Legal violence, gentrification and property.

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'Discourse lives .... beyond itself in a living impulse toward the object; if we detach ourselves completely from this impulse all we have left is the naked corpse of the word, from which we learn nothing at all about ths social situation or the fate of a given word in life. To study the word as such, ignoring the impulse that reaches out beyond it, is just as senseless as to study psychological experience outside the context of the real life toward which it is directed and by which it is determined' (Bahktin - The Dialogical Imagination)

No one engaged in thought about history and politics can remain unaware of the enormous role violence has always played in human affairs, and it is at first glance rather surprising that violence has been singled out so seldom for special consideration' (Arendt - On Violence)

Abstract: I argue that a careful attention to property as a legal and political set of relations is long overdue within geographic scholarship, given its importance to power, identity and social relations. Moreover, geography can offer considerable insight into the workings of property. However, in thinking about property (and law) more generally, I make the claim that we must attend not only to its various meanings and discourses, but also to the ways in which property and violence coexist. Legal violence, understood as the the injurious use of physical force directed at the body under the sign of Law, is poorly understood yet demands attention, for both analytical and ethical reasons. Whether realised or implied, violence is important to property law at all levels: it is deployed at its foundation, is a means by which it is enacted, and is central to its legitimation. Drawing upon a case study of gentrification in Vancouver's Downtown Eastside, I argue that these violences are also powerfully geographic.

I: Three moments from Vancouver's Downtown Eastside:

'In actual history, it is a notorious fact that conquest, enslavement, robbery, murder, in short, force, play the greatest part' (Marx, Capital I, 874)

American visitors to Vancouver are often surprised that a place like the Downtown Eastside exists. Vancouver's assiduously marketed images of orca whales and rain forest, of cappucino and Gore-tex, seem far removed from the harsher urban spaces just to the east of the downtown core. Long a marginalised space - economically, 'racially' and politically - the Downtown Eastside encompasses some 8,000 people, many of them living in substandard hotel rooms, struggling with poverty, addiction

and systemic marginalisation. Yet to developers, the Downtown Eastside is cheap, devalorised downtown land, zoned for high densities, in a vibrant urban region characterised by central city densification and service sector employment. Perhaps it speaks to the recency of Vancouver's ascendance, or the well organised nature of community groups in the Downtown Eastside, that the working class population has not been entirely displaced. However, it is beginning. Pressures from neighbouring mega-projects combined with incipient 'up-scaling' has already meant an erosion of affordability.

The Downtown Eastside is a complicated and diverse place. For the moment, however, let me just touch briefly on three particular moments or sites within the neighbourhood. They offer different points of entry into the origins of this space, its more recent history and its contemporary form, respectively. While diverse, they are all manifestations of urban property relations.

The first is a monument on the eastern edge of the neighbourhood, that commemorates the original survey in 1885 that laid out the downtown street grid, and signals the profound and rapid transition which saw rainforest give way to real estate in the space of a few decades. Under a bas relief depicting survey markers, set in a mighty forest, we read these words:

> 'Here stood Hamilton, First Land Commissioner Canadian Pacific Railway. In the silent solitude of the primeval forest he drove a wooden stake into the earth and commenced to measure an empty land into the streets of Vancouver'.

The second example comes from a century later, and marks the supposed 'watershed' year that signalled Vancouver's growing integration into global circuits of investment, tourism and real estate. In 1986, the city hosted the Expo Worlds Fair. As recounted by the oral histories of the Downtown Eastside, this was a year that also signalled not only the arrival of gentrification, but its social costs. Olaf Solheim was an 87 year old retired logger, who had lived in the same room at the Patricia Hotel for thirty years. In expectation of an influx of tourists to Expo, he along with 1000 other area residents was evicted from residential hotels in the Downtown Eastside. Solheim found alternative accomodation, but died soon thereafter. For area activists, he died of grief.

The final moment is from a recent newspaper article, entitled 'Yuppies in the 'hood', that explores the tensions associated with gentrification in the area - arguably ushered in by Expo. The journalist marks a clear distinction between the civilised spaces of gentrification and the anomic chaos of 'Skid Row':

> 'There's a world of difference between the inside and the outside of Alison Harry's world. Inside, the walls are painted deep teal. The high-gloss wood furniture gleams in reflected lamp and candlelight. Music hums from the CD player.... Outside, at the corner of Princess and Hastings, the night life is just beginning.... The dazed, drugged and drunk are walking slowly in and out of the bars. Harry can hardly wait for the middle class to invade her neighbourhood. "My choice is gentrification or ghettoization.... The area is being left to rot.... We need to show them there's a better way. They need to see people in action' (Bula, 1995, a1)

All of these moments are about at least two things. First, they concern property in land, conceived in legal and political terms. While geographers have tended to focus on property as an economic construct ('real estate'), we haven't done a very good job in exploring property in social and political terms ('real property'). In the Downtown Eastside, at least, property is obviously important in the former sense. However, it also seems a useful point of entry in the latter sense. Increasingly, scholars of various stripes have made the argument that property, in this sense, is worth talking about. Property, it can be argued, is of importance at many levels. For Hegel, for example, the masculine individual constructs his identity as an autonomous, and hence free self through private ownership (Berry, 1980). Relations to others are also defined, in part, through property. For example, Salamon and Tonatore (1994) explore social cleavages in an American rural community between new arrivals and long standing residents, arguing that 'the relative attitudes and expectations of [different groups] to property - personal and public - are ... paramount determinations of the emergent social structure' (637-8). But the state has also long played a critical role in the definition and policing of the rights, extent and content of property interests. Liberal conceptions of property are also linked to conceptions of the state, the individual and the community. Thus, classical liberal thought posits the private sphere as associated with individual property rights, characterised by autonomy

and freedom, while positioning the public domain as that of potentially oppressive collective rights, and state intervention (Ryan, 1984). Policing and protecting that division has long been central to jurisprudence. This can have punitive implications for political freedoms and social life (Mitchell, 1997; Brigham and Gordon, 1996). The rights and freedoms associated with the public and private domain, moreover, have historically been seen as different for men and women (Bondi, 1998), as well as for different cultural groups.

Second, all these moments are spatial, in some consequential ways. Space is being actively pulverised, represented, or redefined, respectively. The point here is that if we are interested in the social dimensions of property, it is perhaps appropriate that we also thing about its spatial dimensions. I am going to argue that an attention to the 'spatialities' of property is not only of analytical consequence, it's also politically important.

But I also want to make a broader point. In thinking about the geographies of property (and, by extension, other legal forms) I want to argue that we need to think about violence. This is unusual, given that property appears to be concerned with all that is not violent. Moreover, legal thought (and geographic enquiry that has concerned itself with law) has tended to focus on the textuality of law; that is, the social meanings which are ascribed to it. I will argue that such a focus, while necessary, is perhaps insufficient. I want to take issue with the claim that law is 'just words'. Or put another way, I want to recognise the ways in which, as Robert Cover (1986) puts it, 'violence and the word' coexist.

A quick caveat: I am going to state my case rather boldly, both because of a desire to be provocative and because the literature around law, violence and space, as noted below, is undeveloped. In so doing, I will be obliged to skate over some complexities and nuances, including some pressing questions concerning the ethics of legal violence. My goal, at this stage, is more modest. I wish to make a preliminary case for the critical analysis of property, space and violence, with the claim that violence should be an important concern for critical legal geographers, but also with the recognition that an analysis of property (and law more generally) that recognises the interplay of violence and discourse yet fails to confront space is incomplete.

II: Law and violence:

For John Locke, 300 years ago, the sine qua non of political power was the right to create the penalty of death. More recently, Max Weber defined law as that which monopolises the violence that is transformed into legitimate force. Derrida has argued that 'law is always an authorized force.... there is no such thing as law...that doesn't imply *in itself, a priori, in the analytic structure of its concept,* the possibility of being 'enforced', applied by force' (1990, 925). Yet we haven't done a very good job of thinking through the ways in which law (and legal geographies) are also violent[1].

The association of violence and law seems unusual from a number of perspectives. From a liberal perspective, violence is that which is not law. The rule of law is superior given its ability to regulate violence in a civilised and humane way. Thus, the distinction between terrorism and just war. Recognising the presence of violence at the centre of law does not mean that law is essentially prohibitive. As Foucault has noted, it can prove productive. Moreover, legal violence claims legitimacy, as compared to extra-legal forms of violence. I am willing to accept the possibility of a just war, and repulsed by acts of violence beyond the state. That said, a closer recognition and exploration of legal violence can raise troubling and important questions about its legitimacy. Moreover, I do want recognise that law is more closely implicated with violence than many liberals might be willing to accept.

Law 'deals pain and death', wrote Robert Cover (1986, 1609) in his remarkable essay . His deliberately stark claim is a striking one, given the profound disassociation between violence and the law within much political discourse. As Sarat and Kearns (1991, 211) note, 'the general link between law and violence and the ways that law manages to work its lethal will, to impose pain and death while remaining aloof and unstained by the deeds themselves, is still an unexplored and hardly noticed mystery in the life of the law'[2].

Yet it is obvious that violence of all kinds is done with the active or tacit acquiescence of legal institutions and officials. This does not imply malevolence, or the 'abuse' of power; rather, legal violence is sanctioned violence. The use of 'lethal

force' by police officers, the violence done in the battlefield, or the execution of convicted felons are all clear examples of such sanctioned legal violence. But violence is also imposed on other bodies through more routine legal acts, through forms of legal inaction, or through threatened or implied means. The violence visited upon an abused woman following a police decision not to intervene in a 'domestic dispute' , or the implied violence that maintains discipline in jail could all be seen as acts of violence, despite intentionality. As Sarat and Kearns remind us 'law's violence is not coextensive with law's malevolence; rather it is inflicted wherever legal will is imposed upon the world, wherever a judicial decision, or a legislative act cuts, wrenches, or excises life from its social context. So conceived, law's violence is hardly separable from the rule of law itself, from the deadening normalcy of bureaucratic abstractions and routine interpretive acts...' (1991, 210, cf Wealt, 1996).

It is these often mundane ways in which law is 'enforced' that demands the most careful inquiry, both because of its prevalence and its disappearance. Violence need not be enacted to be operative. Cover (1986) takes the case of the sentencing of a convicted defendant;

> 'he sits, usually quietly, as if engaged in civil discourse. If convicted, the defendant walks - escorted - to prolonged confinement, usually without significant distrurbance to the civil appearance of the event. It is of course grotesque to assume that the civil facade is 'voluntary' except in the sense that it represents the defendant's autonomous recognition of the overwhelming array of violence ranged against him, and of the hopelessness of resistance or outcry.... [M]ost prisoners walk into prison because they know they will be dragged or beaten into prison if they do not walk' (1607)

All of this seems a long way from real property, or ownership in land. When I think of the small parcel of real property that I own, it is quietness and civility that come to mind, rather than 'pain and death'. Indeed, for perhaps these reasons, the literature that explores property in a social context has tended to think of it in a more positive and consensual light. Communication, story telling and persuasion are means by which property is understood.

III: Property as persuasion:

'Persuasion is what makes property available to action', argues Carol Rose (1994, 296), who has been central in arguing for a notion of property relations as social to the extent that they rely upon discursive and persuasive practices. Communication and shared understandings, she argues, are at the core of a viable property regime. Property is 'a kind of assertion or story, told within a culture that shapes that story's content and meaning.... the would be 'possessor' has to send a message that others in the culture understand and that they find persuasive as grounds for the claim asserted' (25). This is a striking claim, not least because of the tendency to think of property in individualistic terms. Rose draws upon common law and property theory to argue that property requires the communication of a claim to others. Moreover, that communication must be restated over time for it to have any real purchase. I can say that I 'own' my home, from her perspective, because I have communicated that claim in the appropriate format - deeds, maps, survey stakes and so on. However, I must continuously reenact that claim to others, such as my neighbours, for it to be persuasive. The building of fences, from this perspective, is a communicative act by which people claim dominion. While this may well occur in settings beyond the court room, Rose also notes the ways in which the common law recognises the importance of continuous forms of communication. The doctrine of adverse possession is a case in point. If my neighbour builds a shed at the bottom of 'my' garden, and I neglect to 'communicate' the fact that she has encroached on my entitlement for some period fixed by statute, I am not only denied the right to sue her for the recovery of the land, but she may be legally recognised as the title owner. At issue, Rose argues, is the ways in which claims were communicated. Thus, it is my failure to communicate my claim (by putting up a 'No Trespassers'sign, or initiating legal proceedings) to my neighbour and the authorities who are in a position to judge my claim, that underlies my loss. Conversely, my neighbour has to signal her presence in a physical sense - in this case, by building a structure. The courts would not recognise her view over my property as constituting a property right in the same sense.

Patricia Seed (1995) has taken a similar tack in her discussion of the 'ceremonies of possession' in the New World. Like Rose, she regards property through a cultural prism. Her question is simple: how did European powers legitimate their possession of the Americas? Colonial power was enacted, she argues, through 'distinctive sets of expressive acts - planting hedges, marching in ceremonial

processions, measuring the stars - using cultural signs to establish what European societies considered to be legitimate dominion over the New World' (179). These 'ceremonies of possession' were seen as self evidently persuasive to different nations, given there roots in everyday life, common languages and shared legal codes. She documents the distinctive ways in which the French, for example, engaged in theatrical rituals - processions, cross-plantings and staged ceremonies of colonial acquiesence on the part of Native peoples - while for the English, more mundane acts, such as the building of houses and the clearing of gardens, were seen as transparent acts that converted 'unowned' land to 'English' land.

A focus on the communicative qualities of property is, not suprisingly, also often allied with the turn towards narrative in legal enquiry. Rose offers a creative use of narrative to explore the ways in which dominant accounts of property rely upon the telling of stories (of the beginnings of property, for example). In so doing, she reveals the ways in which their very narrativity can paper over some conceptual gaps, and also opens the possibilities for other narratives of property to be told. Milner (1993) explores narratives of property in Hawai'i, focusing on popular struggles over land ownership. He explores the various stories that the people involved offer that describe and justify their ownership. In so doing, he argues that the stories map out various 'rites' by which people justify to themselves and others the ownership of their homes.

Such an emphasis on interpretation and the construction of meaning would find common cause with much writing within geography. Those geographers interested in law, myself included, have tended to focus on the meanings of law, although not without a recognition of the oppressive and occasionally violent qualities of law. The geographers are not alone: there is a rich array of writing within legal studies that centres on its narrative structure, ranging from those who treat legal discourse as a particular semiotic system, those concerned with its rhetorical qualities, and more critical treatments of its narrative form (Brooks and Gerwitz, 1996). For some, the literary quality of legal discourse places it at the core of the human project (White, 1994). For others, law's stories are a site of oppression, as well as means of destabilising law (Ewick and Silbey, 1995).

So, for example, I have tried to make sense of the particular ways in which the common law emerged in sixteenth and seventeenth century England, under the

aegis of the jurist Edward Coke, noting the ways in which this entailed a complex set of representations of the legal spaces of England (Blomley, 1994). In particular, I sought to track the process by which the common law was reconfigured from one that privileged localised and communal legal knowledge to its centralised and unified early modern form, in which the common law was that which was common to all. I sought to relate this process to concurrent changes in cartography, which saw an ideologically and functionally related shift away from localised forms of mapping to the abstractions and enframings of the modern map. The combined effect, I suggested, was to help make possible different (perhaps, modern?) conceptions of both law and space, and their inter-relation which proved of particular importance in furthering the remaking of the'legal geographies' of real property, with the shift from feudal tenure, operative as a set of localised relations between spatially and socially situated individuals, to modern liberal notions of absolute possession, aspatial, reified and individualised. Such reworkings and associated resistance to them, moreover, relied in different ways on opposing stories of English cultural and legal formation. Much debate turned, for example, on whether the common law that Coke celebrated predated the Norman Conquest.

There is certainly a lot to be said for such an attention to narrative and meaning ain the discussion of property. At the very least, it serves to open up a space for the exploration of the social dimensions of property. Moreover, the degree to which property relies upon certain shared understandings seems appropriate. This need not, it should be said, lead to a notion of society as consensual and coherent. Indeed, opening up property in this way can, as Rose and others such as Radin (1993) shows, offer the possibility of recognising other meanings of property (for example, as not purely that of neo-classical optimisation), as well as recognising the complicated ways in which property relations are embedded in social life (eg Hollowell, 1982, Hann, 1998). Rose herself is sceptical of the view that would define property rights as an artificial construct, that conceals dominant power relations, arguing that this is to undervalue its prevalence and its purchase within everyday life and aspirations.

However, there does seem something of an absence in this discussion. Take, for example, the question of colonial dispossession in the Americas, as native peoples entitlements to the lands were belittled, marginalised or flatly denied. As Said (1993) reminds us, the relation between imperialism and land is a fundamental one: 'At some very basic level, imperialism means thinking about, settling on, and

controlling land that you do not possess, that is distant, that it is lived on and often involves untold misery for others' (7). For many property theorists, the process by which dispossession is said to have occurred offers further proof of a discursive analysis. Thus, native people were assumed to not be landowners precisely because they 'had done nothing to signal their proprietary claims' (Rose, 1994, 295). Or, to be more exact, if they had signalled their claims, they had not done so in a way that was 'persuasive' to colonial settlers. The exceptions, such as the agricultural plots of native women in North America, which were recognised as viable forms of property, rested on the degree to which they were persuasive - agricultural plots 'visibly marked the land in an enterprise familiar to European conceptions of property' (Rose, 1994, 295). This is not to deny the force and violence that were threatened or applied by colonial powers; yet, for Rose, '[s]uch culture-conflict stories, upsetting as they are, must reinforce the point that seeing property is an act of persuasion and seeing property also reflects some of the cultural limitations in imagination' (1994, 296).

This analysis does seem to have some explanatory power, echoing some of the powerful arguments for the instrumental importance of 'imaginative geographies' in dispossession and domination (Said, 1979). Struggles over space are not only 'about soldiers and cannons', 'but also about ideas, about forms, about images and imaginings' (Said, 1993, 7). The enactment of property, in both its routine and extreme forms, obviously entails persuasive narratives, the construction of meaning, and representations. Yet in thinking, for example, about dispossession, I am left with an unease at the rapidity with which the 'soldiers and cannons' are skated over or rendered secondary to discourse. In thinking about the geographies of property, attending to violence and the word, to revisit Cover (1986) seems to be an analytically important project. Moreover, if we consider Doug Hay's comment, such a project is also politically significant, given the social selectivity of legal violence:

> 'The coercive impact of law is the most important element for those who, in fact, are the most direct victims of its violence, the poor; the legitimation of the word is most compelling to those predisposed to believe it, who share it, who articulate it' (1992, p 18).

When we remember that legal theory is, almost without exception, written by those who are the beneficiaries, rather than the victims of law's violence, this claim is an unsettling one.

V: Violence and the word.

There is a lot to be said for an attention to violence, space and property. Most immediately, foregrounding questions of violence directs us to the materiality of law and of the ways it connects with lived experience. As noted above, it poses difficult questions of the morality of legal violence, and its selectivity. But also we can argue that an analysis of property and law more generally is fundamentally incomplete without an exploration of violence. Thus, Delaney (1998) argues:

> 'The question is, which argument, which interpretation, among available alternatives, will be sufficient to validate the use or witholding of violence or the threat of violence.... Part of how law works is to effect a spatialisation of violence by authorizing acts of exclusion, expulsion, and confinement, or not' (184)

Sarat and Kearns (1991) 'note the appalling absence of anything even approximating a jurisprudence of violence in contemporary legal theory' (209) and take legal critics to task in their focus on law's violence 'as exclusively cultural and symbolic' (221). However, the importance of legal meaning should not be summarily dismissed. Clearly, property is very much about the construction of certain claims upon others and society. Property, thought of purely in negative terms, denies the material and symbolic benefits that flow from ownership. Moreover, property as a web of meanings is very much one of the ways in which 'world-making' occurs.

The challenge, then, becomes one of thinking through the ways in which property entails both violence and representations. However, this is not easy. Thinking about legal violence and legal meaning at the same time is, for many, impossible Violence, on the one hand, takes us beyond words. Conversely, 'the existence of law', Sarat and Kearns (1992a, 3) note, 'stands as a monument to the hope that words can contain and control violence'. For some, legal meaning and violence are antithetical. For Cover (1986, 1602), '[p]ain and death destroy the world that [legal] interpretation calls up.... pain destroys, among other things, language itself'. Rose

inisists that '[p]roperty regimes cannot bear very many or very frequent uses of force; force and violence are the nemesis of property and their frequent use is a signal that a property regime is faltering' (1994, 296, my emphasis).

Another problem rests on the tendency to separate practice from representation, and to allocate violence to the former. It is clear, however, that meaning can be a site of violence - language can be used to marginalise and diminish others. Or, conversely, meanings and narratives can serve as a legitimation for legal violence. Thus, Locke's treatise is both a story about property and its beginnings, and a meditation on the violence that calls private property forth. However, we need to be cautious of thinking of the relation between violence and meaning in such a way as to valorise the latter. Sarat (1992) cautions that 'as violence and pain are put into language, we may be tempted to forget that their metaphorical representation as weapons and words cannot truly capture the meaning of violence and pain themselves' (140) Also those forms of violence that leaves no visible scars, such as 'the violence of racism, poverty and despair' will be less easily represented (141).

VI: Landscapes of property: violence and meaning.

Perhaps one particularly geographic way in which we can begin to grapple with the complicated mixing of violence and meaning that a property regime entails is to recognise that socialised space, like property, entails both practice and representation. This is evident, most clearly, when we consider the concept of 'landscape'. On the one hand, a landscape is a material assemblage, a physical space. Thus, an urban landscape in this sense is made up of a distinctive mixture of streets, buildings, parks. The analysis of this built form, of course, is the traditional purview of Sauerian cultural geography. Many contemporary cultural geographers, conversely, see landscape in a very different way. Landscape, on this account, entails the visualisation and representation of a space. Most famously, landscape entails a culturally specific 'way of seeing', expressed most famously in Renaissance humanism and the rediscovery of linear perspective. For Timothy Mitchell (1991), this can be thought of as a particuarly consequential 'enframing' of the social world that sets the dispassionate observe apart from a world that awaits 'his' pleasure.

Landscape then, appears as 'site' or 'sight'. The dichotomy between the two has come under critique, however. Don Mitchell (1996) has challenged the separation of

the two, arguing that both are acts of active social labour, that both can have discenernable effects, and consequently must be considered simultaneously. Moreover, both intersect and interrelate in important ways. I shall return to this point in a moment; but what of property?

I shall argue that property in land is closely implicated in the production of landscapes of either sort, and is itself worked over and constituted through landscapes. Put simply, property entails the 'marking' of space. This can be an embodied practice (the driving of survey stakes, the mapping of a plot of land, the traditional 'beating of the bounds') as well as entailing certain representations of space (delineating the boundaries of property, the naming of individual properties). Put the other way, landscapes in both senses of the word can crystallise (and naturalise) property regimes. As Brigham and Gordon (1996) argue in their study of New York's Lower East Side, property can be made both discursively and materially present in the landscape.

> 'The legal distinction between ownership and opportunity for use is constantly at issue on the Lower East Side. Walking (down the sidewalk usually), one is made aware of what is public and what is not. For a homeless person sleeping, tentatively, on the steps of the 10th Street public library, the possibilities contained in the laws of property become behaviors. Ownership is presented in material ways (locks, fences, razor wire) and more discursively (in language that says "Get out, "Where is the rent", "Come in"' '(my emphasis, pp. 277-278).

Perhaps one way to begin to get at the copresence of violence and meaning in the material and representational landscape is to link violence to the material, and meaning with the representational, for the moment. For it is clear that the violences of property are present in the material landscape. The locks, fences and razor wire, noted above, are one obvious case in point. However, more careful reflection reveals that these categories are not so easily contained.

For example, Carol Greenhouse (1992) argues, contra Cover, that violence does not destroy the world of text, interpretation and meaning. She draws upon anthropological evidence to argue that violence does not stand outside the symbolic language of a social community 'but is central to it, as the theme, medium, and

syntax of their narrative texts'. These texts are in part legible 'because of the way they 'speak' the violence of the everyday' (121). The Ilongot, of Northern Luzon, in the Philippines, imbue their landscape with 'violent' meanings: 'Ilongot historical narratives include the recitation of long series of place names, each one the emblem of the violence or some other event that took place there' (115). The textuality of violence, however, has its limits - 'texts do not contain or express all the violence that people are capable of unleashing against each other' (123), for example. Yet a recognition of the symbolic dimensions of violence 'does not preclude contact with real violence, because of the extent to which that violence is encoded in everyday life and the social order' (122)[3].

Simon Schama also notes the often concealed violences of landscape in the West - the 'blood beneath the verdure and tombs in the deep glades of oak and fir' (1995, 24). He describes, for example, the ways the Polish forests of southern Lithuania entered into the national ideologies of the German Third Reich as an extension of the Teutonic *Heimat*. A 'total landscape plan' was launched, following the German invasion, with the wholesale and violent deportation of thousands of farmers and foresters and the attempt at creating a protected forest zone: 'With its Polish-Lithuanian identity completely wiped out, it could be presented as a great, living laboratory of purely Teutonic species: eagles, elk, and wolves' (72). But this remaking of the landscape was only partially sucessful; partisan bands, many made up of Jewish escapees from the urban ghettoes, fled to the forests, to engage in desperate and brutal resistance against the Nazis, and then Russian communist troops. Dispossession was worked out in a violent landscape that was both representational and irreducibly material.

As the examples above begin to suggest, we need to be cautious about bifurcating both violence and meaning and the material and the representational, given that they seem to intersect and mingle. Thus the meanings attached to landscape can be used to legitimate violence, whilst the violences of property can be encoded in meaning. To think of property purely as a language game is insufficient: 'Discourses can never be pure, isolated or insulated from other moments in social life, however abstract and seemingly transcendent they become' (Harvey, 1996, 83), but operate in a complex, dialectical relation to those moments, including material practice.

IV: Property, space and violence.

Let me now focus a little more carefully on real property. I want to suggest that a property regime may indeed entail not only the construction of meaning, but practical acts of violence, understood as the excercise of physical force. In thinking about legal violence, I want to look not only at 'extreme' property cases, such as colonial dispossession, but also suggest the importance and prevalence of implied forms of violence in the mundane workings of property. Moreover, I also want to explore the resultant 'spatialisation of violence', noting the ways in which the landscape is represented, worked over, constructed and invoked. I shall do so in general terms here, and with reference to a particular place below. In thinking through the geographies of property, I will extend the framework of Sarat and Kearns (1992), who argue that violence is central to law's project at three levels: origin, legitimation and action. At all these levels, I shall argue, an attention to the geographies of legal violence is helpful.

a) violence provides the occasion and method for founding a property regime:

Legal orders, Cover (1986) reminds us, are commonly 'staked in blood' (1607). The American Declaration of Independence, he notes, was underwritten by a pledge of 'our lives, our fortunes and our sacred honour' (1606). Such a mutual pledge was not taken lightly given that the leaders of the rebellion had engaged in a legal act of treason, for which the penalties were a degrading and terrible death, loss of estate and 'corruption of the blood'.

Moreover, the American Republic was - and continues to be - built upon countless acts of individual and collective legal violence inflicted upon millions of bodies whether they be slaves, Cheyennes, Seminoles, squatters, strikers, Mexicans, Filipinos or Iraqis (Hofstadter and Wallace, 1970). Violence, whether legal, extra-legal or illegal, 'has been frequent, voluminous, almost commonplace' in American history (Hofstadter, 1970, 3). Foote (1997) argues that violence is central to American national identity given the necessarily violent nature of colonial settlement[4].

Earlier legal orders - like English common law - also have violent pasts concealed within them. English common law is, of course, the law of conquest, occasioned by

violent acts of dispossession on the part of a Norman elite. Subsequent legal reforms within the common law have been, in their ways, violent (what Cover elsewhere terms 'jurispathic, that is, designed to root out and extirpate alternative legal understandings). And legal regimes continue to change; many writers have observed the ways in which shifts in the conceptions of land ownership, such as the transition from feudal to modern land regimes in England, have been the occasion for acts of repression and state violence.

Such a process is geographic at several levels. Norbert Elias, for example, has explored state formation as the historical establishment of the 'monopoly mechanism' whereby the monopoly of organised violence becomes increasingly centralised through the incremental elimination of rival centres of organised violence within a territory (Mennell and Goudsblom, 1998). Lefebvre (1991) offers a more extended treatment of the links between space and violence, noting that an analysis of the state power without an attention to space is one of Hegelian abstraction, given that without space, power 'simply cannot be said to achieve concreteness' (281). With Elias, he recognises the centrality of organised violence in the ascendance of modern state power: 'The state legitimates the recourse to force and lays claims to a monopoly of violence'. Such a sovereign claim, however, 'implies 'space', and what is more it implies a space against which violence, whether latent or overt, is directed'. That sovereign space, at the same time, is 'a space established and constituted by violence' (280) - in particular, through war and imperial conquest. [E]very state is born of violence, and ... state power endures only by virtue of violence directed towards a space' (280).

Such a space is described by Lefebvre as an 'abstract space', characterised by three formants, the geometric, the visual and the phallic. The geometric formant, evidenced by abstract Euclidean geometry generates the impression that space is neutral and innocent. The visual, which enthrones sight, surveillance and the detached gaze, gives the impression of transparency, that things are exactly as they look. The combination of these two formants give us the geography of the planner, or the spatial scientist; rather than emerging as socially produced and deeply political, space appears as an apolitical surface, upon which rational and detached decisions are taken. The phallic formant is a less subtle spatialisation of power. 'The obsession with verticality serves to prohibit and impress - it symbolises the

dominance of masculine forces, the power of the corporation and the state' (Stewart, 1995, 614).

The three formants are evidenced in the production of real property. Most immediately, real property entails the 'shattering' or 'pulverisation' of space (Lefebvre, 1991, 334). With its increased commodification, space is broken up into comparable and hence exchangeable 'cells' that become increasingly abstract and quantified. The effect is to transcend the production of commodities in space and inaugurate the modern epoch, where space itself is produced. Yet such is the apparent neutrality and transparency of abstract space, that the violence that served to produce such configurations, and to sustain them, is concealed. For Don Mitchell (1996), for example, the landscape views of Southern California are also a means by which the contingent and politicised forms of struggle and displacement are rendered natural and frozen[5]

We can perhaps trace the violences upon which property regimes were founded in the landscape. The coffee table books that celebrate the English landscape and the rural 'idyll' are a good example. The aerial photos depicting the shadowy outlines of traditional field patterns and settlements, usually celebrated as an expression of a rich and layered history also are mute testimony to the legally sanctioned, enforced and legitimated process of enclosure by which sheep became the devourers of men. The persuasive meanings of property, moreover, are also evident in the ways in which spaces are represented. Cosgrove's (1984) close reading of English landcape painting and garden design were very much a means by which the emergent forms of ownership (individualised, commodified) that displaced many traditional forms of tenure were rendered natural and explicit. John Clare's poem, 'The Mores' eloquently and passionately decries the redefinition of property in early nineteenth century England:

'Inclosure came and trampled on the grave
Of labour's rights and left the poor a slave....
Fence now meets fence in owner's little bounds
Of field and meadow large as garden grounds
In little parcels little minds to please
With men and flock imprisoned ill at ease...
Each little tyrant with his little sign

Shows where men claims earth glows no more divine[6].

But such violences do not just operate on an abstract space, as Lefebvre notes. Rather, as the establishment of new legal regimes seems necessarily linked to the destruction or forcible reconfiguration of previous systems of land tenure, so they have also entailed legal violence - whether excercised, threatened or implied - against, ultimately, the bodies of others. For E. P. Thompson (1968, 218) 'Enclosure (when all the sophistications are allowed for) was a plain enough case of class robbery, played according to fair rules of property and law laid down by a Parliament of property owners and lawyers'. Eric Wolf (1990) also documents the ways in which the shifting requirements of capitalism meant the enforced and legalised transformation of tenurial systems in many parts of the globe. Sprague (1988) demonstrates the ways in which the Métis of Manitoba, Canada, were dispossesed in the 1870s not only through naked force, but through due process, and federal and provincial statute. The historical violences of colonialism are not unconnected with contemporary forms of legal violence. After 400 years, according to McFarlane (1990) the 'settler society' of Canada 'still derives its ultimate legitimacy from the same source: brute force' (18)

My aim in reviewing these legal histories is not to grandstand, however tempting it may be. My point is that while the process by which states and legal systems take form and evolve undoubtedly entails 'narrations' and the construction of meanings, it also involves concrete applications of legal violence. Given the recognition that the establishment of state power and property regimes are closely implicated, this means that property is also 'born of violence'. That process, moreover, is inscribed not only on bodies, but also on space.

b) violence gives property (as a regulator of force and coercion) a reason for being.

Despite its founding violences, law tends to deny its origins, or - more importantly - deflects questions of its own innate violence to the violence that makes law necessary. In other words, law's violence - rational, regulated, advancing common goals - is distinct from, and a counter to the 'anomic of sectarian savagery beyond law's boundaries' (Sarat and Kearns, 1992a, 5). Thus, in general, 'the story law tells about itself focuses on its majesty rather than its monstrousness' (Sarat and Kearns (1991, 218). However, when law is forced to confront its violences, it authorises

them 'as a lesser or necessary evil and as a response to our inability to live a truly free life, a life without external discipline and constraint' (222). Thus, Thomas Hobbes' Leviathan promises 'a way of taming violence by producing, through social organisation, an economy of violence' (223). Waldenfels (1991) clarifies 'the great divorce' between reason and violence' deeply embedded within western thought, upon which this distinction rests.

Similarly, the construction of that which is deemed property often seems to rest on the construction of an anomic and violent world of 'non-property'. Boundaries - both figurative, temporal and spatial - are integral to this process. The foundational narratives that tell property's story often presume an a priori and usually violent world without property. For Locke (1690/1980), this world is one of 'fears and continual dangers' (s. 124). But those worlds without property are also located in space that is before History ('in the beginning, all was America' - s. 149)

Jeremy Bentham offers a powerful example of the separation of the spaces of property and violence. Property, for Bentham, was 'an established expectation' that requires the security provided by law for it to exist; 'Property and law are born together, and die together. Before laws were made there was no property; take away laws, and property ceases' (1978, 52). In the absence of security, property fails, and so does economic activity. The colonial landscapes of North America, he notes, offers a striking contrast between the domain where property and security coexist and its antithesis - the violent spaces in which property is absent.

> 'The interior of that immense region offers only a frightful solitude; impenetrable forests or sterile plains, stagnant waters and impure vapours; such is the earth when left to itself. The fierce tribes which rove through these deserts without fixed habitations, always occupied with the pursuit of game, and animated against each other by implacable rivalries, meet only for combat, and often suceed only in destroying each other. The beasts of the forest are not so dangerous to man as he is to himself. But on the borders of these frightful solitudes, what different sights are seen! We appear to comprehend in the same view the two empires of good and evil. Forests give place to cultivated fields, morasses are dried up, and the surface, grown firm, is covered with meadows, pastures, domestic animals, habitations healthy and smiling. Rising cities are built upon regular plans; roads are constructed

> to communicate between them; everything announces that men, seeking the means of intercourse, have ceased to fear and to murder each other' (1978, 56, my emphasis)

New (1997) explores the ways in which Canadian 'pioneer' spaces entailed the definition of its edges. 'On the other side of these conceptual edges were presumed to lie the territories of anarchy - by which in practice were meant wilderness, forest, moral corruption, Indians, Catholics, and French' (80). Property is only one means by which the edge was defined; however, he also reminds us that the term 'wilderness' literally denotes a place beyond the reach or authority of common law, setting the propertied world of cultivation and garden property distinct from the 'untractable wilderness' (29).

Turner's frontier thesis also invokes a spatial and propertied divide: 'The frontier is the outer edge of the wave - the meeting point between savagery and civilisation.... The most significant thing about the American frontier is, that it lies at the hither edge of free land' (1961, 38). He goes on, however, to map out the telos of property, as the frontier inexorably advances:

> 'The United States lies like a huge page in the history of society. Line by line as we read this continental page from West to East we find the record of social evolution. It begins with the Indian and the hunter; it goes on to tell of the disintegration of savagery by the entrance of the trader.... we read the annals of the pastoral stage in ranch life; the exploitation of the soil... the intensive culture of the denser farm settlement; and finally the manufacturing organisation with city and factory system' (43)

c) violence provides a means through which property acts.

Edgar Friedenburg (1971) makes a arresting claim: 'If by violence one means injurious attacks on persons or destructions of valuable inanimate objects ... then nearly all the violence done in the world is done by legitimate authority' (43). It is arresting, because of our tendency to assume a radical divide between violence and law:

> 'Students who block entrances to buildings or occupy a vacant lot and attempt to build a park in it are defined as not merely disorderly but violent; the law enforcement officials who gas and club them into submission are perceived as restorers of order.... (Friedenburg, 1971 p. 43)

Yet the violence that is done in the name of law is uncoupled from the legal enterprise in various ways. Cover (1986) describes the pyramid of violence that characterises legal enforcement, so that a command to do violence - such as a death penalty - works its way through complicated hierarchies of legal personnel in such a way that it appears to emenate from everywhere and nowhere at the same time. This can also occcur through language: Austin Sarat, in his discussion of a US capital trial, notes the ways in which the language of the trial sought to distinguish 'the killings that it opposes and avenges from the force that expresses the opposition and through which its avenging work is done' (1994, 142). Hence, legal violence lays claim to the economy that guarantees, for example, that 'no person shall be deprived of life without due process of law'.

Property can also be said to 'act' (or be 'enforced') in potentially and actually violent ways. This is particularly so when we remember that property is fundamentally concerned with legally defined and policed relations between individuals. At its core, property entails the legitimate act of expulsion. The text book definition of property as the right to exclude, like that of the state as that which has the legitimate monopoly of violence, is usually hurried over by scholars of property. But perhaps this speaks more to the class location of academics than to the everyday workings of property as experienced by many. For the homeless person, the renter, the squatter, the indigenous person or the trade unionist, the violence meted out by the state in defence of the right to expel is too often undeniable.

Two examples:

Chicago, 1931: With unemployment at over 40%, evictions increased so that by the summer of 1931, over two hundred families a week were evicted for non-payment of rent. Communist part organising brought about growing resistance, as large crowds gathered to restore people to their homes. Landlords turned to the Chicago police to enforce the eviction orders. On August 3, 1931, about 5000 people, mostly black, gathered to help an older black woman return to her flat. Police arrests

sparked a confrontation; officers fired point blank into the crowd, killing three and wounding many more (Hofstadter and Wallace, 1970, p 172-175).

Ontario, 1995: In the night of September 6, 1995, the Ontario Provincial Police opened fire on a peaceful occupation of Ipperwash Provincial Park by the First Nations Aazhoodenaang Enjibaajig, or the Stoney Point People. When the police withdrew, one youth had been shot and wounded and Dudley George, a member of the Aazhoodenaang Enjibaajig, had been fatally injured by a bullet in his chest. In 1942 the Canadian government invoked the War Measures Act and forced the Stoney Point People from their unceded territory, set aside by treaties in 1825 and 1827. Since the end of WWII the Stoney Point People have struggled to have their land returned. In 1990, they had begun to recoccupy their lands, facing continuing police harassment and criminalisation. An OPP officer was subsequently found guilty of criminal negligence causing death, and was given a sentence of two years less a day of community service[7].

Yet, while important, these examples are extreme cases, representing a breakdown or crisis in the economy of legal violence. Violence need not be meted out for it to be operative. Rather, it can be said to act in more internalised, yet no less disciplinary ways[8]. Norbert Elias' discussion of the importance of 'self constraint' in modern society is instructive here. Such forms of self-policing, deeply engrained in the social habitus, 'require the individual incessantly to overcome his momentary affective impulses in keeping with the longer term effects of his behaviour.... [T]hey instill a more even self-control encompassing his whole conduct like a tight ring, and a more steady regulation of his drives according to the social norms' (Elias, 1998, 59). He compares this to pre-modern 'warrior' societies, where weaker social interdepencies combine with the absence of a clear, centralised monopoly of violence to produce 'uncivilised' forms of behaviour amongst a warrior class, where unchecked passions, 'extraordinary freedoms', 'savage joys', and 'the uninhibited satisfaction of pleasure from women' are rampant (Elias, 1998, 55).

For Elias, this transition is integrally related to changes in the monopolization of violence. A society with a more stable monopoly of force is one that can sustain more complex social interdependencies. Such social formations nurture moderated and self-disciplined forms of individual and social behaviour that is attentive of others; in turn, such forms of behaviour become part of the habitus, second nature

to social actors[9]. Hence with modern society, 'physical violence is confined to barracks; and from this store-house it breaks out only in extreme cases ... into individual life' (57). Yet this displacement of violence to 'the margin of social life' (57) does not signal its disappearance, for Elias; rather 'physical violence and the threat emanating from it [still] have a determining influence on individuals in society, whether they know it or not'. That influence is not the uncertain and varied one associated with earlier expressions of violence, but becomes more depersonalised and measured. Yet it is still there:

> 'a continuous, uniform pressure is exerted on individuals by the physical violence stored behind the scenes of everyday life, a pressure totally familiar and hardly perceived.... The monopoly organisation of physical violence does not usually constrain the individual by direct threat. A strongly predictable compulsion or pressure mediated in a variety of ways is constantly exerted on the individual. This operates to a considerable extent through the medium of his own reflection. It is normally only potentially present in society, as an agent of control; the actual compulsion is one that that the individual exerts on himself .... Physical clashes, wars and feuds diminish.... But at the same time the battlefield is, in a sense moved within' (57, 60)

A similar economy of violence perhaps operates in a spatialised property regime. The spatial environments we move in - the homes, workplaces, streets, neighbourhood, shops and so on - can serve to reflect and reinforce social relations of power, through complex and layered spatial processes and practices that code, exclude, enable, stage, locate and so on. The effects are complex, entailing:

> 'the assignment of a particular meaning to lines and spaces in order to control, at first glance, determinable segments of the physical world. Upon further reflection, however, it is clear that the objects of control are social relationships and the actions and experiences of people....' (Delaney 1998, 6)

Property is particularly important here, as Delaney (1998) notes. The codes of access and exclusion that structure the uses of space are saturated by conceptions of property. Such conceptions can be quite formal - consider the issue of public access to semi-privatised spaces, such as shopping malls - or they can be somewhat less formal - such as my 'right' to a parking spot on the street outside my house. The

geographies of property, in these senses, are also implicated in 'wider' networks of power relations, such as a capitalist land market, or processes of colonisation, as well as, perhaps, serving as a site for the contestation of such networks.

Jeremy Waldron (1990) offers a powerful example of the linkage between property and space, in his treatment of the legal regulation of homelessness:

> 'Everything that is done has to be done somewhere. No one is free to perform an action unless there is somewhere he is free to perform it.... One of the functions of property rules ... is to provide a basis for determining who is allowed to be where.... The rules of property give is a way of determining, in the case of each place, who is allowed to be in that place and who is not (296).

However, regulations that restrict the use of public space in many North American cities - such as forbidding sleeping in public parks - have, despite appearances of impartiality, essentially punished homeless people, given that they are de facto excluded from private property: 'Since private places and public places between them exhaust all the places that they are, there is nowhere that these actions [such as sleeping] may be performed by the homeless person. And since freedom to perform a concrete actions requires freedom to perform it at some place, it follows that the homeless person does not have the freedom to perform them' (315).

Waldron also reminds us of the social selectivity of law's violence. In Canada, indigenous people make up some 5% of the total population, but 32% of the federal inmate population. One in three African American men in the 20s are jailed annually. In 1990, on an average day, one in every four African American men in the US were either in jail or on probation or parole (New Internationalist, 1996).

For Lefebvre, the meanings conveyed by abstract space 'are more often prohibitions than solicitations or stimuli.... Prohibition is the reverse sign and the carrapace of property, of the negative appropriation of space under the sign of private property' (319). The interesting question, of course, is what it is that <u>enforces</u> such prohibitions. Certainly, for many homeless people, enforcement frequently entails the threat or actuality of corporeal violence. However, following Elias, legal violence may become more generally internalised as a disciplinary force[10].

VII: Property and violence in the Downtown Eastside

What I wish to do for the balance of the paper is to think about contemporary property relations in central Vancouver, and to explore the ways in which violence, meaning and property intersect. Thinking about meaning is important in this context, I shall suggest, but it is insufficient. My purpose is also to show the signficance of space in this complex intersection. Not only does property help produce this space, but it is also worked out within the landscape.

Canada is, by repute, a civil place where naked state power is moderated, or excercised with out malign intent; put another way, a tradition of deference ensures that citizens do not engage in violent protest against oppression. This would seem to be the case in relation to property where 'quiet possession' is the norm, at least for the middle class. Certainly, while the issue of gentrification-induced displacement in Vancouver's Downtown Eastside has received attention, the violent 'revanchism' that Neil Smith (1996) has identified in the United States does not seem evident. And yet, when we look more carefully, the violences of property are there. For Bud Osborn (1998), a local street poet, the 'friendly predators/ such as builders, planners, architects, landlords, bankers and politicians' bring 'violence to our community'.

Gentrification is an interesting site in which to think about space, violence and property. To simplify, when geographers have theorised gentrification, it is the 'economic' geographies of property that seem to predominate. Property, in this sense, is largely conceived of as a nexus of market relations, with the debate turning on the consumption or production of 'real estate'. Yet, property surely enters into gentrification in another sense, The legal and political dimensions of ownership, whether formally protected or more informally understood, seem critical. Moreover, the very process of gentrification entails struggles over the meanings and practices of property, as evidenced in the shift from rental to homeownership, the dispossession of marginal populations, the contestation of dominant ideologies of homeownership, and contending claims to place and entitlement (cf Davis 1991, Brigham and Gordon 1996).

a) The origins of property:

Before exploring contemporary processes of gentrification, however, we need to pause, for a moment, and reflect on the the very production of the area that is now the Downtown Eastside. Like any urban space, it appears to be a remarkably secure and self sufficient site, that has always been with us. Orthodox histories of the city document the unfolding of a Western property grid over the area that is now the Downtown Eastside. In this sense, the cadastral grid 'neutralises space' (Sennett, 1990, 48), emptying it of its contingencies, histories and violences. Thus the monument to Hamilton, the Canadian Pacific Railway surveyor noted above, who 'in the silent solitude of the primeval forest ... drove a wooden stake into the earth and commenced to measure an empty land into the streets of Vancouver'.

Yet, of course, this landscape was far from 'silent' or 'empty'. For millenia, the area that Hamilton helped 'pulverise' and commodify had been peopled by Musqueam and Squamish peoples. Trails, villages, and middens signal dense histories of occupation and use (Barnett, 1955). For the Squamish: 'These beaches gave us shellfish, crabs and eel grass. The forests and flatlands provided deer, large herds of elk, bear, and mountain goats. Food plants were harvested, and the trees supplied the wood for our houses, canoes, weapons and other ceremonial objects....' (Miranda and Joe, 1993, p. 5)

The Squamish and Musqueam, were not, and are not, people without property. Indeed, property appears to have been a central means by which relations with others were defined, particularly in the context of significant events: 'To assume a family name,.... to commemorate a change in status growing our of a life crisis, or to publicize any event having a bearing on social status demanded a public distribution of goods' (Barnett, 1955, 253). Such distributions of property 'were integral elements in the social fabric, and cannot be discussed apart from it' (255). The circulation of property reached its apogee in the klanak, or potlatch.

Moreover, these were not unowned lands. For the Squamish, for example, property appears to have played a vital role, defining social standing and regulating access to economic resources (Barnett, 1955). Property relations defined access to personal items such as canoes, slaves and hunting and fishing sites, and also shaped rights to use personal names, songs, spirit powers and magic. Clan and kinship relations structured usufructurary rights to particularly scarce resources - so that deer, duck and fish nets, bird rookeries and so on were owned by extended families,

while access to other sites, such as clam beds or fish dams was open to all village members. Personal property was also recognised; notably, houses were owned by the builders and their descendants. However, most forms of property, including resource sites, were not marketable or alienable from the family.

Yet, in the space a few short decades, the geographies of property underwent a fundamental redrawing, as the systems of land ownership of the various First Nations who have used and settled the area were obliterated and subdivided by European settlers (Figure 1 and 2). The process by which that redrawing occurred entailed a variety of processes, including disease and economic disruption. It also seemed to have entailed a variety of representations of native people and land on the part of the dominant society that made aboriginal title, at best, transient. Colonial ideologies in British Columbia held that native peoples 'had been and remained primitive savages who were incapable of concepts of land title and who most certainly should not be perceived as land owners' (Tennant, 1990, 40). Yet this dispossession was not purely discursive. Violence, either implied or actual, was also present. Such violences, arguably, were not simply a secondary adjunct to the discursive realm (for example, the instrument through which ideology was put into practice), but were of importance in their own right as a vector of colonial power. Violence was not only an outcome of law, in other words, but its realisation[11]. The establishment of a Western liberal property regime was both the point of these violences, and the means by which violent forms of regulation were enacted and reproduced.

Cole Harris (1997) describes the importance of physical violence to early colonial power in British Columbia. In the first half of the 19th Century, state power was largely absent; fur trading companies (notably the Hudson's Bay Company) represented European interests as a quasi state. They operated violently and punitively - 'a politics of fear - 'respect' or 'terror' were the traders' common words' (48). Summary executions, show trials, corporal punishment and attacks of native settlements were frequent (cf Galois, 1992)[12]. But even after the establishment of a state presence in the area that was to become Greater Vancouver in 1858, the threat of violence seemed to still be ever present, even if its actual use was moderated somewhat. 'Battles were unecessary; shows of force and a few summary executions did much to establish the new realities. In a newly acquired territory where other forms of control were unavailable, the quick, brutal, episodic application of

sovereign power established its authority, and fear bred compliance' (Harris, 1993, 67). In 1860, for example, Colonel Moody of the Royal Engineers, who were charged with laying out the initial cadastral grid for the Greater Vancouver region, became concerned that inter-tribal conflict was threatening white settlers. He blamed the Squamish in particular, and threatened 'to wipe out the entire Squamish Tribe with gunfire' (quoted in Roine, 1996, 13).

Law's violence under colonialism centred on a redrawing of the map of property: 'In detail colonialism took many forms but it ... depended upon force to achieve its essential purpose: the transfer of land from one people to another' (Harris, 1997, xii, my emphasis)[13]. Yet, once established, Harris argues, the land system itself became the most important form of disciplinary power: 'It defined where people could and could not go as well as their rights to land use, and it backed these rights, as need be, with sovereign power... the land system itself became powerfully regulative. Survey lines and fences were pervasive forms of disciplinary power backed by a property owner, backed by the law, and requiring little official supervision' (Harris, 1993, 67)

Thus, the area that became downtown Vancouver saw a profound redefinition of property, underwritten by, and instantiated the violent dispossession of the original occupants. Take, for example, the Squamish village of Khwaykhay, settled for thousand of years. One observer estimated 2000 native peoples at this site in 1862 , with 'hundreds of lodge smokes spirall[ing] toward the cloudless sky' (Grant, 1911, 489) . In 1865, a surveyor laying out a site for a proposed sawmill noted that it intruded onto 'an Indian village', the residents of whom 'were suspicious of encroachment on their premises'. The mill was moved further east to another native site (Luk'luk'i) in the present Downtown Eastside. In 1888 the area around Khwaykhay was designated as Stanley Park and a road was built around the perimeter; as one worker noted, 'the Indians were put out of their houses and we were put in'. A small pox epidemic in 1888 caused government authorities to burn the village; the remaining residents were later charged with squatting (McDonald, 1992, p 11).

While the modalities of power have changed over the ensuing century, they can be said to be still undeniably in place. Only very recently has there been any willingness on the part of the dominant society to acknowledge the possibility of an aboriginal claim. Even so, this has been confined to 'crown' lands; privately held

land has been exempted from the land claims process. The fact of dispossession, in combination with racist 'Indian' policy and structured inequalities in labour, educational and housing markets have relegated many native peoples to the economic and political margins. Under these conditions, it is not surprising that many native peoples from across Western Canada make their home in the Downtown Eastside. Their 'off-reserve status means that many of them have been further marginalised. Native people in the Downtown Eastside, if they enter at all into discussions of the area, appear largely as racialised 'problems', characterised by substance abuse, ill health, and various forms of social and individual disfunction, that both singal and contribute to the 'decline' of the area.

But there were other historic violences, of course, that were done in this place. In particular, the 'subduing' of nature entailed the clearing of trees, the despoilation of marine environments, and the killing of animals. To term this violence may suggest a problematic extension of rights discourse to the natural world; can one speak of the 'murder' of a tree, for example (though see Stone, 1974) I would not wish to equate such acts with the violence done to native peoples, for example. However, if we think of a violence as a predisposition on the part of those committing it, it could be seen as an appropriate term. Certainly, if violence necessitates an objectification and distancing from the object of violence, liberal property relations could be seen as important precisely because of the ways in which they set nature apart from human endeavour, and require physical acts of transformation and domination. For John Locke, most famously, 'subduing or cultivating the earth, and having dominion ... are joined together. The one gives title to the other' (1980/1690 § 35)[14].

b) The empire of good and evil:

The histories of dispossession are largely invisible. Occasionally, however, they enter into optimistic telelogies of the area, signalling the closure of the frontier, and the transition towards 'highest and best use'. Thus, for example, the advertising copy for Concord Pacific's massive waterfront developments adjacent to the Downtown Eastside, note that:

> 'For centuries, Native villages had existed on these shores. In 1863, Queen Victoria's Royal Engineers surveyed this sheltered Pacific inlet. Over a

> century later, the pavilions of a hundred nations at Expo 86 drew the world's attention to Vancouver.... Occupying the former site of Expo 86, Concord Pacific Place is rapidly taking shape as Canada's most ambitious and exciting downtown waterfront community...' (Concord Pacific, n.d.)

The notion of 'highest and best use', by which this transition is explained and justified, is left unexamined, as is the founding violences upon which it was based. Rather, inner city urban change is presented as natural and inexorable. Robert Park (1952) offers an interesting and influential analysis, in his discussion of succession, which is similarly presented as not only 'an irreversible series' (226) and an 'inexorable historical process' but also as very much concerned with the appropriation of land by different interests. An 'obvious and impressive' example is provided by South Africa, Park notes, in which the transition from original inhabitants, through Dutch settlers and to English domination saw the region pulled from isolation into the currents of 'a new world civilisation'. This transition, for Park, is seen as a telling illustration of the principle whereby 'the land eventually goes to the race of people that can get the most out of it' (226). Similarly, discussions of gentrification in Vancouver have often relied upon similar assumptions, presenting urban change as inexorable, natural (and hence a-political) and ultimately beneficial to the extent that they mark an intensified economic use by a worthy class[15].

There is more than an echo of the telos of property, noted above, here. As Neil Smith (1996) has so powerfully documented, the the 'frontier' metaphor remains important to American gentrification, as the inner city becomes discursively constituted as an urban wilderness of savagery and chaos, awaiting the urban homesteaders who can forge a renaissance of hope and civility. At the same time, Smith reveals the material politics of the frontier, as the shifting margins of profitability and revalorisation map out the physical process of gentrification on the ground. The mythic frontier of gentrification is 'undergirded' by an economic frontier, in other words.

Contra Turner, then, the frontier is not closed: 'the notion of closure ... falsely represents the American relationship to real property in terms of fixity and stability by denying the ongoing processes of property transfer' (Ellis, 1993, 127); urban space, in fact, is 'unclosed, available for continual, ongoing closure' (131). The trope of the

frontier is also evident within the Downtown Eastside, given the Benthamite tendency to mark out a divide between reclaimed territory and a space of non-property, an 'outlaw' or 'wilderness' space[16].

Elsewhere, I have tried to make sense of the ways in which some powerful interests in the city represent the Downtown Eastside, with particular reference to notions of property and entititlement (Blomley, 1997). Several tropes seem to reoccur, the effect of which is to mark out a border between positive forms of property and its antithesis. Thus, private developers or new loft residents in the area are sometime characterised as positive vectors of economic and moral uplift, while poor residents are either denied any form of claim-right to the Downtown Eastside (to the extent that they are deemed mobile, non-owners, or engaged in behaviour that constitute a threat to private property) or simply removed from the map through strategies of spatial renaming (Blomley and Sommers, forthcoming). A long history of 'Skid Row' rhetoric has tended to deny the identities, humanity and agency of the poor. This is by virtue of the many things they are assumed to lack - civility, restraint, community and so on. Part of their lack relates to real property. The poor do not, by definition, own property. As such they do not qualify as 'full' citizens or as community members. This reflects a deep seated presumption within liberal property discourse that the ownership of land, in particular, is a prerequsite for stability and membership in a polity and society (Krueckeberg, 1998, Goetz and Sidney, 1994). Indeed, the poor are if anything a threat to property; not only because of their 'property crime' but also because by their presence, they destabilise 'property values', both economically and culturally. Governmental practices, for some commentators, depend upon and reproduce categories of marginal and abjected subjects, as distinct from the 'affiliated', who engage in the life long 'projects of the self' valorised by contemporary modalities of governance (Rose, 1996). Property - as a site in which subjects can invest themselves, economically and politically - is one important form of affiliation. The affiliations of the marginal, however, are to an often spatialised 'anti-community', characterised by threatening forms of lifestyle and comportment.

Perhaps in that sense, Bentham's propertied geography which maps out the 'the two empires of good and evil' - is still in evidence. The contrast with the unpropertied 'fierce tribes', with their 'implacable rivalries' and the healthy and smiling habitations of the propertied is remapped in contemporary urban

landscapes. As evidenced in the quotation at the outset of this paper, tropes of gentrification rely upon similar distinctions. A 'world of difference' is said to exist between the settled space of a gentrifier, and the feral 'night life' outside, characterised by the unamed bodies of the 'dazed, drugged and drunk'[17].

c) The 'enforcement' of property:

When we consider the continued workings of that property regime, as they are experienced by the poor, violence reappears. Bud Osborn (1998), in describing the violences of the Downtown Eastside, includes what he terms 'vicious displacement'. The threat or reality of displacement is ever present in the Downtown Eastside as the stock of affordable, if substandard housing is eroded. Critical to displacement are the prevailing property relations. Displacement, it should be remembered, is not an 'act of god'. In the case of hotels, rather the evictions, conversions, and harassments associated with displacement are predicated upon a power relation between property owners (hotel owners) and tenants with relatively limited rights. It is hard to gauge how many people have actually been evicted in the Downtown Eastside. According to City statistics, between 1980 and 1997, 1667 'single rom occupancy' rooms were 'lost' in the area (City of Vancouver, 1998). That 'loss' often translates into involuntary displacement, as hotels are converted, rents increased beyond welfare levels, or buildings demolished. In 1986, in preparation for the Expo Worlds Fair in Vancouver, for example, it was suggested that over 1000 people were evicted. It is possible that some of these residents were willing to move, given the substandard conditions of many of these hotels. However, it is undeniable that for many, the personal and financial costs were untolerable. The experience of Olaf Solheim, noted above, is one such case.

How then were such evictions 'violent'? If we hold to one side the question of pyschological violence, the physical violence associated with the evictions seems relatively minor. Unlike other cities, there were not many cases of hotel owners physically threatening tenants, to my knowledge. Further, although community groups did organise around the issue, there do not seem to have been many cases of individual tenants actively resisting prevailing property relations (through occupations, for example). However, the apparent absence of explicit violence perhaps speaks in part to the latent violence of the legal system. Thus, the threat of

legal action, itself sustained ultimately by violence, may serve to sustain displacement. The violence that arguably undergirds those displacements is, however, left unacknowledged. Rather, it is characterised as part of the 'natural evolution' of the area, or as a process that is class-blind, occurring throughout the city as rents and property values increase. The residents of hotel rooms are, moreover, depicted as 'property-less' (or as potentially a threat to property, as noted above) while hotel owners claim their property rights when threatened with regulation[18].

But property is also enforced in other ways. For example, 'property crime' has become a pressing issue in the area, particularly in the context of high levels of injection drug use. The result has been high levels of criminal activity. n the latter half of 1997, 11% of all 'theft from autos', 20% of all violent crimes and 81% of all drug arrests in Vancouver occurred in the Downtown Eastside (City of Vancouver, 1998). Despairing at street crime, and lax police response, merchants and home owners in two areas have employed their own security guards, some of whom have been accused of violent attacks. Given the perception of a breakdown of 'law and order' - some local community groups have gone so far as to request the deployment of the Canadian army [19]. As a result, the police have beefed up street level enforcement, including the implementation of 'Operation Scoop' in the Fall of 1998, which entailed the wholesale arrests of street level drug dealers (Skelton, 1998).

The police themselves acknowledge that these actions are purely symbolic: Operation Scoop will not 'significantly impact the availability of drugs' (Skelton, 1998). However there was a felt need for law to 'reclaim' the streets which had become 'lawless'. In part, this is to be achieved through making legal violence more visible; that is, through increases in the number of police officers in the area, stepped up enforcement activity, and so on. However, here and elsewhere, civic authorities have also embraced attempts at improving 'civility' through an array of environmental crime prevention programs, such as the regulation of street beggars, 'open' drug dealing, graffiti and so on. In this, they have been directly influenced by the influential 'broken windows' philosophy, espoused by James Q Wilson and George Kelling (1982), with Kelling, for example, recently being invited to Vancouver.

The 'broken windows' model of crime prevention makes interesting use of notions of property and ownership. Wilson and Kelling's examination of the 'disorder' of the street that spawns criminality focuses explicitly on that which is 'untended' (i.e. spaces which are unclaimed, and unowned). They describe a test, involving two abandoned cars left in a low income area. The licence plates were removed from one car. Within minutes, the unlicenced car began to stripped, and within a day, 'random destruction began. 'Untended property becomes fair game for people out for fun or plunder'. The effect of removing clear signals of ownership is to signal 'that no one cares' (1982, 31). The effect is to lower 'communal barriers - the sense of mutual regard and the obligations of civility' (31). Consequently, what is needed are modes of regulation that focus on quality of life issues, rather than crime fighting. On the principle that, for example, 'the unchecked panhandler is, in effect, the first broken window' (34), the regulation of apparently minor activity that signals a breakdown in order should become a priority.

In one sense, 'broken windows' ideology - with its appeal to 'mutual regard' and civility' seems to reframe the relation between legal violence and property. A call for foot patrols, community based policing, and 'environmental' forms of regulation seems to displace legal violence. And in one sense, perhaps it does, although if Elias is correct, law's violence is still internalised by newly 'responsibilised' liberal subjects, who rush to sign up for 'neighbourhood watch' program. However, in another sense, violence is not displaced to the margins, but still remains powerfully operative. Nikolas Rose (1996) and others have noted the differentiated ways in which the subjects of governmental strategies are located, with the distinction being made between the affiliated and the abjected: Different governmental strategies are called for in the latter case; which can include the 'intensification of direct, disciplinary, often coercive and carceral, political interventions in relation to particular zones and persons' (Rose, 1996, 345).

It would seem that this coercive intensification - directed at particular marked bodies, such as the poor, the homeless, sex trade workers, First Nations populations - is evident in Vancouver's Downtown Eastside, as it is elsewhere. (Smith 1996). And it can be argued that this is in no way a contradiction of the apparently more benign language of 'broken windows' ideology. In their call for policing to focus on the maintenance of 'order' rather than 'crime prevention', Wilson and Kelling lament the disappearance of the traditional police role as 'night watchman'; that is,

'to maintain order against the chief threats to order - fire, wild animals, and disreputable behavior' (33). Order is defined as inherently ambiguous, but as rooted in community based standards and norms. Thus, policing must accomodate and reinforce community definitions of order. This, they acknowledge, marks a departure from liberal standards of state regulation, increasingly hedged in by the rule of law, that would limit the broader discretion required of the police. While they acknowledge that their approach could make the police 'agents of neighborhood bigotry' (35), they seem to accept this as a necessary cost. Stewart (1998) is less sanguine. The historical record of enhanced police discretion is one of 'both general violations of civil liberties and the specific oppression of minority communities' (2251) he argues.

And stepped up policing in Vancouver's Downtown Eastside (which also entails newly established 'private' policing in certain areas) has brought with it similar allegations. The spaces of property, are in some senses, at stake in such struggles - who has the right to the city, who is to blame for the 'loss' of the city, in whose name is it to be 'reclaimed' (cf Smith, 1996) - but also helps underwrite these conflicts. Not only does broken windows ideology rely upon certain propertied claims concerning 'untended property', but a Benthamite divide between those who threaten property and those who are at threat perhaps helps justify distinct and differentially violent forms of state intervention against urban bodies.

Within the Downtown Eastside, there are those who argue that policing strategies are underwritten not by the guest for community integrity and security, but with a concern at property values; at ensuring that the area is 'safe' for investment:

'the war on drugs
is a euphemism for a war against refugees
from global economic warfare
whether they are from alberta or el salvador
the war on drugs is an excuse
for police to beat the shit out of people who are
ill and abandoned and deemed expendable and powerless
and who have nowhere else to go than down here (Osborn, 1997)[20]

VIII: Conclusion:

It is too easy to appear self righteous. At the very least, I need to recognise the degree to which my life is predicated on past and continuing forms of legal violence. Violence is deployed to protect me, a white, middle class home owner, from the violences of those without property. The very existence of my home is, itself, dependent on previous violences done to the previous native owners, long since dispossesed through force. I am also conscious of skating around some other pressing ethical questions. In raising the question of legal violence, it does not follow that it is necessarily immoral. Moreover, to reduce law and the state to violence is also problematic, as Arendt (1970) notes. And yet, for at least three reasons, it seems to me important to take law's violence more seriously.

First, if we are interested in the state and law, yet concentrate purely on its discursive forms, we miss some important dimensions of power. I have tried to suggest here that violence is important to 'Law's Empire' in fundamental ways - it is operative at its origin, is evident in its workings, and is central to its legitimations. Violence, moreover, is not simply a 'by-product' of law, but can be said to be at its core. This does not preclude an attention to law's meanings, discourses and narratives. Indeed, 'violence and the word' are related in all sorts of ways. However, we should not let an attention to the latter detract us from a careful exploration of the physical violences, directed at the 'bodies of law' (Hyde, 1997). This does not mean that legal violence is somehow random or explicit: I have argued that the state apparatus deploys an economy of violence that need not be rendered visible for it to be operative.

'Any effort to distinguish the commands of law from the commonsense notion of forceful violence is a residue of hoary metaphysical illusions about law', argues (Weisberg, 1992, 176). Treating law as discursive 'tends to prettify the force and violence out of the law' (178). In so doing, and this is my second point, we miss some important ethical questions. At a generalised level, these relate to the liberal project itself. As Cover (1986) reminds us so powerfully, judges are unlike other discursive agents like, say novelists, because they often make decisions that inflict violence. 'Lawmakers may be rhetoricians and intellectual artists, but they are also the violent engineers of the state's policies' (Wiesberg, 1992, 178). This does not mean that such violences are necessarily immoral, but it does raise some complicated questions concerning the distinctions between legal and extra-legal

violence (cf Weisberg, 1992) as well as the degree to which the violence inside law can be internally destabilizing (Waldenfels, 1991, Sarat and Kearns, 1992b).

At a more immediate level, issues of legal violence have become of heightened importance in contemporary North American society. Explicit legal violence has become more evident, as policy makers embrace an increasingly carceral society. If there is an 'economy' to legal violence, in other words, it seems increasingly to be undergoing a restructuring, or to confronting a serious of profound internal 'contradictions'. In Canada between 1971 and 1991, for example the number of police officers increased 41%, while the number of private security guards increased by 126%. In the US, crime and law enforcement shows account for around 30% of total television (New Internationalist 1996). The violences of law, however, are socially selective. Human bodies are subjected to differentiated violences, largely - it seems - as a function of the ways in which they are racially and social marked. As McKinnon notes, representation is an instrument of social hierarchy, that can rationalise and normalise the forms of violence that are visited on those on the bottom (McKinnon 1993, 30). Such representations are also worked out in particular spaces, as Mike Davis, Neil Smith and others have noted. Thus it is that the marginalised peoples and spaces of North American cities experience law's violence in a much more immediate sense than do the populations that benefit from such violences[21].

That law's violence is differentiated not only socially but also spatially should not surprise this audience. My third, and final point, is simply to underscore the vitally important <u>geographies</u> of legal violence. If we're interested in the geographies of law, we should be attending to violence; however, I've also tried to suggest here that as an attention to violence is incomplete without a critical geographic imaginary. Violence is integral to law in terms of its origins, actions and legitimations; yet such violences are also powerfully geographic. Space gets produced, invoked, pulverised, marked, and differentiated through practical and discursive forms of legal violence. And law's violence is itself instantiated and legitimised, yet also complicated and contradicted in and through such spaces.

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Notes:

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[1] Violence literally means to 'carry force toward something'. Robert Litke (1992) provides a review of the possible meanings, noting the distinction between personal and institutional violence that can have either physical or pyschological effects. Thus, racism constitutes a form of psychic as well as physical violence. However, I choose to use the term in a narrower sense - the injurious use of physical force directed at the body under the sign of Law (cf Platt 1992)

[2] I owe a great intellectual debt to both Cover and Sarat and Kearns, who have done more than anyone I am aware of in exploring this 'mystery in the life of law'

[3] cf Foote (1997), who explores the complicated and ambivalent ways in which American culture concretises its understandings of violence in the landscape (for example, through memorials).

[4] Foote's claim that, therefore, '[v]iolence should be seen ... as a regenerative force, one capable of refining and forging a new society' (334) may be appropriate for the dominant society; however, native peoples may beg to differ.

[5] cf Proudhon's claim that property is homicide: 'property, after having robbed the labourer by usury, murders him slowly by starvation' (Proudhon, 1840/1994, 140)

[6] http:/www.oneworld.org/tlio/history/clare.html

[7] http://kafka.uvic.ca/~vipirg/SISIS/Ipperwash/dgdeath.html

[8] For example, Douglas Hay (1975) notes a significant increase in English capital statutes from the late seventeenth century (c . 50 in 1688) to around 200 by 1820, reminding us that almost all concerned property offences. Yet despite bloodier laws and an increased conviction rate, eighteenth century criminal law took relatively few lives. However, the spectacle that surrounded criminal law and its violences, such as the majesty of the assizes, the rhetorics of vengeance, and the promise of mercy and justice, made frequent recourse to the actual violences of the death penalty less necessary.

[9] 'The peculiar stability of the apparatus of mental self-restraint which emerges as a decisive trait built into the habits of severy 'civilised' social being stands in the closest possible relationship to the monopolization of physical force and the growing stability of the central organs of society. Only with the formation of this kind of relatively stable monopolies do societies acquire those characteristics as a result of which the individuals forming them, get attuned, from infancy, to a highly regulated and differentiated pattern of self-restraint; only in conjunction with these monopolies does this kind of self-restraint require a higher degree of atomaticity, does it become, as it were, 'second nature'. (Elias, 1998, 54)

[10] A related analysis comes from debates concerning governmentality; in particular, the notion of 'action at a distance' and, more generally, Latour's treatment of power as translation (see Latour, 1987, Rose and Miller, 1992)

[11] I am endebted to David Delaney for his emphasis of this point.

[12] Harris' argument that such forms of violence 'have less to do with law ... than with power' (57) may be true to the extent that it occurred absent a formal state apparatus. However, the reliance on legal forms (trials etc), combined with the theatrical display of state power (cf Hay, 1975) might suggest a closer connection.

[13] In making the case for acts of legal violence directed at Native peoples, we should not forget the many historic violences of Native life before colonisation. Beyond the village, relations were very often hostile and potentially violent. Attacks against rival villages brought death and enslavement (Barnett, 1955, 267-271). Complex rivalries and alliances, accompanied by physical violence, ensured relations of domination between groups.

Also, it should be remembered that the descendants of many of the Euro-Canadians who were the beneficiaries of this dispossession were themselves economic refugees from earlier acts of displacement, such as the 'Clearances' of the Scottish Highlands.

[14] Seed (1993) also traces this link between the subjugation of nature and English notions of property, noting the degree to which it has been seen as a biblical imperative. Also, there seems a discursive link between aboriginal dispossession and the subduing of nature - positioning native people as 'of nature'.

John Clare's poem, 'Remembrances', written in 1832, runs: 'Inclosure like a Buonaparte let not a thing remain/It levelled every bush and tree and levelled every hill' (http:/www.oneworld.org/tlio/history/clare.html). For other treatments of the link between law and nature, see Delaney (1999); for an examination of the 'ethical geographies' of nature, see Wolch and Emel.

[15] For Locke (1690/1980), it is labour that 'puts the difference of value on every thing' (s 41).

[16] We should remember that the Canadian 'frontier' is distinct. Tina Loo (1994) notes that the British Columbia frontier was not Turnerian, but imperial and metropolitan.

[17] Bula, ibid

[18] For a counter to this argument, see Radin (1993).

[19] The Executive Director of a merchants association in Chinatown, within the Downtown Eastside. sees open drug dealing as bringing the 'law enforcement establishment into disrepute' (Mulgrew, 1998b, a 15)

[20] While it may not be fashionable to adopt such an instrumentalist reading, it should not be too quickly dismissed. Howard Zinn, at least, would agree : 'most law enforcing is designed to protect property, not human beings.... Most of our legal system is designed to maintain the existing distribution of wealth in our society.... Most criminal penalities are used not to protect the life and limb of the ordinary citizen but rather to punish those who take the profit culture so seriously that they act it out beyond the rules of the game' (1971, 26-27)

[21] In a new twist on police outreach, police officers in New York are counselling African Americans in New York about how to survive encounters with the police. 'The golden rule is: Comply. No matter how unwarranted the stop, no matter how abusive the cop, comply'. One officer reportedly advised the audience: 'Sure, you've got rights. But your most important right is your right to go home to your family' (Grunwald, 1999, 17).