SHARING THE SIDEWALK

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ABSTRACT

This paper imagines different users of the sidewalk, with an emphasis on religious women, to explore the ways in which individuals and communities shape discourse in contemporary Canada. While approaches to "competing rights" often take the form of Charter modification, legislation, or litigation, the fragile intersection of faith and gender can be described through simple "sidewalk stories" of acknowledgement and interaction.

I. THE SIDEWALK MOMENT

Imagine a sidewalk in a major cosmopolitan Canadian city. As you walk along, with your list of errands in hand, you see someone heading towards you. You don't know the person, where she comes from or where she is going, and she doesn't know you. You step to the right, as does she, and you pass each other – having avoided eye contact and collision. You have shared the sidewalk, you have acknowledged each other, you have followed well-known norms of conduct, and nothing about your purpose, direction, or trajectory has been affected by the encounter. This is co-existence in the absence of conflict, controversy or even conversation.

And yet, many sidewalk moments go beyond silent co-existence. Risks of collision and competition for the space are present; so are potential promises of conversation and concern. The range of possible sidewalk encounters – shaped by the identities of the sidewalk users, the nature and norms of the neighbourhood, and the character of the sidewalk itself – gives rise to various ways to govern the co-existence of sidewalk users. We might focus on the possibility of conflict, and create general principles or specific rules of resolution. We might imagine ways to communicate norms of conduct such that controversy is avoided. Or we might collect stories of encounters in order to construct a narrative of sidewalk moments.

Models of governance embodied by these responses are reflected in any discussion of "competing rights". Charters or Codes are obvious structures for grounding the principles relevant to resolving competition. Specific legislation or educational policies may be even more effective at targeting particular kinds of conflict. This paper will suggest that a collection of stories and behaviours is an equally significant approach. Rather than imagining rules that govern the "sidewalk moment" of rights that challenge each other to a duel, this approach is committed to a careful observation of the interactions – of rights, interests, identities, narratives, and real people – in the limited space that a sidewalk provides. Social policy may be constructed "on the ground", both figuratively and literally. The sidewalk moment helps us engage in that construction project.

II. SIDEWALK VARIATIONS

1. REDEFINING THE SIDEWALK

The metaphor of the sidewalk moment reminds us that some basic rules or minimal ordering are required to govern the interaction of pedestrians going in opposite directions. The norm that might tell us to move to the right in order to avoid collision gives us only a skeletal picture of human relations and interaction. The sidewalk itself in this image is neutral background against which two similar users balance each other. But this is an analysis of competing rights untouched by the richness of sidewalks in real neighbourhoods. Sidewalks are places to play hopscotch, to sleep, to put out a hat for money, to train a dog, to operate a snow removal truck, or to learn how to ride a bicycle. They are collective sites of many intersecting interactions.

In Outremont, in Montreal, on Saturday mornings, the sidewalk is both a public path for some people and an

extension of their homes for others. Religious fiction allows the Hasidic Jewish residents of Outremont to treat all space demarcated by wires or strings as domestic or private (Van Praagh, 1996; Chateauvert, et al., 2004; Anctil, et al., 1999). From a practical viewpoint, this means that baby carriages can be pushed down the sidewalk on the Sabbath, their owners reassured by the overhead wires that the ground is deemed domestic for religious reasons. Thus, the shared sidewalk is not only a potential site for the encounter of a deeply religious pedestrian and her non-religious neighbour. It is also literally a fusion of definitions: a religious community definition of the sidewalk as private, and a secular state definition of the sidewalk as public. One definition is visibly inscribed, through wires high above pedestrians' heads. The other is necessarily invisible, marked by the mix of users and uses of the space.

Ten years ago, objection to the "eruv" being juxtaposed on Outremont neighbourhoods resulted in the dismantling of the wires by the municipal government. But, after a 2001 Quebec Superior Court case (Rosenberg v. Outremont, 2001), the Hasidic communities succeeded in reinstating the eruv. Thus, the literal line placed by the Hasidim around their communities to facilitate religious observance, co-exists with the figurative line drawn by the municipality around the entire neighbourhood, filling it in with public space (Cooper, 1996; Gagnon, 2002).

The eruv story is effective for three principal reasons. First, it teaches us that stories of encounter – or of competing rights – have to be placed in context in order to be meaningful. It is futile to imagine telling two sidewalk users how to behave vis-à-vis each other if we don't know where they are and who they are at the moment of encounter. Second, it reminds us that the well-worn dichotomy of public and private requires particular sensitivity and attention. Not only can it be turned on its head, such that private interactions depend on public structures, and public norms can sometimes be best seen through a private lens, but it denies important overlap. Thus, approaches to "competing rights" are drawn from both public law and private law.

Third, the eruv brings together two seemingly disparate actors and institutional sites of governance. The role and responsibility of the municipal authorities illustrate state authority. At the same time, the extension of the domestic sphere invites us through the front door of a Hasidic Jewish home writ large. We expect to turn to the municipality as the site of jurisdiction over a sidewalk; after all, there must be rules on snow clearance, spring-cleaning, and general maintenance. But the possibility of a Hasidic mother carrying her baby on that sidewalk on a Saturday comes from the normative authority situated in her home, the authority that allows her to do what would otherwise be deemed prohibited work. The governance of the sidewalk is simultaneously top-down, in the form of state law, and bottom-up, in the form of religion-derived family custom.

2. GOVERNING THE SIDEWALK

Examples of state desire to define space and modes of behaviour are not hard to find. The Canadian Charter of Rights and Freedoms is one, as are all provincial human rights codes or charters. When individuals bring claims of discrimination or the infringement of their fundamental rights, against either state or non-state actors, they rely on an explicitly articulated commitment to individual freedoms. The individual whose freedom has been violated can walk down the sidewalk, head held high, once those in his path have been told to step aside in the name of human rights protection. As one state authority orders one sidewalk user to yield to the other, however, another state authority may try to impose the opposite rule. Different state actors compete in their attempts to define and govern space and behaviour. When the Bouchard-Taylor Commission was created by the Quebec government in 2007, part of the preamble of its mandate explicitly named as a concern the appropriate balance between the rights of the majority and the rights of minorities (Commission de consultation sur les pratiques d'accommodement relieés aux difference culturelles, 2007). At the same time, the municipality of the small village of Hérouxville pointed specifically at the Quebec and Canadian charters of human rights as the source of unreasonable accommodation of certain immigrant cultures. Both these instances are examples of scepticism towards interpretation by courts and tribunals of state instruments of human rights protection. Both react to state governance of "competing rights" by questioning its language, structures, and application.

The "Code de vie" proposed in Hérouxville literally addressed questions of who could walk where, how, why, and with whom (Municipalité de Hérouxville, 2007). Significantly, the *Code* specified that individuals covering their heads and faces were not welcome in the village, an intended reference to Muslim women. The visit of a busload of Muslim women from Montreal, arms full of baked treats, gave Hérouxville residents a much-needed reality check. But the clumsy attempts to articulate a broad answer to the question of "Qui sommes-nous?" through a specific exclusion of particular religious people from the sidewalks are worth closer attention. In reaction to accommodation perceived as overly generous to religious minorities, we find the explicit exclusion of religious women whose mode of dress identifies them as such. That is, the easiest target is the most visible, and the prime example seems to be the Muslim woman who covers her head, her face, or her body.

The call – both metaphorical and literal – for a clearing of the sidewalks of religious women, is often supported in the name of gender equality. Indeed, the Quebec Council on the Status of Women has argued for a modification of the Quebec Charter such that freedom of religion would be explicitly subordinated to the right to gender equality (Le Conseil du Statut de la Femme, 2007). This approach focuses on a human rights framework as both problem and solution. The issues are characterized as challenges of competing rights, and the remedy is the imposition of a clear hierarchy. As religious individual meets woman on the sidewalk, the religious individual should always give way and walk in the street.

3. CONFRONTATION ON THE SIDEWALK

Such an encounter characterizes the patch of Montreal sidewalk that links two now-famous neighbours: the YMCA and the Satmar Hasidic synagogue (Gruda, 2007). Satmar Hasidic Jews pray at the synagogue and use it as a community centre and yeshiva. Next door, YMCA members swim, exercise, work out with weights, and participate in children's programs. When representatives from the synagogue offered to pay to frost the Y's windows in order to stop Hasidic boys from spending time looking across the alley at women in the exercise room, the Y accepted their proposal. In doing so, it failed to consider the views of its own community and clients. After much heated discussion in 2007, the frosted windows disappeared, the Hasidic boys – one presumes – were placed under stricter surveillance, and neighbourly equilibrium was restored.

The sidewalk site for this back-and-forth can be interpreted as a battle between gender equality and religious ideology. The women of the Y might signify equality, freedom and the future; the men of the synagogue religious authority, isolation, and the past. But the story and the sidewalk need not be presented in this way. No explicit conflict on the sidewalk ever took place; each neighbour, and its members, displayed respect for the other. The initial negotiation of co-existence was simply reworked, as more voices were heard and perspectives added. Rather than a clear-cut victory of one neighbour or right over another, this is a story of shared space marked by dynamic diversity or fluid hybridity (Simon, 1999).

This alternative perspective on the story – one in which the contours of co-existence are shifting rather than sharp – holds out more potential for recognizing the missing people in the picture. Whether in the Status of Women's recommendation for a trumping right of gender equality, or in a simplistic characterization of Y and synagogue as a conflict between gender and religion, religious women are absent. That is, all individuals of faith appear to be men, and all women appear to be faith-free. The notion that a choice need be made between equality and religious freedom in human rights law doesn't seem to make real space for women as members of religious communities. Going for an actual walk through the neighbourhood, and observing the mélange of activities that fill the buildings and sidewalk, holds out much potential for interacting with women of faith.

III. REIMAGINING SIDEWALK SPACE

The paradigmatic image of the problematic outsider in much of the discourse on social diversity and citizenship has become the religious woman, cloaked (literally or figuratively) in the vestments of her faith. She is seen as a victim of religious norms governing gender dynamics and roles, someone caught in traditions that need to change. Often it sounds like it is the responsibility of the state to somehow save her, to help her take off the cloak and find herself. However, denying a religious woman the right to wear the vestments of her faith in public risks pushing her right off the sidewalk, either into oncoming traffic with no protection or back into her "private" home with the blinds closed and curtains drawn.

Instead, we could look for ways to walk with her, to make room on the sidewalk. Above, we saw how the eruv turns the sidewalk into both public space and an extension of the home. Perhaps encouraging that extension, such that the private is opened up rather than kept closed, means that the religious woman's footprints can be traced in the fresh snow along with those of her neighbours. Instead of telling her she can't come outside as she is, we develop our side-by-side existence until we both feel "at home" inside and out.

In a collection of essays written in Yiddish and now published in French and English, a Hasidic woman in Outremont writes of her daily life, the challenges of bringing up twelve children, and the tiny moments that constitute her relationships and responsibilities (Zipora 2006, 2007). As she says, she lives with her curtains closed to the outside world. But she is prepared, through her writing, to extend an invitation into her home. By sharing her own space, usually closed off as private or domestic, she offers an opportunity to all to recognize the complex ways in which religious women organize and experience their overlapping membership in communities of faith and in the broader community at large.

An invitation into a religious woman's home is much harder to come by than is a confident handle on how to approach "competing rights". But I would suggest that such an invitation has the potential to be turned into a much more meaningful story, one that sheds light on how claims of rights violations can be understood and

effectively addressed. A real mix of narratives and experiences serves as the multi-textured sidewalk space in which individuals and communities observe, acknowledge, and talk with each other. Sometimes, conflicts occur and require resolution. Yet it is futile to search for a constitutional, legislated or policy template that simply provides the answer and sidesteps complicated conversation. Each conflict, like each story of encounter on the sidewalk, will carry its own context, characters, and consequences.

Codes, charters, and constitutions are structures that frame our institutions and guide our collective character and well-being. But they co-exist with daily dialogue and interaction in which we engage as neighbours and citizens. That is, while state instruments and institutions embody a "desire" to define and govern shared space, the "capacity" to actually oversee and govern the sidewalks belongs to the users. Attempting to address the competition among rights in an abstract way assumes that charters set out basic background rules that resolve any imagined or real conflict. Instead, if we recognize the multiple meanings of the shared sidewalk, we realize how many sites of encounter exist, whether formal or informal, easy to see, or quietly hidden.

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