Occupation, Exclusion and the "Homeless Problem" during Occupy Montreal

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Abstract

As part of the Occupy movement in the fall of 2011, the *Indignés* in Montreal occupied a public square and set up an autonomous encampment to protest against socio-economic inequality. However, cohabitation problems soon arose in the camp and tensions between so-called homeless occupiers and *Indignés* occupiers developed, leading to the exclusion of the homeless people. This paper addresses this tension and inscribes the concept of occupation in a larger historical context. It teases out the legal histories of *occupation-as-exclusive-appropriation* to cast another light on *occupation-as-protest*.

Key words

Occupation; Occupy Movement; Homelessness; Public Space; Municipal By-laws; Property Theory; Protest Movements; Social Exclusion

Resumen

Como parte del movimiento "Ocupa" del otoño de 2011, los *indignados* de Montreal ocuparon una plaza pública, y levantaron un campamento autónomo para protestar por la desigualdad socio-económica. Sin embargo, en el campamento pronto se dieron problemas de cohabitación, y se produjeron tensiones entre los llamados

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ocupantes sin-techo y los ocupantes *indignados*, que llevaron a la exclusión de los primeros. Este artículo refleja esta tensión, y sitúa el concepto de ocupación en un contexto histórico mayor. Clarifica la historia legal de "ocupación como apropiación exclusiva" para dar una luz diferente a la "ocupación como protesta".

Palabras clave

Ocupación; Movimiento Ocupa; movimiento indignado; personas sin hogar; espacio público; ordenanzas municipales; teoría de la propiedad; movimientos de protesta; exclusión social

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1. Introduction

Occupy Montreal set up its camp in Square Victoria, on October 15, 2011. This square – a public space or, more accurately, a piece of land owned by the City of Montreal for the benefit of the public – was carefully chosen. It is surrounded by important symbols, including: the World Trade Centre of Montreal; the posh and trendy hotel *W*; the stock exchange tower, which now only trades derivatives; and *Québecor media*, a giant communications company with a center-right wing ideology.

Soon, Square Victoria was renamed *La place des peuples*, in English the *People's Square*. A tent city was organized, with an on-site people's kitchen, a library, wireless internet, a first aid station, an information booth, and, of course, some portable toilets. At the height of the movement, 250 tents were installed in Square Victoria. The statue of the Queen Victoria that oversees the park was decorated with a Guy Fawkes mask[1] and a large placard saying "Zeitgeist: Aller de l'avant. Going forward". At one point, not without irony, the Queen even held the Patriote flag, a flag symbolizing the 19th Century movement against British domination in the province. Occupy Montreal put forward two fundamental principles: 1) the world needs a profound economic change that would lead to a more just distribution of wealth on a local and global level; 2) non violent action is the way to achieve this end (Parker 2011).

Occupy Montreal happened in the wake of the Occupy Wall Street movement. Born out of the Arab Spring and the massive mobilization in Tahrir Square, Egypt, as well as the Indignados movement in Spain, the Occupy Wall Street movement was, among other things, protesting against the stark economic inequality. This is well illustrated by one of the movement's catchy slogans, "We are the 99%!", a phrase that is said to be inspired by a *Vanity Fair* article by economist Joseph E. Stiglitz (2011). The name Occupy Wall Street is generally attributed to Kalle Lasn and his acolyte, Micah White, respectively founder and senior editor of the anti-consumerist magazine *Adbusters*. Neither of them can recall who came up with the idea of occupying lower Manhattan, but on June 9th, after hesitating between OccupyWallStreet.org, AcampadaWallStreet.org and TakeWallStreet.org, they decided that Occupy Wall Street would best capture the kind of actions they had in mind and they went ahead and registered that domain name (Schwartz 2011). On July 13th, a new hashtag was created on Twitter: #OCCUPYWALLSTREET. The day after, *Adbusters* sent a call for action via its electronic mailing list: it wanted to see 20,000 people flooding Wall Street on September 17 and repeating a simple single demand.[2] The call sent by *Adbusters* in reference to Occupy Wall Street is telling:

> The beauty of this new formula and what makes this novel tactic exciting, is its pragmatic simplicity: we talk to each other in various physical gatherings and virtual people's assemblies … we zero in on what our one demand will be, a demand that awakens the imagination and, if achieved, would propel us toward the radical democracy of the future … and then we go out and seize a square of singular symbolic significance and put our asses on the line to make it happen (Adbusters 2011)

A New York Times journalist wrote "Kalle Lasn (…) did not invent the anger that has been feeding the Occupy Wall Street demonstrations across the United States. But he did brand it" (Yardley 2011). The compelling slogan *Occupy Wall Street* was chosen for its marketability, its evocation, but also its connection with movements around the globe and its potential for inclusion and imagination. The spirit behind this tactic, it was argued, was a fusion of the Tahrir movement —with a one demand, just like the Egyptians protesters who made clear that first, Mubarak must go— and the visibility of the Indignados in Spain who also gathered in a public

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[1] For more details on the use of the Guy Fawkes mask in the Occupy movement, see Elden (2011).
[2] This single demand has subsequently been forgotten about. As Lawson-Remer (2011) wrote: "Protestors cannot agree on "one demand" because there is no one magic bullet to fix the mess".

space and camped out for an extended period of time. But if *Adbusters* has had a role to play in the branding of the movement, it did not create the movement itself. Nor did it invent occupation as a form of protest.

The word *occupation* to designate a form of protest is believed to have roots in a 1920's Italian movement of occupation of factories. Zimmer writes that "*Occupy* and *occupation* first became part of the language of protest in September 1920, when factory workers in Italy held strikes against working conditions" (Zimmer 2011). The Oxford Dictionary traces back the translation of the Italian name of the movement, *Occupazione delle fabbriche*, to a London *Times* article published on September 2nd, 1920 (Zimmer 2011). Occupation, i.e. the action of remaining in a place without authority as a form of protest, is also a historical tactic in the United States and was used in such protests as the Bonus Army movements of 1932-1933 and the Indians of All Tribes occupation of Alcatraz (Zinn 2005). On a smaller scale, it was used as a protest tactic through the student occupation movement of 2009 (Aragorn! 2012; see also Fortin and Roussell 2012). And, of course, the occupation of central plazas in North Africa and Spain during the 2011 Arab Spring and Spanish Indignados' 15-M movements showed that occupation can also be a larger scale form of protest.

In the province of Québec, occupations (of educational institutions, of ministers' offices, etc.) have been part of the student activist toolkit for a long time.[3] An early example of occupation dates from 1968, when the students at Cegep Lionel Groulx, a higher education institution north of Montreal, voted an unlimited strike and occupied the institution (Drapeau 2010). But Occupy Montreal was unprecedented in Québec for its scale, its location on the public domain, and its duration.

No doubt the fact of being collectively visible, present, and installed in one place has proved a powerful and effective tactic for social movements. Nevertheless occupations sometimes raise questions, especially when they are associated with invasion and appropriation of the space. Moreover, occupations are not only a tool for progressive protest movements. *Occupation* is a polysemous word that can – in one of its senses, and as we will see in section 3 – evoke the exclusionary violence of private property. In Montréal, this contradiction between *occupation-as-exclusive-appropriation* and *occupation-as-protest* was made salient at the occasion of the Occupy encampment, and was especially exemplified by what has become to be known "the homeless problem" on the encampment.

This paper addresses this contradiction and looks into the multiple dimensions of occupation in the context of the lived experience of the encampment in Montreal during the Occupy movement. The paper is divided in two sections: first, after having described the legal context of Occupy Montreal and depicted the interactions within the encampment and with city officials, I explore what was dubbed the "homeless problem" in the Occupy movement in Montreal. This first section draws on various media sources and internal documents (mass media, independent media reports such as blog entries and media releases from Occupy Montreal). The second section draws on the concept of "citationality" as put forward by Judith Butler, to inscribe the concept of occupation and the "homeless problem" of the movement in a larger historical context. Butler (1993) builds on Derrida's notion of "iterability" to argue, as Brady and Schirato explain, that "every performance of gender is required by the histories of gender intelligibility to cite the norms that precede and produce it, and that the ongoing requirement of gender performance requires the ongoing and repeated citations of those norms" (Brady and Schirato 2011, p. 48). Similarly, this paper teases out the legal histories of *occupation-as-exclusive-appropriation* to cast another light on the contradictions of the Occupy movement as a protest movement against social and economic inequality.

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[3] On the history of the student movement in Québec, see ASSE (2005).

Finally, in the concluding section of this paper, I answer the call that we, as workshop conveners, put out, and I take the opportunity of this paper to be transparent about the source of my indignation. Hence, I express my indignation at the social exclusion of homeless people from public space and at the role of law in producing all kinds of exclusion.

2. Occupy Montreal and the "homeless problem"

According to a 2001 report (Fournier 2001)[4], there are approximately 30,000 homeless people in Montreal. Lately, many shelters have come out in the media to say that they are unable to meet the demands of that population and that the number of homeless people, and especially homeless women, in the city is rising dramatically (Montpetit 2012, Duchaine 2013).

To be homeless means not having any stable place to stay and therefore spending large amounts of time in public spaces (Waldron 1991). But it also means, at least in Montreal, being constantly targeted by the police. In 2009, a public agency dedicated to the protection of human rights in Québec, the Commission des droits de la personne et des droits de la jeunesse du Québec (CDPDJQ), found that homeless people in Montreal suffer from a disproportionate and discriminatory enforcement of municipal by-laws governing public spaces through the issuance of "tickets". (Campbell and Eid 2009, see also Fortin forthcoming)

By-laws governing public spaces in Montreal, such as Square Victoria where the Occupy encampment was located, include: *By-law concerning noise* (R.R.V.M., c. B-3); *By-law concerning dog and animal control* (R.R.V.M., c. C-10); *By-law concerning peace and order on public property* (R.R.V.M., c. P-1); *By-law concerning parks* (R.R.V.M., c. P-3); *By-law concerning the prevention of breaches of the peace, public order and safety, and the use of public property* (R.R.V.M. c. P-6); and *By-law pertaining to civic behaviour, respect, and cleanliness* (Ville-Marie, CA-24-085). These by-laws all provide for fines as punishment when violated.

According to a study conducted by Professors Bellot and Sylvestre (2012), 30,551 tickets were given to 4,370 homeless people in Montreal between January 1st, 2006 and December 31st, 2010. Those tickets were given mostly for violation of municipal by-laws or public transportation agency by-laws for behaviour related to the use of public space (e.g. being in a park at night, drinking alcohol on the public domain, entering the Metro without a pass, sleeping in Metro stations, etc.) Overall, this means that in 2010, homeless people accumulated a penal debt in unpaid fines — fines that, needless to say, are very unlikely ever to be paid— that amounts to 15 millions dollars (Bellot and Sylvestre 2012, see also Fortin forthcoming).

Not only do they control behaviour, but by-laws also control —or, perhaps more accurately, "banish"— presence (Beckett and Herbert 2010). In the mid-1990s, Montreal started to prohibit access to most of its public places at night. In 2006, a city ordinance, *Ordonnance modifiant l'ordonnance sur les heures de fermeture des parcs* (City of Montréal, Ville-Marie, P–3, o.8.1.)[5] transformed almost all squares and plazas downtown, including Square Victoria, into parks and forbade the population to access them between midnight and 6 a.m. A person present in a park when it is closed may receive a ticket from the police —ticket that is normally associated, again, with a fine of several hundreds of dollars.

Occupy Montreal, with its encampment, was theoretically not exempted from the application of this ordinance. But interestingly, the activists benefitted from a relative tolerance from the city authorities, at least at the beginning of the encampment. In fact, three days after the beginning of Occupy Montreal, at a time

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[4] No subsequent report has been published on the issue.
[5] This ordinance, which is not a formal by-law, was not adopted by the legislative chamber of the City of Montreal but rather was adopted under the executive power of the mayor.

when the whole world was looking at the various ways cities would handle the occupations, the then Montreal Mayor Gérald Tremblay supported the movement.

> What's important to us is … peace and security… That's why the Montreal police department is on site, and will be checking [the situation] regularly, and we have a [city] foreman who's present and every three hours our [blue] collars are there to ensure cleanliness… So long as there's no mischief or incivility, we'll see over the next hours and days the best solution to permit people to express themselves and demonstrate their unhappiness concerning a subject that seems planetwide (Mennie 2011).

Surprisingly, there was considerable confusion in the first days of the occupation about the legal status of Square Victoria. Was it a park or was it a plaza? The answer matters since a plaza would be open at night and a park would be closed. Astonishingly, it seemed that the 2006 ordinance had been forgotten. Even the police spokesperson, Ian Lafresnière, said that the designation of Square Victoria as a public space gave the protesters considerable leeway, noting that the protesters seemed to be on the right side of the law (Mennie 2011).

But the line between the right and the wrong side of the law is a moving line and the tolerance of the municipal authorities was in fact purely discretionary, and as a matter of fact, short-lived. It soon became obvious that the city was looking for a pretext to evict the occupiers. First, it tried to enforce various health and security norms, for example invoking fire hazards to order the occupiers to dismantle the wooden structures they had built to protect themselves from the cold (see e.g. Normandin 2011a, Rakobowchuk 2011). Literally, the authorities were trying to get the cold weather to bear the blame for the anticipated eviction, wishing the occupiers would leave on their own (see eg. Fong 2011; Normandin 2011b). But they were not leaving. And the tolerance reached a breaking point.

On November 23rd, 2011, in the evening, the police distributed eviction notices to the occupiers. Unsurprisingly, the eviction notices cited the by-law prohibiting being in park between midnight and 6 a.m. (Saint-Arnaud 2011a). The eviction that followed on Friday November 25th unfolded peacefully. Not one ticket was handed out. After the eviction, the Montreal police representative explained that the police had no intention of arresting or handing out tickets to the occupiers. "It was never our will to judiciarize people that were in the square. Our will was only to expel these people. (…) These people have rights, they have freedom of expression" (Saint-Arnaud 2011b, my translation).

2.1. The "homeless problem"

Significantly, the eviction operation, in the name of public safety, came after the newspaper *La Presse* featured the following sensationalist headline on its front page: "Nightmare at Occupy Montreal! Fights. Shooting Gallery. Vandalism. The situation gets out of hand." (Normandin 2011c, my translation). The Occupy Montreal encampment was getting bad press and the mayor was being accused of being too soft on the activists. The article reported that Square Victoria had become too dangerous and that many protesters were leaving. One occupier who was dismantling his tent, too exhausted by his "Occupy experience" to stay, commented: "We're here to change the system but we have to spend our entire days doing social work." (Normandin 2011c, my translation). Another one said that they had big problems with alcohol and drug consumption on site, as well as with mental health issues.

The camp at that time appeared to be ideologically and geographically divided. The so-called *indignés* occupiers on the North end were trying to find a solution to the "homeless problem" and wanted to be able to expel the "undesirable elements" from the encampment. On the South end, the so-called *homeless* occupiers who had set up camp there were seen by certain people as "trashing the party" of the activists (Normandin 2011c). It should be noted that the term "homeless" quickly

became a sweeping term to designate the drug addicts or the so-called "trouble makers" —in other words, the "others", those who apparently did not belong to the movement.

Another newspaper article reported that some self-declared *indignés* occupiers, determined to bring order back to the encampment, decided around November 20th that from then on, they would not offer free food to everyone anymore and would only serve those who prove they participate to the life of the movement (Normandin 2011c). At one point, some activists even called the police on certain homeless people to have them expelled from the camp (Rocha 2011).[6]

A well-known Montreal-based editorialist, Michèle Ouimet, wrote a piece in early November, emphasizing the divide between the "activists" and the "others" (Ouimet 2011). She wrote that those who wanted at first to protest against social inequalities had seen their protest "kidnapped" by the homeless who quickly understood they could relocate in the Square and receive free food and free clothes, and this without having to deal with the hassle of the shelters that impose strict rules on them. She said that the mix was highly explosive and that the city authorities, in refusing to intervene and to shut down the camp, was playing with fire.

Michèle Ouimet might have been harsher than necessary on both the movement and the homeless, but it remains that she had a point: the so-called homeless were not always all that welcome in the space. Some activists (but by no means all of them[7]) saw a divide between the *homeless* occupiers and the *indignés* occupiers. This opposition between homeless people and activists dangerously recalls the infamous dichotomy between the deserving and undeserving poor. They were apparently all part of the 99%, but some belonged to the movement more than others: some were more entitled to occupy the space and be part of the public than others, these others being in fact the most vulnerable and destitute segment of the 99%. Perhaps too busy reinventing the world, some activists did not notice they were construing the homeless as more outlaw than themselves and they were excluding those who were there in public spaces long before them (and would stay there long after them as well). The homeless appeared to be disruptive to the movement, just like the movement was meant to be disruptive to the socio-economic status quo. As Louis Gaudreau and Michelle Duval wrote in an op-ed piece, the homeless were perhaps making the movement more troubling to watch, less sympathetic to the sensitive observer, but their presence within the movement was simply showing another dimension of this social crisis in which financial capitalism had thrown us (and denouncing the social crisis was allegedly the purpose of the protest) (Gaudreau and Duval 2011).

Both the Left and the Right in Montreal criticized the Occupy movement and how it dealt with the homeless. The Left criticized the movement basically for its lack of experience within social justice groups, for not being a truly "poor people's movement", and for excluding the issues of racism, sexism and classism (Hudson 2011, Ancelovici 2012). Another critique, in the context of Montreal, was that the Occupy movement missed the opportunity to connect mental health problems and addictions with the capitalist system and to underline the demoralizing effect

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[6] See also Occupons Montréal (2011a) for a summary of the Occupy Montreal General Assembly Meeting held on November 12, 2011: "John: I'll speak in English. There's not enough people involved in the security committee. We don't have any itinérants entre nous. Nous sommes tous des occupants, mais il y a des trouble makers. Let's not be afraid to call the police if we can't solve a problem."
[7] Some activists refused to adopt an exclusionary discourse towards the homeless and made a point of telling the press that the movement was meant to welcome everyone in need, especially the most vulnerable among the 99%, or otherwise the movement would be reproducing the same logic of the system it was denouncing. Other activists mentioned how the street-wise homeless were helping with advice on how to keep warm. And they blamed the media for amplifying the "homeless problem" (e.g. Nguyen 2011, Audet 2011, see also Occupons Montréal 2011b).

capitalism has on the working class.[8] The Right criticized the movement for its uselessness, its incoherence, its naivety, but strangely also for the way it dealt with the homeless. For example, Éric Duhaime, a right wing polemist in Montreal known for his derogatory language toward homeless people and the poor in general, was suddenly using the so-called "homeless problem" to make fun of the Occupy Montreal movement. "Law and order is important in a society!" he said, underlining sarcastically how the activists who called the police on the homeless people at least learnt a good lesson through that experience (Duhaime 2011, my translation).

In the midst of critiques of the movement, it is interesting to see that not much was said about the incoherence of the city authorities. Yet the city applied a double standard to the occupation of the public space. In a way, the media attention towards the encampment protected the activists from any judiciarization, i.e. the process by which the homeless encounters the judicial system.[9] As one city official said, talking about the eviction, "we knew we were under observation, we knew the images of the intervention at the end of the occupation would be seen around the world…" (Saint-Arnaud 2011b, my translation). Homeless people, unfortunately, do not have this good fortune. The world was watching the eviction of the occupiers, but no one is watching when homeless people get tickets: no one is watching when they accumulate several thousands of dollars in fines for merely *existing* in the space. With Occupy Montreal, all of a sudden, journalists were talking about homelessness. But the homeless presence in public space did not start nor did it end with the Occupy movement. The movement made the homeless visible to the population, but paradoxically it made them visible through their erasure.[10] As one occupier said, "homeless people hurt the image of Occupy Montreal" (Lapuz 2012). Homeless people were persona non grata in public spaces before the encampment; they were also persona non grata within the movement; and they even somewhat bear the blame of the failure of the movement. Strangely, in a way, the most destitute among the 99% are the cause of both the inception and the death of the movement. Once the encampment was dismantled, the homeless were at best back in their shelters and at worse scattered around the city; but they remained homeless, and they remained judiciarized. As Waldron put it, with "no place governed by a private property rule where he [or she] is allowed to be" (Waldron 1991, p. 300) and unwelcome in the public space, the homeless person is usually left with nowhere to be, nowhere to exist (Waldron 1991, see also Laberge and Roy 2001).

I decry the way the homeless people were treated at the occasion of Occupy Montreal, but as Herring and Gluck put it in the Occupy Wall Street Gazette no 2, "The 'homeless problem' (…) is not a problem of the movement, but rather of the economic system at which it is aimed. It is a problem that society ignores or treats through punishment and exclusion, but the movement cannot afford to respond to it in this way." (Herring and Gluck 2011). Hence, first and foremost, the social exclusion the homeless people suffer from is indirectly the result of law enforcement. And unfortunately, this social exclusion was re-enacted at the encampment. What was meant to be uniquely an *occupation-as-protest* could not, in the end, resist the pull of *occupation-as-exclusive-appropriation*. This inherent contradiction calls for an examination of the historical significations of the concept of occupation, to which I turn in the next section.

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[8] See the interview of Fred Burrill from Decolonize Montreal by Sabine Friesinger at a weekly news show on CUTV (2012).
[9] *Judiciarization* is the word that is currently employed in Québec English. *Criminalization* is not the appropriate term here since, most of the time, to live as a homeless person in Montreal does not involve criminal law, i.e. in Canada a violation of a federal law (mainly set out in the *Criminal Code*).
[10] On the erasures and elisions of the movement in Canada, see Kilibarda (2012).

3. Occupation and exclusion: a brief incursion into theories of property

The Oxford English Dictionary (OED) lists at least eight definitions for the word *occupation*, grouped in three categories: senses related to space, senses related to time, and other uses (OED online). Thus, *occupation* means, for example, "the action of taking or maintaining possession or control of a country, building, land, etc., especially by (military) force". It also means "the action or condition of residing in or holding a place or position; actual possession; tenure; occupancy", or "a particular action or course of action in which a person is engaged in, especially habitually, a particular job or profession, a particular pursuit or activity". But against the background of traditional lexicographical definitions, the Occupy movement has shown us that the words *occupy* and *occupation* have acquired new meanings lately —something that is not quite yet captured by the OED definitions. In the past few months, the verb *occupy* has gone from a transitive verb to a modifier (e.g. Occupy protest, Occupy movement) or even a "rallying cry" (e.g. Occupy!!!, as one of the things you can do to join the social movement) (Zimmer 2011, see also Alim 2011). On January 6th, 2012, the American Dialect Society announced that *occupy*, as a verb, a noun and in combining form referring to the Occupy movement, was voted the word of the year for 2011 (Zimmer 2012). "It's a very old word, but over the course of just a few months it took on another life and moved in new and unexpected directions, thanks to a national and global movement. The movement itself was powered by the word" said Ben Zimmer, chair of the New Words Committee of the American Dialect Society and also language columnist for *The Boston Globe* (American Dialect Society 2012).

Although the words *occupation* and *occupy* clearly evocate space and control in common language, and some notions of autonomy, resistance, assertion and collectivity within the Occupy movement itself, the word *occupation*, in law, has yet a different, or at least much more specific, signification, one that is directly connected to the concept of acquisition of property rights. In this section, I want to look at its connection with property theories and show how occupation, at least in law, can also be construed as a way to exclude others rather than as a way to collectivize a space. In other words, the homeless might have been unwelcome in the encampment in Square Victoria, but perhaps the very branding of the movement, as well as its cherished tactic, had exclusionary tendencies.

Excavating the legal history of this concept allows one to take seriously the fact that "each instantiation of law builds on prior instantiations" (Coutin 2011, p. 572). Drawing on Judith Butler's notion of citationality, I contend that occupation, as a political signifier,

> … is itself the sedimentation of prior signifiers, the effect of their reworking, such that a signifier is political to the extent that it implicitly cites the prior instances of itself, drawing the phantasmatic promise of those prior signifiers, reworking them into the production and promise of "the new," a "new" that is itself only established through recourse to those embedded conventions, past conventions, that have conventionally been invested with the political power to signify the future. (Butler 1993, p. 167)

In other words, when people invoke a term, such as *occupation*, they cannot help but simultaneously invoke earlier meanings of the term, even if deploying the term in a new context, and even if the term has acquired new meanings over time. Hence, to fully understand the various dimensions of the word *occupation*, and especially its performativity, one has to understand its past and its technical legal meaning. For this purpose, allow me here a brief and almost caricatured incursion into theories of property.

3.1. Occupation in the Civil Law tradition and in Ancient Roman Law

In current Québec civil law, *occupation* (and its synonym *occupancy*) is a "mode of acquisition of the ownership of property without an owner by taking possession of it

with the intention of becoming the owner" (Allard *et al.* 2012). Occupation is a way to become the owner of certain things that are ownerless, *res nullius*, or things that have been abandoned by their owner, *res derelictae*. *Res nullius* have to be contrasted with *res communis*: things in the first category, like wild animals for example, can be appropriated by individuals, whereas *res communis* are things not susceptible of appropriation by anyone, for example the air we breathe (Allard *et al.* 2012). One can *occupy*, i.e. acquire by occupation, only things that can be owned and that have no owner. In addition, for occupation to happen, two components must be reunited: 1) the person must take physical control; 2) the person must have the intention of becoming the owner of that thing.

The modern civil law concept of occupation is, like many other concepts, founded on Ancient Roman Law. In his chapter on the early history of property, Henry Sumner Maine, one of the first specialists of what he calls Ancient Law and a forefather of the anthropology of law, describes *occupatio* (Latin) or *occupancy* (his English translation of *occupatio*) as a natural mode of acquisition. "Occupancy is the advisedly taking possession of that which at the moment is the property of no man, with the view (adds the technical definition) of acquiring property in it for yourself" (Maine 1917, p. 144). Occupation is implied once there is capture (again keeping with the image of the hunting of a wild animal) and this capture provides ownership, as humans have a natural right of ownership in the things they control. Occupation is a way to exclude, inasmuch as what was available to all becomes, after it is occupied, the exclusivity of one.

Natural here should be opposed to *civil*, as in *jus naturale* (natural law, i.e. law common to all men, existing in the state of nature, predating society) opposed to *jus civile* (civil law, or private law, i.e. law governing relations among, in the case of Rome, the Roman citizens). Gaius, one of the most famous jurisconsults of the Roman era, wrote in his Institutes (c. AD 160):

> § 66. Another title of natural law, besides Tradition, is Occupation, whereby things not already subjects of property become the property of the first occupant, as the wild inhabitants of earth, air, and water, as soon as they are captured.

> § 67. For wild beasts, birds, and fishes, as soon as they are captured, become, by natural law, the property of the captor, but only continue such so long as they continue in his power; after breaking from his custody and recovering their natural liberty, they may become the property of the next occupant; for the ownership of the first captor is terminated. Their natural liberty is deemed to be recovered when they have escaped from his sight, or, though they continue in his sight, when they are difficult to recapture. (Gaius, as translated by Poste 1875, p. 198)

Hence Gaius clearly identified occupation as a mode of acquisition of ownership based on "natural law". Although Gaius somewhat connected occupation and nature, he did not explain what he meant by natural law and why, in the first place, occupation confers ownership and the right to exclude others.

3.2. Occupation, the origins of property, and natural law

According to Tierney, it took the canonist theorists, and then theologians like Thomas Aquinas in the 13th Century, before anyone looked further into natural law and the origins of property (Tierney 1997, p. 136). But even Aquinas did not elaborate a compelling argument about how and why the first acquisition of private property came into being (Tierney 1997, p. 146). It was the Spanish Dominican Francisco de Vitoria, in the 16th Century, who connected the origins of property with natural law, based on the teachings of Thomas Aquinas. Actually, it is interesting to see how the Spanish Thomists were dedicated to the legitimation of the Spanish conquest of Americas and, in this endeavour, how occupation became a central component of their theories. As Pagden argues, "The conquest of America could only be made legitimate by demonstrating that the native populations had forfeited these rights by their own actions. And this (…) had to be done without endangering

the claim that all rights were the products of God's laws and not of God's grace" (Pagden 1987, p. 81). In other words, first the Catholic theorists had to explain that *dominium* (property rights, in short) was natural; then they needed to show why American Indians did not have property rights based on occupation and why the New World was *terra nullius*. Once that was done, they finally needed to explain how occupation could operate its magic to the profit of the Spaniards and therefore legitimize Spanish *dominium* over Americas. In order to do so, they, too, had recourse to natural law.

For Vitoria and his followers, American Indians had *dominium*, as *dominium* was natural to man by virtue of his rationality, but they were not capable of exercising it. They were seen as children, "and the Castilian crown might thus claim a right to hold the Indians, and their lands, in tutelage until they have reached the age of reason" (Pagden 1987, p. 86). In arguing this position, they were opposing the Calvinists and refuting that the Indians had lost their *dominium* because of their sins and that *dominium* was a consequence of God's grace. Once it was advanced that American Indians had *dominium* but could not exercise it and that it was an act of charity for Spain to take care of them, which is in line with the Catholic dogmas, it remained to be proven that Spain had *dominium* in America. In a very circular way, Vitoria concluded that since the Spanish were already there, it would be an injury to leave, and, based on *jus gentium* (the law of nations), any nation has a right to defend itself against injury (Pagden 1987, p. 88). Therefore, they were entitled to stay in America, and had full title to the land. Plus, if the American Indians were rejecting the rights of the Spanish to "travel, engage in trade and profit from commerce, and engage in efforts to convert the Amerindians to Christianity (...) the Spanish were justified in waging war against them" (Lynch forthcoming).

Hence, it seems as though the concept of occupation migrated from private law to public international law, i.e. from occupation of wild animals to occupation of *terra nullius*. If occupation started in Ancient Roman Law as a way for a person to acquire ownership of *res nullius*, it made its way into international law and the publicists even today usually consider occupation, along with cession, prescription, accretion and subjugation, as a traditional mode of acquisition of a territory under public international law (e.g. Brownlie 2008; see also Lesaffer 2005). Occupation in that context, paralleling the Roman law concept, implies "the appropriation by a State of a territory which is not at the time subject to the sovereignty of any State" (Jennings 1963, p. 20). At the time of the Spanish Conquest of the Americas, it was understood that American Indians were not organized as a state and therefore their territory was seen as *terra nullius*, open for occupation. But again, occupation as a mode of acquisition of a territory by a nation has been understood, and legitimized, because of its roots in natural law. It was according to the natural order of things, some would say God's will, that Spain, and later other Western nations, had property rights in the New World through occupation.

In the 17th Century, Grotius, a Dutch Protestant, now recognized as one of the fathers of international law, also saw the concept of occupation as being at the origins of private property based on natural law, although Grotius has a slightly different vision of natural law than Vitoria. For Grotius, God was not necessarily absent from natural law but rather "God had simply allowed humans to use their reason freely to decide what was right" (Lynch forthcoming). Moreover, as Richard Tuck explained,

> It was an important feature of Grotius's theory at this point that the general principle of occupation was not taken to be conventional. (...) There was something natural in the development into the institution of private property of the basic inherent human right to use the material world, and no agreement was ever necessary. Rather, all that was necessary was labour of some kind. Men had physically to take possession of the material object, or to alter or define it in some way... (Tuck 1979, p. 61).

Pufendorf, who studied Grotius and who is another great jurist of the 17th Century, also associated occupation with the state of nature. "The first man received his authority over all things, and he needed no further title, because there existed no one whose right could stand in his way…" (Pufendorf, as quoted in Tuck 1979, p. 157). Hence, for natural rights theorists like Grotius and Pufendorf (and again I admittedly oversimplify), private property existed since the beginning of time, God has given to humans the power to exercise control (*dominium*) first over themselves and then over things, and private property therefore predates society: it exists in the state of nature, as an extension of that gift.

Because of its connection with nature, the principle of occupation became at once the incontestable justification of appropriation by men and of appropriation by nations. And the notion of occupation made its way from Roman law (i.e. explaining the origins of private property) to *jus gentium* (i.e. explaining the origins of property rights through conquest) via natural law. As the historian of international law Randall Lesaffer writes:

> The early-modern writers on international law considered occupation of vacant land to be a precept from natural law. They took the Roman concept of occupation, stripped it from its particulars and technicalities, which they banned from the sphere of positive law, and thus created a general principle of natural law. From thereon forwards, the exclusion of land in Roman law could be considered a concretization in positive law of a natural precept. (Lesaffer 2005, p. 45).

At a certain point of time, *jus gentium* became understood less as natural law common to all men because of their mere humanity than as the law that was applicable to people who were not citizens of a specific state (as opposed to *jus civile* which was the special law of a State). Grotius, for one, assimilated the new *jus gentium*, the law of nations and precursor of modern concept of public international law, to *jus naturale*, the law received everywhere by natural instinct (Tuck 1979, p. 18). He incorporated the Roman principle of occupation, because it is founded in natural law, into the law of nations. In other words, it means that occupation as a mode of acquisition of ownership by people over things became also a mode of acquisition of land ownership by nations, in the name of nature. It means also that, based on natural rights of occupation, the "Barbarians" could be legitimately dispossessed (Pagden 1987).

3.3. Occupation and decolonization

This scanty and necessarily underincluisve incursion into theories of property was meant to recall that occupation has been theorized as a mode of acquisition of ownership (both private and public) and, as such, has legitimated many takings, including the conquest of the Americas.

Of course, I would not go as far as to say that it is because the movement was called "Occupy" that it was exclusionary, or even more absurdly, that this name is at the root of the "homeless problem" in Montreal. However, with Butler, I would argue that a word is never fully devoid of its past, even when it acquires new meanings. And I would say that being aware of the baggage of a term helps keep its past in check. Hence, exposing the historical significations of the concept *occupation* and the inherent contradiction that exists between *occupation-as-protest* and *occupation-as-exclusive-appropriation* brings some depth to our understanding of the tactic and help us also understand the contradictions within the movement itself. Based on precepts such as inclusion, redistribution, justice, and even "the refusal to accept the legitimacy of the existing legal order" (Graeber 2011) (here implying that permission is not required to be in the public space), the

Occupy movement, even while embracing prefigurative politics[11], was not shielded from power dynamics leading to exclusion.

Thus the contradiction at the heart of the movement was not caused by the name itself. But it remains that in the midst of the Fall 2011, the term *occupy* was criticized and some critics even suggested a name change, suggesting the use of the term *decolonize* instead. For example, Jessica Yee, the executive director for The Native Youth Sexual Health Network, was one of them:

> The 'OCCUPY WALL STREET' slogan has gone viral and international now. From the protests on the streets of WALL STREET in the name of 'ending capitalism'—organizers, protestors, and activists have been encouraged to 'occupy' different places that symbolize greed and power. There's just one problem: THE UNITED STATES IS ALREADY BEING OCCUPIED. THIS IS INDIGENOUS LAND. And it's been occupied for quite some time now (Indian Country Today Media Network 2011).

In suggesting "Decolonize Wall Street" instead of Occupy Wall Street, Native American groups wanted to recall the history of occupation of the land on which Wall Street was built and to underline that "colonization continues to this day, with Indigenous communities across the globe still under attack" (#decolonizewallstreet flier 2011). This sentiment was echoed in Toronto when, in a panel sponsored by Occupy Toronto, Indigenous activists commented on the need to decolonize together. Leanne Betasamosake Simpson, of the Alderville First Nation, Professor in Indigenous Studies at Trent University in Ontario and instructor at the Centre for World Indigenous Knowledge, said that for her community and her ancestors, *occupation* has meant "400 years surviving under a system that has brought countless waves of gendered violence, colonialism, conquest and dispossession." (Sztainbok 2012) For Clayton Thomas-Muller, of the Mathias Colomb Cree Nation, also a panelist that day, it is clear and simple: Occupy is offensive. The way forward is *decolonization* not *occupation* (Sztainbok 2012). In Montreal, Fred Burrill, from Decolonize Montreal, criticized the Occupy movement for its underinclusion of homeless people, its disconnection with popular, local, ongoing struggles, and its lack of critical anti-colonial and anti-capitalist analysis (CUTV 2012).[12] Decolonize Montreal, while standing in solidarity with the Occupy movement, also declared:

> (…) we stand in solidarity with demonstrators in New York, Boston, and countless other American cities, in rejection of this capitalist system and the misery it brings. We also recognize that those cities, like Montreal, are already occupied territory. We stand against colonialism and in support of Indigenous peoples across Turtle Island struggling for land, autonomy, and dignity. We stand against patriarchy and racism, and for the self-determination of all peoples. We are also inspired by uprisings for justice and dignity around the world, from Egypt to Chile, from Greece to South Korea (QPIRG Concordia 2011).

In some instances of Occupy encampments, there were even grassroots pushes to change the name from Occupy to Decolonize. Hip Hop artist and Oakland activist Boots Riley, in response to a letter from a partisan of the "decolonize terminology", wrote the following on a blog —after recalling that when the American Indian movement took over Alcatraz in the 1970s, they said "We are Occupying Alcatraz":

> Most folks of color have no idea what the term decolonize means. It is not a liberating term to most, it is simply another term that academics use. Similarly, most don't even have the political connotation with the word Occupy as it relates to colonialism (Riley 2011).

And Riley goes on saying that underrepresentation of people of color in the movement will not come with a name change.

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[11] Prefigurative politics here means that the encampments "became spaces of experiment with creating the institutions of a new society – (…) - a genuine attempt to create the institutions of a new society in the shell of the old" (Graeber 2011).
[12] For other examples of calls to "decolonize" the movement across Canada, see Kilibarda (2012).

> The real problems of race and racism in this and any movement don't begin to get solved with a name change. They begin with a movement that actually addresses the material needs of people of color and one which makes space for people of color. Let's talk about the remedies to those problems (Riley 2011).

H. Samy Alim, professor and director of the Center for Race, Ethnicity, and Language (CREAL) at Stanford University, bridges the two positions in his fascinating article on the Occupy Wall Street terminology. In his piece, H. Samy Alim highlights the irony of a progressive movement using the term *occupy* as well as the meaning shift that this same word has undergone. And he suggests that we occupy language, that we make it our own.

> Occupy Language might draw inspiration from both the way that the Occupy movement has reshaped definitions of *occupy*, which teaches us that we give words meaning and that discourses are not immutable, *and* from the way indigenous movements have contested its use, which teaches us to be ever-mindful about how language both empowers and oppresses, unifies and isolates (Alim 2011).

4. Conclusion

The Occupy Wall Street movement could have been called Take Back Wall Street, Animate Wall Street, Camp Out on Wall Street, or a million other titles, and still could have involved a spectacular use of space, an occupation. Yet, Lasn on that summer night of 2011, chose Occupy Wall Street for what he envisioned as the American version of the anti-austerity movement. And the name is now part of history.

As we have seen, *Occupy* might not be the most legitimate term for such a movement. Even understood narrowly as a mere way to hold space, because of its connotation with appropriation, dispossession, and exclusion, Occupy Wall Street — or, as a matter of fact, Occupy Montreal— seems to be antagonistic to the reclaiming of an open and inclusive public space. Yet occupation as an activist tactic is not the problem per se. And again there is nothing intrinsically wrong in the use of the term *occupation*, which definition is polysemous and certainly not fixed in time. But as Judith Butler suggests, an inquiry into the evolution of the meanings of a term allows for a better understanding of what is at stake in this term (Butler 1993, p. 174). And knowing what is at stake perhaps even helps keep privileges and exploitative patterns in check.

Of course I am indignant at the loaded legacy of the term *occupation* as dispossession of Indigenous people by colonial powers. But I am also indignant at the social exclusion of the homeless occupiers by the *indignés* occupiers during Occupy Montreal. The *indignés* occupiers did not have an inclusive theory of public space nor a sophisticated theory of *occupation-as-protest* when they set up their encampments, and they were reproducing practices of exclusion and dispossession towards the homeless during their occupation. An inclusive theory of public space would imply finding ways of negotiating cohabitation in, and uses of, public space, and doing so in a democratic and egalitarian manner. Unlike private property, public space calls for inclusion: it calls for sharing, communion, political mobilisation. Being aware of the historicity of the term occupation, and the inherent contradiction that exists between *occupation-as-exclusive-appropriation* and *occupation-as-protest*, perhaps we need to devote more thought to the everyday life and temporality of occupation as a protest tactic, its capacity of being inclusive without annihilation of differences, without dispossession, without exclusion.

But again, occupations are important and powerful modes of protests and this tactic should not be abandoned altogether. Quite the opposite. In an essay emerging in the midst of an occupation during the 2009 student movement in California, it was written that "the point of occupation (...) [is] the creation of a momentary opening in capitalist time and space, a rearrangement that sketched the contours of a new society. (...) While we know these free zones will be partial and transitory, the

tensions they expose between the real and the possible can push the struggle in a more radical direction" (Communiqué from an absent future 2009). Hence, I would even argue that it is not less *occupations-as-protest* but more *occupations-as-protest* that we need. But most importantly, we need more occupiers who take occupations seriously, are aware of the inherent contradictions of occupations, and take actions to preclude, as much as possible, the enactment of domination in the space, in order for "the contours of a new society" to be free from inequality and exclusion.

But most specifically, I am indignant at the combination of neoliberal policies and municipal by-laws in Montreal that exclude homeless people and produce poverty on a much more regular basis than the *indignés* occupiers. Homelessness became visible with the Occupy movement, but its visibility should have been a good opportunity not to scrutinize the behavior of those who "disrupt" or the behavior of the handful of occupiers who tried to deal with the "disrupters", but rather to call into question the municipal, provincial, and federal policies that create poverty, and increase vulnerability and social exclusion. The lack of social housing, the poor services offered to those struggling with mental health issues, the judiciarization and social profiling suffered by homeless people, the structure of privileges in Québec capitalist society, all those things deserve our constant scrutiny.

In conclusion, allow me to quote an occupier sign that circulated widely on the Internet in the fall of 2011. The sign (and tweet) read: "If they enforced banking regulations like they do park rules, we wouldn't be in this mess in the first place". Full of irony, this quote encapsulates both the violence of the law and its role in the production of socio-economic inequality. But it leaves out the fact that although we might be "all the 99%", some people definitely suffer more than others from austerity measures. And they suffer more from the enforcement of park rules too. This is the case of the homeless people in Montréal. So let's call for a better enforcement of banking regulations and a greater redistribution of wealth "to clean up this mess", but while we are at it, let's not forget to ensure that no laws produce homelessness and no homeless person is made illegal through the enforcement of park rules.

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