard to isolate the ‘legal’ from the ‘spatial’”²² in many cases, like in the example mentioned previously or in the literature that focuses on the effects of private and public property.

This view of legal geography contributes to explaining that existing critical legal literature on homelessness cannot be considered as legal geography research even though that literature acknowledges the connection between law and space. For instance, the existing critical legal research on homeless in Victoria either 1) advocates for the recognition of a social right to housing in Canada from a human rights standpoint;²³ 2) analyzes the philosophical foundations of important court decisions, like *Victoria v Adams*, from a private property law viewpoint;²⁴ or 3) challenges anti-homeless laws from a criminal law perspective.²⁵ Nevertheless, to these three

²¹ See: CBC News, ‘How do Vancouver’s ‘social distancing’ fines work?’ CBC News-British Columbia [25 March 2020] <<https://www.cbc.ca/news/canada/british-columbia/vancouver-social-distancing-penalties-state-of-emergency-1.5508543>> accessed 19 December 2020.

²² Blomley, From what? (n 14) 29.

²³ McAlpine (n 4); Young, Rights (n 4); Zion (n 4).

²⁴ Hamill (n 9).

²⁵ Skolnik, Rethinking, (n 5).

kinds of critical legal research, law still predates and creates social understandings of urban space and public property in cities like Victoria. Likewise, to these three kinds of critical legal research, space comprehends the material segments of the world where law is applied.

Although the existing critical legal literature on homelessness in Victoria acknowledges the relation between law and space, that literature only explains that relation from a legal perspective. Hence, from the existing critical legal literature's view on homelessness in Victoria, law still determines the nature and meaning of space since there is nothing in social life that escapes legal interpretation and regulation.²⁶ Similarly, the same critical legal literature does not consider how social understandings of space determine and challenge customary or legislated legal orders. For example, most of the critical legal research that advocates for a social right to housing or for a different understanding of public property presents law as a catalytic force used by neoliberal interests that determine the meaning of urban space based on patterns of inclusion and exclusion. Likewise, that kind of legal research still presents law as the centrepiece of a process that enacts reality, social relations, identities, and institutions.²⁷ As such, the only means to contest the reality, social relations, identities, and institutions created by law would be the official enactment of a norm or court decision that creates different realities, social relations, identities, and institutions in order to promote a social right to housing and a socially inclusive urban space in cities like Victoria.

²⁶ David Delaney, 'Beyond the word: law as a thing of this world' in Jane Holder & Carolyn Harrison, eds, *Law and geography. Current legal issues*, vol 5 (Oxford University Press 2002) 67.

²⁷ Delaney, Ford & Blomley, *Preface* (n 14) xv.

In opposition to the existing critical legal literature, a legal geography approach to the problem of homelessness in Victoria would argue, on the one hand, that space is not the stage where law is implemented²⁸ but a category that contributes to the social process of law, which is manifested in a plurality of legislated or customary legal orders that can coexist. On the other hand, this approach would argue that law is not only the enactment of norms in parliaments or the decision-making process in courts because law is also a part of daily life of diverse communities and individuals dealing with conflicts and striving for agreements. Therefore, legislated and customary laws emerge as outcomes of social processes facilitated by human interaction, which is essential to constitute, challenge, and transform social institutions that make diverse legal orders possible. For instance, in the case of societies with legislated legal orders, this process generally takes place in parliaments and courts, whereas, in the case of the *Gitksan* people, this process mainly occurs within the *Feast* or *Potlach*, according to their customary legal system.²⁹ To further the ideas introduced in this first section, in the second part, I will explain the relevance of the theory of performativity to the approach to legal geography proposed in this paper.

²⁸ Nicholas Blomley, 'Interpretive practices, the state and the locale', in Jennifer Wolch & Michael Dear, eds, *The power of geography: How territory shapes social life* (Unwin Hyman, 1989) 175.

²⁹ Val Napoleon, 'Living Together: Gitksan Legal Reasoning as a Foundation for Consent', in Jeremy Webber & Colin Macleod, eds, *Between Consenting Peoples: Political Community and the Meaning of Consent* (UBC Press 2010).

PART 2. PERFORMATIVITY

In this section, I will focus on the theory of performativity, which will contribute to explaining why human interaction is essential to the emergence of legal and spatial orderings that are the focus of legal geography. To begin with, the theory of performativity states that a continuous series of actions and statements, which constitute human interaction, facilitates, or causes social reality on a daily basis.³⁰ From the perspective of the theory of performativity, the reiteration of socially relevant acts³¹ and discourses determine the legal and spatial dimensions of social reality that legal geography analyzes. Therefore, mere human interaction is not enough to make legal and spatial orderings emerge. Instead, the performance of legal and spatial orderings requires reiterated human interaction within society.

John Langshaw Austin and Judith Butler are the two main representatives of the theory of performativity. Their books *How to do things with words* (1962)³² and *Gender trouble: feminism and the subversion of identity* (1990)³³ have significantly contributed to the development of the theory of performativity. Austin set the theory-of-performativity grounds by introducing the idea of performative statements.³⁴ This kind of statements do not describe an

³⁰ Jillian Cavanaugh, 'Performativity' in *Oxford bibliographies Anthropology* [2015] <<https://www.oxfordbibliographies.com/view/document/obo-9780199766567/obo-9780199766567-0114.xml>> para 1 accessed 23 January 2021.

³¹ Reuben Rose-Redwood & Michael Glass, 'Preface' in Michael R. Glass & Reuben Rose-Redwood, eds., *Performativity, Politics, and the Production of Social Space* (Routledge 2014) xiv.

³² John Langshaw Austin, *How to do things with words: the William James Lectures delivered at Harvard University in 1955* (Oxford University Press 1962).

³³ Judith Butler, *Gender trouble: feminism and the subversion of identity* (Routledge 1990).

³⁴ Elena Loizidou, *Judith Butler: ethics, law, politics* (Routledge 2007) 18.

action; they do the action.³⁵ To explain what performative statements are, Austin proposed a few examples; the most famous of them is: “I name this ship the *Queen Elizabeth*’ – as uttered when smashing the bottle against the stem.”³⁶ According to Austin, instead of reporting an action, the authority who uttered this statement in the appropriate circumstances performed the action of naming a ship as the *Queen Elizabeth*.³⁷ Performative statements are not measured in terms of accuracy because they are not intended to describe something. Their purpose is to effectively affect reality.

According to Austin, the specific conditions that determine the effectiveness of performative statements are: a) consensus about the effects of the statement; b) an individual designated to perform the statement; c) a defined procedure; d) collective conviction about the need to complete that procedure; e) the participants must act with conviction about the statement’s effects; and f) collective consensus about the need to conduct oneself according to those effects after the procedure is finished.³⁸ All these requirements stress the role of social conventions to make performative statements work, specially when such statements are produced by social authorities.

Austin’s emphasis on the roles of social conventions and authorities has raised criticism. First, Austin’s approach is perceived as conservative, traditionalist,³⁹ and (to some extent)

³⁵ Austin (n 32) 6.

³⁶ *ibid* 5.

³⁷ *ibid* 6.

³⁸ *ibid* 14-15.

³⁹ Rose-Redwood & Glass, ‘Introduction: geographies of performativity’ in Michael Glass & Reuben Rose-Redwood, eds, *Performativity, politics, and the production of social space* (Routledge 2014) 7.

opposed to the pluralistic view of law that is supported by the approach to legal geography proposed in this paper. Hence, Austin's position could imply that sovereign's performative statements align with predominant social conventions⁴⁰ because those conventions are implicit requirements for the effectiveness of performative statements. Furthermore, Austin's view of the role of an individual with exclusive competence to carry out performative statements implies that the norms sanctioned by the sovereign determine the legitimacy of social, economic, cultural, political, spatial, and legal orderings.⁴¹ In this sense, Austin's approach tends to align with traditional views of law as the centrepiece of social reality. In this context, one question arises: are sovereign performative statements enough to explain how social reality arises?⁴²

The answer is no. While Austin's seminal thesis focuses on the role of social conventions to validate performative statements, a different approach to performativity indicates that social reality, understandings, authority, and institutions arise from reiterated human interaction that is not limited to human communication validated by social conventions.⁴³ This approach was proposed by Judith Butler. Through her work on gender norms, Butler argues that identities and, specifically, gender identities are the result of normative processes of categorization that are initially conditioned by social structures but ultimately consolidated by reiterated social practices.⁴⁴ As Rose-Redwood argues: "Butler's key argument is that the performative act of doing

⁴⁰ Nicholas Blomley, 'Performing property: marking the world' [2013] 26:1 Can JL & Jur 23, 32.

⁴¹ *ibid.*

⁴² *ibid.* 2.

⁴³ Blomley, *Performing*, (n 40) 7.

⁴⁴ Butler, *Gender*, (n 33) 2; Judith Butler, *Bodies that matter* (Routledge 1993) 15.

is precisely what brings the performer into existence through the repetition of the deed.”⁴⁵ In other words, although the singular norms or performative statements that social authorities produce are important, those norms or statements are not enough to consolidate social understandings of identity. Thus, reiteration is essential to bring reality and identities into existence.

From Butler’s perspective, the process of identity consolidation is socially determined,⁴⁶ but it requires the active role of individual and collective agency. Individuals follow and observe the social norms that determine identity; nevertheless, the same individuals that act according to the social norms that determine identity have the option to change or rearticulate such norms by resisting them.⁴⁷ In other words, human agency that contributes to social reality goes beyond the human discourse that generates social norms by defining collective understandings of gender identities. Likewise, gender identities are not exclusively produced by social authorities because human agency and reiterative actions play a substantial role not only in the definition of identities, but also in the performance of social understandings of reality. From this view, individuals are neither passive actors that depend on the performative statements uttered by social authorities, nor uncritical subjects that follow the norms that authorities dictate according to social conventions. Instead, through reiterative interaction, individuals become decision makers and exercise the power to define and rearticulate social norms and understandings that affect their identities.⁴⁸

⁴⁵ Rose-Redwood & Glass, *Introduction* (n 39) 8.

⁴⁶ *ibid.*

⁴⁷ Butler, *Bodies* (n 44) 15.

⁴⁸ Loizidou (n 34) 4; Rose-Redwood & Glass, *Introduction* (n 39) 8-9; Butler, *Bodies* (n 44) 15.

Austin's and Butler's positions on performativity influence critical human geography, inspiring the approach to legal geography proposed in this paper. Since the publication of *Gender trouble: feminism and the subversion of identity*, the theory of performativity has contributed to explaining how social understandings emerge and are performed. Based on Butler's approach to performativity, feminist geographers have explained that social space is not exclusively the result of norms enacted by social authorities, in a similar way to gender identities.⁴⁹ This point is relevant to the approach to legal geography presented in this paper because it makes clear that social conventions and norms that integrate law do not determine social reality and social understandings of space. Consequently, reiterated human interaction contributes to defining and consolidating social norms and understandings of space. At the same time, reiterated human interaction contributes to re-articulating the social norms that affect social understandings of space. The same could be said about law because reiterated human interaction contributes to re-articulating the social conventions and contexts that determine legal orderings.

Like Austin's sovereign approach to performativity, Butler's approach does not deny the relevance of the discursive and normative spheres that affect legal and spatial orderings. However, Butler's approach to performativity differs from Austin's approach in the role of human interaction to perform space and law. As Loizidou would explain, according to Austin, performative statements intentionally uttered by an authorized person have a relevant social impact and affect reality. In contrast, according to Butler, discourse and ideology have a relevant social impact only through reiterated human actions that materialize them; nonetheless,

⁴⁹ Rose-Redwood & Glass, *Introduction* (n 39) 4.

discourse and ideology are not immutable because the same human actions can resist and re-articulate them.⁵⁰

To better illustrate and summarize all these differences between Austin's and Butler's approaches to performativity, I will dissect the story of Alexander and Diogenes that was mentioned in the introduction. From Austin's sovereign approach, Alexander is the only person with authority to utter a performative statement (or a legal norm). In the story, Alexander simply asks Diogenes whether there is something that Diogenes needs. This means that Alexander does not assert anything that could alter reality. Therefore, there is no performative action in the story. In contrast, from Butler's political approach, human interaction plays a central point in the process of defining and consolidating social reality and social norms. Based on this approach, the story of Alexander and Diogenes is a perfect example of social performativity because of four reasons. First, Alexander reasserts his sovereignty by acting as a sovereign when he talks to Diogenes.⁵¹ Second, although Alexander does not utter a performative statement, his question to Diogenes is asked in front of his court and implies that the sovereign has the legal power to change reality by assisting people in need *only if he wishes to*. Third, Diogenes understands the social, legal, and discursive context in which Alexander raises his question and replies with a request that alters the socio-legal norms that enable the sovereign to act at his will: *could you move yourself a little bit out of my sun?*⁵² Fourth, Alexander acts exactly as Diogenes demands, and, by doing so, reality is performed in a way that challenges existing socio-legal norms. Therefore, from Butler's

⁵⁰ Loizidou (n 34) 41-42.

⁵¹ Butler asserts that: '[t]here is no power that acts, but only a reiterated acting that is power in its persistence and instability.' Butler, *Bodies* (n 44) 9.

⁵² cf Plutarch (n 1).

political approach, this seminal or archetypal episode can inspire future human interactions to consolidate a new socio-legal context in which the sovereign *must* not only assist people in need, but also respect their fair demands and abide by their rights. To this new context, reiteration is essential.

This short review of the story of Alexander and Diogenes summarizes and illustrates one of the main points that I have explored in the first two sections: reiterated human interaction constitutes, challenges, and transforms our social, political, economic, cultural, spatial, and legal orderings. In the next section, I will delve into the role of human interaction in consolidating and contesting anti-homeless cities like Victoria.

PART 3. FROM CORINTH TO VICTORIA

The performativity-based framework of legal geography introduced in sections one and two is instrumental to determine how reiterated human interactions affect legal and spatial orderings to consolidate and transform ideological discourses and social relations. As I will explain in this section, reiterated human interactions play a substantial role in shaping the social understandings of law and space that inspire anti-homeless cities. To this purpose, I will contextually focus on some important episodes that illustrate how the city of Victoria has adopted a hostile approach to the issue homelessness in the last decades.

In the era of globalization, cities around the world, including Victoria, have engaged in a development model fueled by investment, tourism, and economic immigration. The success of such model requires cities to implement public policies that contribute to commodifying urban space to attract and retain capital, tourists, and economic immigrants. Those policies are intended

to reproduce the structures that fuel this development model and to allow cities respond the problems that capital accumulation entails.⁵³ In this context, those policies help cities to demonstrate that they can secure the urban and economic landscapes that investors, tourists and economic immigrants desire.⁵⁴ Thus, those policies have geographical and social impacts⁵⁵ because they contribute to beautifying cities and preserving the purity of urban space,⁵⁶ which is a notion determined by dominant discourse about socially acceptable uses of that space.⁵⁷

In the case of Victoria, the purity of urban space is determined by a dominant discourse that portrays it as a touristic city.⁵⁸ To maintain the purity of urban space, Victoria applies policies that: 1) preserve historical buildings and parks; 2) revitalize abandoned infrastructure in downtown; 3) protect natural areas; 4) promote visits to attractions like Butchart Gardens; and 5) control the conduct of people whose presence and modes of life are inconsistent with acceptable uses of urban space (i.e. homeless people).⁵⁹ These policies operate to make visible all Victoria's

⁵³ Michael Dear & Jennifer Wolch, 'How territory shapes social life', in Jennifer Wolch & Michael Dear, eds, *The power of geography: How territory shapes social life* (Boston: Unwin Hyman, 1989) 3, 5 & 7.

⁵⁴ Don Mitchell, 'The annihilation of space by law: the roots and implications of anti-homeless laws in the United States' in Nicholas Blomley, David Delaney & Richard Ford, eds, *The legal geographies reader: law, power, and space* (Oxford: Blackwell, 2001) 14.

⁵⁵ Dear & Wolch (n 53) 5-6.

⁵⁶ Tim Cresswell, *In place/Out of place: geography, ideology and transgression* (Minneapolis: University of Minnesota Press, 1996) 59, quoted by Mitchell (n 54) 16.

⁵⁷ Buhler (n 8) 216.

⁵⁸ Sean Grisdale (n 10) 3, 14; Koenig (n 10) 14, 113, 114, 119-120, 125.

⁵⁹ Vancouver Island public Interest Research Group-VIPIRG & Victoria Coalition Against Poverty-VCAP, 'The people's plan for Pandora. Research results: statistics and notes from surveys, interviews and focus groups' (Victoria 2011) <<https://vcapvictoria.files.wordpress.com/2011/03/peoples-plan-survey-results-report.pdf>> 2 accessed 1 April 2021; Grisdale (n 10) 3; Koenig (n 10) 114, 119, 122-123, 145, 147; The Corporation of the City of Victoria, by-law No 07-059, *Parks Regulation By-law* No 07-059, ss 13(1), (2),

attractions while keeping out of sight signs of urban decay. Whereas they benefit tourists, investors and the public, these policies persistently impact homeless people, who neither fit within the public understanding of urban space, nor within the Canadian property rights system.

Law has been instrumental to preserve the purity of Victoria's urban space and contribute to an anti-homeless city. In Particular, the Canadian legal understanding of public property contributes to by-laws, evictions, and court decisions that specifically affect homeless people. The Canadian legal understanding of public property is based on a private property paradigm, which highlights the right to exclude others.⁶⁰ Such a paradigm was consolidated in pre-*Charter*⁶¹ and post-*Charter*⁶² Supreme Court decisions, where the Court asserted that governments hold public property, like parks and streets, for the benefit of the community – a criterion that was reiterated in *Victoria v Adams*.⁶³ Nevertheless, in those Supreme Court decisions, the Court did not identify essential differences in the natures of public property, privately owned property and government owned property, as happens in other countries like France.⁶⁴

This legal (mis)conception about the private nature of public property has contributed to performing Victoria as an anti-homeless city in three ways. First, this legal (mis)conception allows

14(1), (2), 16(1) (*By-law* No 07-059) (consolidated on September 22, 2020 up to By-law No 20-102); The Corporation of the City of Victoria, by-law No 92-84, *Streets and Traffic Regulation By-law* No 92-84, ss 73(1), 74(1) (*By-law* No 92-84) (repealed by The Corporation of the City of Victoria, by-law No 09-079, *Streets and Traffic Regulation By-law* No 09-079 s 123).

⁶⁰ Hamill (n 9) 98.

⁶¹ *City of Vancouver v. Burchill* [1932] CanLII 29 (SCC), [1932] SCR 620.

⁶² *Committee for the Commonwealth of Canada v. Canada* [1991] CanLII 119 (SCC) [1991] 1 SCR 139.

⁶³ ‘...Public properties are held for the benefit of the public, which includes the homeless.’ Adams, BCSC (n 7) [131].

⁶⁴ Hamill, (n 9) 100, 104.

local authorities like the Corporation of the City of Victoria to exercise private owners' rights and enact regulations – like the repealed *Parks Regulation By-law No. 07-059* –⁶⁵ to reduce the urban space that homeless people use and to restrict how they use it. Second, according to Hamill, this legal (mis)conception does not contribute to officially and rationally recognizing that “the right that an individual citizen has to public property must be the right not to be excluded.”⁶⁶ Third, this legal (mis)conception promotes incorrect public perceptions about homeless people, who are seen as actors who want to appropriate or *colonize* public urban space.⁶⁷ This false perception contributes to reaffirming social prejudice against homeless people in Victoria.

Approximately 1,525 people experience homelessness⁶⁸ in Victoria. Most of the public services that they receive are provided by public or non-government agencies in the downtown

⁶⁵ cf (n 59).

⁶⁶ Hamill (n 9) 100, 110.

⁶⁷ *ibid* 97. In Adams, BCSC, Judge Ross quotes the following revealing statement by the City of Victoria:

‘If the homeless can camp in public places, can anyone? How is the City to differentiate? Are the truly homeless to be issued free passes? What is to prevent a family camping trip stopping at a park near you? What is to stop the overnight grad party or the prostitute’s tent? Are all our beaches to be open to addicts who may pass out in the sand where their syringes will fall? Is public land to be allocated and partitioned as so many campsites? Where will businesses go and who will pay taxes when the tourists willing to pay for accommodation are gone? What happens when the public land is all parceled out? If camping is permitted, are foundations and generators and fireplaces far behind? Who will be responsible for safety when danger is courted by such conduct? Who will be liable if unsafe accommodation in a City park results in a fire causing personal injury and property damage? How will the spread of bacterial or viral diseases due to poor sanitation and hygiene be prevented? Are City of Victoria taxpayers to pay for the provision of tents and amenities? What will the City need to spend to protect its parks when they are colonized?’ Adams, BCSC (n 7) [187].

⁶⁸ Greater Victoria Coalition to End Homelessness et al, *Everyone counts: 2018 Greater Victoria point-in-time count. A community survey of people experiencing homelessness in Greater Victoria* (2018). <https://www.crd.bc.ca/docs/default-source/housing-pdf/housing-planning-and-programs/2018-pit-count---community-report---final---july-19.pdf?sfvrsn=a92ee2ca_2> 14 accessed 19 March 2021; City of

area. Nevertheless, social prejudice fueled by the official discourse has motivated the Downton Victoria Business Association to persistently campaign against the establishment of social housing projects in the downtown area due to the *negative externalities* that accompany homeless people. According to Koenig, in 2005, the Association lobbied to pass a by-law to “prevent social service agencies from operating in the downtown area.”⁶⁹ Those kinds of private initiatives are not new in Victoria’s downtown. For example, in 1994, business owners from 600-Block Yates Street area have continually requested City Hall to uproot some benches, planters, and a public phone used mainly by homeless people. According to local merchants and a business liaison officer, that public phone and those pieces of street furniture were not only facilitating gatherings of “criminals,” but also engaging in criminal activities as well as causing sense of public insecurity in the area. To make disappear what they called “crime” and “criminals,” business owners from the 600-Block Yates Street area and Victoria’s Downtown Advisory Committee believed that it was worth trying to remove those pieces of street furniture.⁷⁰ In 1995, business owners from 700-Block Yates Street adopted a hired private security services implementing a zero-tolerance approach to

Victoria, *Victoria housing strategy 2016-2025, phase two: 2019-2022* (2019) <https://www.victoria.ca/assets/Departments/Planning~Development/Community~Planning/Housing~Strategy/The%20Victoria%20Housing%20Strategy_Phase%20Two_FINAL%20Web.pdf> 21 accessed 14 March 2021.

⁶⁹ Koenig (n 10) 104-105.

⁷⁰ Carla Wilson, ‘Strip crime generators off area-committee’ (June 18, 1994) *Times-Colonist*, <<http://search.proquest.com.ezproxy.library.uvic.ca/historical-newspapers/june-18-1994-page-14-76/docview/2264910147/se-2?accountid=14846>> accessed 3 March 2021; Koenig (n 10) 153.

get rid of “loitering youth, drug traffickers, panhandlers and bongo-drum players who scare away customers.”⁷¹

These few examples presented above illustrate how the existing legal framework and public discourse tolerate private initiatives that contribute to performing an anti-homeless city in Victoria. Unfortunately, since human interaction determines the content of policies and law, City Council has reiteratedly implemented a series of public policies and by-laws with a similar harmful tone. The next nine relevant cases illustrate the public policies implemented in Victoria to this day:

1. In 1997, Victoria enacted a by-law “making it illegal to “obstruct a sidewalk [in the downtown core] by squatting, kneeling, sitting, or lying down on it between the hours of 8:00 a.m. and 9 p.m.” (Streets and Traffic Bylaw: sec. 75.1 (2) as per Amendment Bylaw No. 37).”⁷²

2. In 1999, Victoria enacted a by-law “prohibiting panhandling at any location before 09:00 and after 21:00, and at any time within six meters of an ATM, a bus stop, a bus shelter, parking-ticket dispensing machines, or an entrance to a financial institution or liquor store (Streets and Traffic Bylaw: sec. 75.3 as per Amendment Bylaw No. 42).”⁷³

⁷¹ Sandra McCulloch, ‘Trouble moves, muscle follows’ (October 12, 1995) *Times-Colonist*, <<http://search.proquest.com.ezproxy.library.uvic.ca/newspapers/trouble-moves-muscle-follows-keep-sidewalks-safe/docview/345584534/se-2?accountid=14846>> accessed 3 March 2021; Carla Wilson, ‘Yates street retail trade Victoria business vandalism street people security’ (October 13, 1995) *Times-Colonist*, <<http://search.proquest.com.ezproxy.library.uvic.ca/newspapers/yates-street-retail-trade-victoria-business/docview/345581083/se-2?accountid=14846>> accessed 3 March 2021. For a thorough description of the events on Yates Street area, see: Koenig (n 10) 158-159.

⁷² Koenig (n 10) 159-160.

⁷³ *ibid* 161.

3. In 1999, Victoria spent Can\$ 2.2 million to revitalize Douglas Street area. The project included the replacement of street furniture used by homeless people to sleep with benches that included arm-rests to deter lounging or sleeping.⁷⁴

4. In 2001, Victoria evicted 50 homeless people from a building on Discovery Street that was leased by anti-poverty activist Ron Lund. The by-law enforcement officer justified the eviction arguing that the building was an unlicensed homeless shelter. Some of the residents moved to the City Hall breezeway and were evicted again for a festival.⁷⁵

5. In October 2005, Victoria enforced *by-laws 07-059 and 92-84* to evict a group of homeless people from Cridge Park.⁷⁶ *By-law No. 07-059* forbade people from loitering or taking up a temporary abode on any park.⁷⁷ This eviction led to the *Adams* case in BC courts. Whereas the by-laws were challenged because they threatened the homeless campers' constitutional right to life,⁷⁸ the City argued that the by-laws were essential to allow people benefit from parks.⁷⁹ Although the by-laws were repealed during litigation,⁸⁰ the BC Supreme Court decided that they

⁷⁴ *ibid* 150, 154.

⁷⁵ For a complete description, see: Koenig (n 10) 148, who refers to reports written by: Gerard Young, 'Spiral Island family clears out: Evicted from shelter, most set up shop at City Hall breezeway' (December 1, 2001) *Times Colonist*, A1-A2; Gerard Young, 'Safety issues spark over for eviction of street kids' (November 29, 2001) *Times Colonist*, B1-B2; Gerard Young, 'Nowhere to go: City of Victoria wants to evict homeless from unlicensed shelter.' (November 28, 2001), *Times Colonist*, B1, B4; Gerard Young, 'Court action considered against campers' (December 4, 2001), *Times Colonist*, A1-A2; Sandra McCulloch, 'City Hall campers clear out: injunction has desired effect but group might resurface elsewhere' (December 7, 2001), *Times Colonist*, B1, B4.

⁷⁶ Milne (n 3) 1.

⁷⁷ *cf* (n 59).

⁷⁸ *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11, s. 7.*

⁷⁹ Young (n 4) 105.

⁸⁰ Sylvestre (n 5) 404-405.

violated the campers' right to life.⁸¹ Afterwards, the BC Court of Appeal clarified that the BC Supreme Court decision does not impose "obligations on the City to provide adequate alternative shelter...The decision only requires the City to refrain from legislating in a manner that interferes with the s. 7 rights of the homeless."⁸²

6. In February 2009, during the *Adams* case litigation, Victoria replaced *By-law 07-059* with a new Parks Regulation By-law⁸³ that created a day-time shelter ban from 7:00 a.m. to 7:00 p.m.⁸⁴ By enforcing this by-law, Victoria has been "confiscating any shelter materials that are left up outside of these hours, arresting individuals with tents still standing after 7:00 am."⁸⁵ The day-time ban created by *By-law 07-059* has been endorsed by BC courts in unsuccessful subsequent court cases to revoke it.⁸⁶

7. To contribute to a resident-and-business-led initiative to beautify Pandora Avenue,⁸⁷ the City of Victoria passed *the Street and Traffic Bylaw, Amendment Bylaw No. 1*.⁸⁸ This by-law aimed to discourage loitering, panhandling, and camping on Pandora at night; and so, *Section 2*

⁸¹ *Adams*, BCSC (n 7) [239].

⁸² *Adams*, BCCA (n 11) [95].

⁸³ The Corporation of the City of Victoria, by-law No 09-074, *Parks Regulation By-law, Amendment By-Law (No.5)* (By-law 09-074) (Included within By-law No 07-059, which was consolidated on September 22, 2020 up to Bylaw No 20-102).

⁸⁴ By-law No 07-059 (n 59) s. 16(A).

⁸⁵ Andrew MacLeod, 'Tent Camping Homeless to Politicians: Face Facts!' Tyee, 16 June 2009. Online: <<http://theyee.ca/News/2000/06/i6/VictoriaTentCamping/index.html>>, quoted by Young (n 4) 112.

⁸⁶ Johnston, BCSC (n 12); Johnston, BCCA (n 12).

⁸⁷ VIPIRG & VCAP, (n 59) 1, 2, 8.

⁸⁸ The Corporation of the City of Victoria, by-law No 10-061, *Street and Traffic Bylaw, Amendment Bylaw (No. 1)* (By-law 10-061).

of this amendment forbade people from occupying a median by standing, walking, squatting, kneeling, sitting, or lying down on it from 7:00 p.m. to 7:00 a.m.

8. *By-law 07-059* is still applied in Victoria. *Section 16A* regulates overnight shelters as well as determines parks, schedules, and areas in which overnight shelters are not allowed. Overnight shelters are not banned in non-environmentally sensitive areas of Beacon Hill Park.⁸⁹ In October 2020, local organizations placed two showers and two tent units that were serving as a warming shelter as well as for providing food, water, and harm reduction resources for homeless people in Beacon Hill Park.⁹⁰ Given the benefits of the care tents and showers, many people reached out to Victoria's Mayor and councillors to support the community benefiting from those structures. However, on November 8, 2020, Victoria's Mayor argued that those structures should be removed according to 1882 Beacon Hill Trust.⁹¹ Consequently, on November 20, 2020, by-law officers removed the two tent units and the two showers. This by-law enforcement action provoked negative social reactions and critiques from the city councillor who was leading

⁸⁹ *By-law No 07-059* (n 59) s. 16A. For additional information on the progressive reduction of places open to camping in Victoria, including debates and experiences connected to Beacon Hill Park, see: Grisdale, (n 10) 42-47.

⁹⁰Katie DeRosa, 'Bylaw officers remove large support tent, showers from Beacon Hill Park' Times Colonist [November 21, 2020] <<https://www.timescolonist.com/news/local/bylaw-officers-remove-large-support-tent-showers-from-beacon-hill-park-1.24243306>> accessed 16 January 2021; CTV News Vancouver Island, 'City removes showers, homeless structures from Victoria park' CTV News Vancouver Island [November 20, 2020] <https://vancouverisland.ctvnews.ca/city-removes-showers-homeless-structures-from-victoria-park-1.5198057>> accessed 16 January 2021.

⁹¹Lisa Helps, 'Showers, community care tent, the city's role and next steps towards housing – Mayor's Sunday email' Lisa Helps – Victoria Mayor Blog [November 8, 2020] <<https://lisahelpsvictoria.ca/2020/11/08/showers-community-care-tent-the-citys-role-and-next-steps-towards-housing-mayors-sunday-email-november-8-2020/>> accessed 16 January 2021.

negotiations with homeless people benefitting from those structures and local organizations supporting them.⁹²

9. Since many homeless people were not able to find in-door shelter during the COVID-19 crisis, the City of Victoria passed the *Parks Regulation Bylaw, Amendment Bylaw No. 10* on September 14, 2020.⁹³ This amendment included a new Section 16B into the *Parks Regulation By-law 07-059* in order to temporarily allow day-time shelters. *Section 16B* was recently repealed, and day-time sheltering is not allowed since May 1, 2021.⁹⁴

These nine cases illustrate how dominant discourse has determined the social understanding of public urban space in Victoria. This public understanding has been reinforced by reiterated policies, by-laws and private actions that contribute to performing an anti-homeless public urban space. Such an anti-homeless space seems to be supported by a (mis)conception about the legal nature of public property, which has not been amended by Canadian courts. Within this context, Victoria continues to regulate its public urban space in a way that restricts homeless people, while it tends to benefit the interests of the majority of the population. Instead of

⁹²Adam van der Zwan, 'City of Victoria dismantles showers for homeless campers at Beacon Hill Park' CBC British Columbia [November 21, 2020] <<https://www.cbc.ca/news/canada/british-columbia/beacon-hill-park-showers-1.5811064>> accessed 16 January 2021; Brishti Basu, 'Victoria bylaw officers dismantle community tent at Beacon Hill Park' Victoria Buzz [November 20, 2020] <<https://www.victoriabuzz.com/2020/11/victoria-bylaw-officers-police-dismantle-community-care-tent-at-beacon-hill-park/>> accessed 16 January 2021.

⁹³The Corporation of the City of Victoria, by-law No 20-102, *Parks Regulation By-law, Amendment Bylaw (No.10)* (By-law 20-102).

⁹⁴City of Victoria, 'Sheltering in parks' <<https://www.victoria.ca/EN/main/city/bylaw-enforcement/sheltering-in-parks.html>> accessed 30 April 2021; The Corporation of the City of Victoria, by-law No 21-049, *Parks Regulation By-law, Amendment Bylaw (No.15)* (By-law 21-049).

protecting the homeless, Victoria's policies and by-laws make them less visible to preserve the purity of the space. As Hamill illustrates, "for a person sleeping uncovered in a park is not always immediately noticeable. People are much more visible when they have built a temporary shelter to sleep under."⁹⁵

While the above mentioned cases illustrate how the actions of authorities and dominant groups contribute to performing an anti-homeless city, those cases also illustrate how homeless people have resisted the dominant discourse as well as the official legal and spatial orderings. Each time that a homeless person "violates" any of Victoria's by-laws, that person demonstrates that the Canadian legal view of public property is harmful to people who do not have a place of their own. At the same time, that homeless person performs public urban space in a way that makes visible the hardships of Victoria's have-nots. Similarly, every time that Victoria's homeless people challenge local policies in court, they contribute to make the public notice the inadequacy of the current legal and spatial orders. By doing so, perhaps homeless people will achieve a recognition of a social right to housing in the long term. Nevertheless, in so doing, they help us understand that the official discourse and understanding of urban space must change in the short term. Recent statements from local authorities suggest that the city of Victoria could contribute to this goal.⁹⁶ Meanwhile, homeless people keep performing urban space in a way that challenges the dominant discourse in Victoria. In doing so, homeless people strive to help society understand

⁹⁵ Hamill (n 9) 113.

⁹⁶ Lisa Helps, *Lisa Helps: Don't let the challenge of homelessness divide us* Times Colonist [June 20, 2020] <<https://www.timescolonist.com/opinion/op-ed/lisa-helps-don-t-let-challenge-of-homelessness-divide-us-1.24156809>> accessed 11 April 2021.

that the most basic right that person has to urban space is the right to use it without being excluded.⁹⁷

CONCLUSIONS

In this paper, I have explored how a performativity-based approach to legal geography is instrumental to explain the connection between human interaction, law, and space in the context of anti-homeless cities. I have followed this approach to illustrate that law creates neither space, nor reality. Instead, it is reiterated human interaction the essential component for creating, consolidating, and changing legal and spatial orderings of our societies. Hence, the performativity-based approach to legal geography proposed in this paper contributes to challenging legal formalist understandings of law and to better appreciate the social processes that provide social space with meaning.

By exploring legal geography from a perspective based on the theory of performativity, this paper has provided arguments to answer, in a more integral way, to the question *what is an anti-homeless city?* A legal formalist perspective would assert that an anti-homeless city is a jurisdiction where authorities apply legal norms to either reduce the urban space that homeless people use, or to restrict how those people use that space. In contrast to formalist standpoints, this paper proposes a legal geography answer based on the theory of performativity to stress that an anti-homeless city is not a jurisdiction that is determined by the legislation hostile towards

⁹⁷ For a property-based view of the right not to be excluded, which has not been developed in this paper, see: Crawford Brough Macpherson, 'The meaning of property' in C.B. Macpherson ed., *Property: mainstream and critical positions* (Toronto University Press 1978); Hamill (n 9).

homeless people that is applied within its territory. In fact, the legal geography answer proposed in this paper makes clear that an anti-homeless city is the result of reiterated human interaction that creates and consolidates legal and spatial orderings in a way that restricts homeless people's rights to use urban space and to benefit from that space. As such, the answer proposed in this paper contributes to explaining how anti-homeless cities, like the city of Victoria, are performed, who performs those cities, and how those cities are contested by people striving to perform inclusive cities in the days of globalization, as Alexander and Diogenes did more than 2,000 years ago.

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