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Zone Restrictions Orders in Canadian Courts and the Reproduction of Socio-Economic Inequality

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Abstract

While State and local governments have long turned to legal norms, such as vagrancy ordinances and anti-panhandling by-laws, and relied on displacement strategies ranging from orders to disperse and forced removals to control disorderly behavior in public spaces, the ways in which courts and legal actors working within the criminal justice system contribute to the monitoring of public spaces have almost completely gone unnoticed. This paper focuses on one court-imposed spatial tactic, namely zone restriction or "no go" orders. We suggest that despite the fact that these court orders rely on preventative discourses and pursue rehabilitative objectives, they may ultimately have punitive effects on the public poor and political demonstrators and contribute to creating and reproducing socio-economic inequality by creating obstacles for their reintegration, encouraging recidivism, putting the safety of individuals at risk and by neutralizing those who challenge the social and political order in various ways. Ultimately, these orders raise some concerns with respect to the rule of law since they are rarely challenged and generally appear to be shielded from review.

Key words

Zone restriction orders; spatial tactics; court management of public spaces; socio-economic inequality; criminalization of poverty; criminalization of dissent

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Resumen

Mientras que estados y gobiernos locales han vuelto a normas legales como la ley de vagos y maleantes, y basan sus estrategias en el desplazamiento, mediante órdenes de dispersión y traslados forzosos para controlar el comportamiento desordenado en los espacios públicos, ha pasado prácticamente desapercibida la forma en la que tribunales y agentes jurídicos trabajan dentro del sistema de justicia penal para contribuir a la vigilancia de los espacios públicos. Este artículo se centra en una táctica espacial impuesta por un tribunal, concretamente la restricción de zona o pedidos "intangibles". Se sugiere que, a pesar de que estas órdenes judiciales se basan en discursos preventivos y persiguen objetivos de rehabilitación, en última instancia pueden tener efectos punitivos sobre el público pobre y los manifestantes políticos. También puede contribuir a la creación y reproducción de una desigualdad socio-económica mediante la creación de obstáculos para la reintegración, fomentando la reincidencia, poniendo en riesgo la seguridad de las personas y neutralizando a aquellos que desafíen el orden social y político de diversas maneras. Finalmente, estas órdenes plantean algunas preocupaciones relacionadas con el estado de derecho ya que rara vez se cuestionan y en general parecen estar a salvo de cualquier revisión.

Palabras clave

Órdenes de restricción de zona; tácticas espaciales; gestión del espacio público por parte de los tribunales; desigualdad socioeconómica; criminalización de la pobreza; criminalización de los disidentes

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1. Introduction

Strategies of spatial regulation and control over the use of public spaces are important components of efforts to control poor and marginalized populations. State and local governments have long turned to legal norms, such as vagrancy ordinances and anti-panhandling by-laws (Harcourt 2001, Hermer and Mosher 2002, Collins and Blomley 2003, Sylvestre *et al*. 2011) and relied on displacement strategies, ranging from orders to disperse (Crawford 2008, Walby and Lippert 2012) and forced removals to banishment (Beckett and Herbert 2010a), to control of disorderly behavior in public spaces (Wacquant 2001, Mitchell 2003). Remarkably, however, the ways in which courts and legal actors working within the criminal justice system (e.g. judges, prosecutors, defense lawyers and probation officers) contribute to the monitoring of public spaces have gone almost completely unnoticed.

This paper is part of a much broader research project aiming to analyze the geographical and socio-legal effects of certain court orders with a spatial dimension issued in the context of criminal proceedings to different groups of marginalized people, namely street sex workers, street-level drug users, homeless people and political demonstrators, who all occupy public spaces but for different reasons in four Canadian cities (Montreal, Ottawa, Toronto and Vancouver)[1].

Such orders primarily include zone restriction or "no go" orders prohibiting individuals from being within the limits of a determined perimeter or from being in a particular place like a park or property generally accessible to the public where they were deemed to have committed an offense related to prostitution, drugs, breaches of the peace, rioting, mischief or obstruction of a police officer in the execution of his duty (Sanchez 2001, Bellot 2003, Hill 2005, Beckett and Herbert 2010b, Moore *et al*. 2011, Bruckert and Hannem 2013). They also include residency, house arrest and curfew conditions requiring that certain individuals reside in a specific facility and avoid occupying public spaces during certain hours (Turnbull and Hannah-Moffat 2009) as well as prohibitions issued against members of political groups, namely anarchists or radicals, from demonstrating or participating in public meetings in the context of charges for unlawful assemblies or riots (Mitchell 2003, Esmonde 2003).

The scope of this paper is however more limited. We focus on one such court-imposed "spatial tactic" (Low and Lawrence-Zuniga 2003, Zick 2006)[2], namely zone restriction orders. On a methodological level, most of our argument relies on grounded or informed legal analysis, i.e. based on statutory and case law analysis, but enlightened by preliminary fieldwork.

After briefly situating this particular form of judicial intervention in the context of the penal management of individuals and social conflicts in public spaces, we discuss what such orders entail and under which conditions they are issued in the Canadian criminal justice system. We then suggest that despite the fact that they rely on preventative discourses and pursue rehabilitative objectives, these court orders may ultimately have punitive effects and contribute to creating and reproducing socio-economic inequality by controlling the access and uses of public spaces and by neutralizing individuals who challenge the social and political order in various ways. Finally, we conclude that these orders raise important concerns with respect to the rule of law and the role played by criminal courts in monitoring individuals and spaces.

[1] This research project is funded by the Social Sciences and Humanities Research Council of Canada and is directed by Marie-Eve Sylvestre, principal investigator, and Céline Bellot and Nicholas Blomley, co-investigators

[2] By spatial tactics, Low and Lawrence-Zuniga mean "the use of space as a strategy and/or technique of power and social control" (Low and Lawrence-Zuniga 2003, p. 30)

2. Zone restriction orders as forms of spatial and socio-legal control

Zone restriction orders arise in the general context of the penal management of social conflicts and poverty (Foucault 1975, Fecteau 2004). Building on Foucault (1975), scholars have shown how the criminal justice system has contributed to the normalization and disciplining of poor or marginalized populations through statutory prohibitions and confinement measures (Wacquant 2001, Crocker and Johnson 2010) or through therapeutic treatments (Valverde 1998, Rose 1999, Glasbeek 2006). This use of law attests to the transformations of state interventions: regulation of the poor through public welfare policies is being replaced and supplemented by penal policies (Beckett and Western 2001, Wacquant 2010). In turn, the criminal justice system has been slowly shifting away from producing punitive responses to crime towards preventive measures based on insecurity, fear and risk assessments (Maurutto and Hannah-Moffat 2006, O'Malley 2006, Harcourt 2007) of various marginal groups, such as the homeless, sex workers, drug users, youth and political demonstrators (Feeley and Simon 1994, Moore 2007, Réa 2007, Bourgois and Schonberg 2009).

These trends have largely played out in the public sphere. Public spaces are important social and political sites of struggles for communication and representation, protest and resistance, exclusion and solidarity by different groups of people (Amster 2004). While they support liberty, diversity, free speech and democracy (Waldron 1991, Zick 2009), public spaces are also subject to constraint, domination and negotiation depending on one's conditions of access, rights and privileges (Laberge and Roy 2001, Mosher 2002, Amster 2004). As a result of neoliberal governance, the ideal of public spaces has been challenged. Public spaces, such as parks, streets, plazas (Low 2000) and sidewalks (Duneier 1999), are increasingly perceived as spaces of disorder and anarchy (Harcourt 2001, Mitchell 2003, Feldman 2004). Contemporary urban life has been constructed around the idea that public spaces should be "purified", becoming transitional spaces where people merely have "rights of passage" (Blomley 2010) in order to reach more secure spaces where they live, work, or engage in leisure or consumption (Bauman 1997).

In this context, some people clearly appear to be out of place (Bauman 1997). Due to their visibility (Haggerty and Ericson 2006, Brighenti 2010) and the nature of the activities in which they engage, sex workers, drug users, radical political demonstrators and the homeless have become special targets of social and legal control. Whether it is based on moral regulation (Hunt 1999, Glasbeeck 2006), health concerns (Poutanen 1998), or security reasons (Castel 2003), street sex workers are continuously displaced, denied legitimate access to the public sphere or legal recognition (Sanchez 1997, Parent, Bruckert 2006, Hubbard *et al*. 2008, Kotiswaran 2008, Parent *et al*. 2010). In the aftermath of the first international trade meetings in the 1990s and the rise of social movements such as the anti-globalization and anti-poverty movements, Occupy and other social protests in echo of the Arab Spring, the policing and criminalization of dissent has been growing noticeably in Canada and in other Western democracies (Della Porta, Reiter 1998, Ericson and Doyle 1999, Pue 2000, Esmonde 2002).

Zone restriction orders, also referred to as "no go" or "red zone" orders, or in the United States "stay-out-of-drugs-area-orders" (SODA) or "stay-out-of-areas-of-prostitution-orders" (SOAP) (Hill 2005), have developed in the last decades alongside or in reaction to challenges to other forms of socio-legal control within the criminal justice system (Beckett and Herbert 2010a). Pursuant to these orders, people are prohibited to go and to be found within small to large perimeters or exclusionary zones, which can extend from certain streets or specific locations (parks, shopping malls, etc.) to the downtown core and to an entire city or province (*R*. v. *Brice* 2006). For instance, in *R*. v. *Rowe* 2006, the offender, who was convicted of criminal harassment of his former common-law partner, was first

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banished from the entire province of Ontario, while the Court of Appeal reduced the scope of his condition to the town of Napanee.

These orders can be issued at different stages of legal proceedings. They can first be imposed by a peace officer and officer in charge[3] in a promise to appear delivered to a person released after arrest in order to compel his or her attendance in court, and later confirmed by the court (ss. 499 of the *Criminal Code of Canada*). They can also be issued by justices of the peace in an interim order to release the accused while he or she is awaiting trial based on an agreement between the prosecutor and the defence or after a bail hearing (ss. 515(4) and 503 (2.1) of the *Criminal Code of Canada*). They can also be imposed at sentencing, after the accused pleaded guilty or was found guilty in a probation order, or in a conditional sentence order (a jail sentence served in the community; ss. 732.3(3) and 742.3 of the *Criminal Code of Canada*). Alternatively, they can be included in preventative orders to keep the peace following an information laid before a justice on behalf of a person who has reasonable grounds to fear that another person might cause personal injury to him or her or to his or her spouse or children, or damage his or her property (s. 810 (3) (3.1) (3.2), as well as ss. 810.1 (3.02) (3.03) and 810.2 (4.1) (5) *Cr. C.*). Finally, zone restriction orders can also be issued by members of the National Parole Board as parole conditions (*Corrections and Conditional Release Act of Canada*, s. 133).

3. The reproduction of socio-economic inequality through court-imposed spatial regulation

Pursuant to the Canadian *Criminal Code*, conditions issued in the context of bail, whether bail is granted by the police after delivering a promise to appear and requiring the accused person to sign an undertaking with conditions or whether bail is granted by the court in an interim release order, should be imposed to serve one of the two or three following purposes: first, "to ensure attendance in court", second, "to ensure the protection and safety of the public having regard to all the circumstances including the likelihood that the accused, if released from custody, will commit a criminal offence", or third (in the case of court bail only), "to maintain the public confidence in the administration of justice" (ss. 498 and 515 (10) *Criminal Code of Canada,* as well as *R. v. Oliveira* 2009 (on police bail), and *Keenan v. Stalker*, (1979) (on court bail)). At sentencing, conditions can and should be issued "to facilitate the offender's successful reintegration into the community" (probation; s. 732.1(3) h) *Criminal Code of Canada*) or primarily "for securing the good conduct of the offender and for preventing a repetition by the offender of the same offence or the commission of other offenses" (conditional sentence; s. 742.1(2) f), and 742.1 of the *Criminal Code of Canada*). For instance, in *R. v. Pedersen* (1986), the former County Court of British Columbia upheld a probation condition imposing a geographical restriction area "known to be one in which drugs are frequently sold" to a young man who was found guilty of possession of marijuana in Vancouver, stating that the order aimed at "securing the good conduct of the Appellant and preventing a repetition by him of the same offence" (see also e.g. *R. v. Deufourre*, (1979) (par. 10), *R. v. Powis* 1999). Except in the case of conditional sentences orders (in accordance with the Supreme Court of Canada's ruling in *R. v. Proulx* 2000), Canadian courts have been clear that conditions should not be issued merely to punish an offender (*R*. v. *Reid* 1999 (in the case of bail); *R. v. Shoker 200*6, par. 13-14 (in the case of probation)).

However, zone restriction orders issued by criminal courts may have unintended effects. We want to suggest that this particular socio-legal and spatial tactic may

[3] According to the *Criminal Code of Canada*, the officer in charge is "the officer for the time being in command of the police force responsible for the lock-up to which an accused is taken after arrest or a peace officer designated by him at this time" (s. 493 Cr. C.). Typically, the officer in charge is a senior peace officer at the station.

instead contribute to creating and reproducing socio-economic inequality. They are likely to do so in four ways.

First, they may contribute to socio-economic inequality by impeding successful reintegration and creating further social and economic barriers and constraints for individuals who are already socially and economically marginalized.

Drawing from the administrative criminology discourse of situational crime prevention (Clarke 1997), zone restriction orders are based on an assumption that some spaces or locations can be criminogenic and that crime clusters around certain places regardless of individuals' needs or situations. By prohibiting individuals from being in and around certain criminogenic spaces, zone restriction orders are meant to prevent them from the temptation of reoffending. As Moore *et al*. (2011) showed in their study of drug treatment courts' geographic restrictions, these conditions are not fashioned to "eradicate disorder, but rather to facilitate addiction recovery or to remake individual selves" (Moore *et al*. 2011, p. 163). While regulating individuals however, these conditions also contribute to shaping the meanings and representations of the places that are indirectly being regulated by assuming that certain places and neighborhoods are only or are primarily criminogenic, bad or unhealthy (Fast *et al*. 2010, Moore *et al*. 2011). Spaces, however, often have equivocal meanings (Ferrell 2001, Hayward 2004) and street populations often employed strategies or spatial tactics in order to appropriate spaces (Fast *et al*. 2010, referring to another meaning of spatial tactics as strategies of resistance within important structural constraints following de Certeau 1984). While the zones that are generally targeted by these orders are places where street people may use or sell drugs, get involved in the sex trade or in other street survival strategies, and while these zones can be sources of violence, they are also places of comfort, exchange and care.

Zone restriction orders generally cover strategic areas in a city, from central streets to downtown areas to the entire city or island. For example, in two recent cases, the accused were youth suspected of being gang members and charged with drug trafficking. The courts upheld a restriction zone covering the entire northern part of the Montreal Island as a condition of their probation orders (*R*. v. *Casimir* 2005, *Valbrun* v. *R*. 2005). In *R*. v. *Reid* (1999), the "red zone" was one square mile and included most of downtown Victoria, whereas the City of Victoria covers seven square miles. In *R*. v. *Chevreuil* (2008), the zone restriction order covered the entire downtown Montreal including its underground subway stations. Finally, the media recently reported the case of a homeless man banished from the idyllic B.C. community of Salt Spring Island as a condition of bail (Vu 2011)[4].

As a result, zone restriction orders exclude poor and marginalized offenders from important parts of town or from communities, where they may have family and friends, social networks and support, work or other economic and political interests. More specifically, in the case of marginalized groups of people, such orders may prevent them from getting access to important community resources essential to their lives, their activities, and in some cases, to their street exit. This may be the case for street-level sex workers and/or drug users living with HIV who need to get access to medical services and community support, or the case of a homeless man who may need to go to a food bank and a shelter located in the downtown area (*R*. v. *Prud'homme* 2007, *R. v. Powis* 1999). It is also the case of anti-poverty protesters who provide assistance and advice to the impoverished and who are prevented from frequenting parks or public places attended by the homeless (*R. v.*

[4] For larger banishment orders issued primarily but not exclusively in the context of domestic violence or criminal harassment cases, see *R. v. Malboeuf*, (1982) ("village of "Ile à la Crosse, in the province of Saskatchewan"), *R. v. Maheu*, (1995) ("in the city of Alexandria, province of Ontario"), *R. v. Williams*, (1997) ("on the Chehalis Reserve in British Columbia") *R. v. Rowe*, (2006) ("in the province of Ontario") and *Quebec (Attorney General) v. Villeneuve* (2005), *R. v. Brice* (2006) ("in the province of Nova Scotia"), and *R. v. Leasak,* (2007) ("in the city of Calgary and Okotoks, in the province of Alberta").

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Clarke 2000), or student demonstrators who are prevented from being on or nearby the premises of colleges and universities and may have to postpone their studies or miss classes (e.g. *R. v. Ramsaroop*, (2009). Such orders create additional constraints and costs in different areas of life. This includes transportation, in particular for those who need to use public transportation while avoiding certain routes, not to mention subway stations (*R.* v*. Chevreuil* 2008, *R. v. Powis* 1999). It can also create additional barriers for housing, in the case of those who are dislocated or prevented from being in an area which includes their personal residence (e.g. *R. v. Griffith* 1998) or where most temporary housing is located (Moore *et al*. 2011). In turn, these orders have an impact on family lives for those who need to visit family, including children or older parents, and friends who live within the boundaries of the red zones, as well as on employment possibilities.

The case of Michael Reid (*R*. v. *Reid* 1999) summarizes well the consequences of these orders for street populations. Michael was a 21-year-old homeless man and marijuana user. He was arrested in downtown Victoria in a popular drug-trafficking area, and subsequently charged with possession of marijuana. He was excluded from the Victoria "red zone" as a condition of bail. Michael was born in New Brunswick, he had a turbulent life, spent many years in foster homes and traveled to different cities in Canada. He had lived in British Columbia for the past four years at the time of his arrest. He worked in a fast food restaurant and he had also been a panhandler, a "squeegee kid"[5] and received social assistance. He had a prior criminal record for breaking and entering and theft, possession of illegal property and failure to comply with a court order as a juvenile as well as two convictions of theft and assault as an adult. Michael lived at a shelter, used food banks and public health services as well as attended an adult education program, all located in downtown Victoria in the same area where he was arrested and banished. Moreover, the red zone interfered with the route to his school and even to his bail supervisor's office. At sentencing, the judge acknowledged those difficulties: "Many people subject to "red zone" conditions are denied the services that they need to change their lives, often away from drug addiction. […] Without these services they cannot overcome their problems or in some cases even live safely" (*R*. v. *Reid* 1999, par. 47). In the words of Melanie Ethier, who served as a witness in the Reid case, "red zones make poor people feel poorer" (*R*. v. *Reid* 1999, par. 12).

In another case, *R.* v*. Prud'homme* (2007), the accused was a homeless man who was prohibited from going in an area of the downtown Montreal where an important shelter in which he used to live was located. On appeal, the defence lawyer argued that spatial restrictions were more punitive for a homeless person who did not have a permanent place to live. While in that case, the judge changed the condition to allow Prud'homme to go to the shelter, these examples clearly show how such exclusionary zones are too often oblivious of street populations' most fundamental needs and life conditions.

Secondly, they are likely to create socio-economic inequality by creating the conditions for increased recidivism. Criminal courts issuing zone restriction orders perpetuate socio-economic inequality and marginalization by maintaining people who occupy public spaces under constant police and judicial surveillance. Individuals subject to court-imposed restriction orders are known and easily identifiable by the police who closely monitor them. Given the scope and nature of such spatial restrictions, these individuals are at high risk of breaching their conditions. This creates a very stressful situation. In addition to running additional risks for their lives and security, street populations run the risk of being charged with committing a new criminal offense, namely failure to comply with a condition (s 145(3), (5), and (5.1) *Criminal Code of Canada*) or breach of a probation order (s. 733.1 *Criminal Code of Canada*), which will send them back to courts where

[5] Squeegee kids refer to youth who offer to clean windshields of cars stopped at intersections with a tool with a flat rubber blade called squeegee.

they may be imposed stricter conditions, sent back to preventive detention in remand centers, or imposed even harsher sentences, such as incarceration. In the end, breaches can build a heavy criminal record (Sprott and Myers 2011). These cases are not marginal in our criminal justice system. In fact, the offenses of failure to comply with conditions and breach of probation orders were the most serious offenses in 20% of all criminal court cases in Canada in 2012 (Boyce 2013, see also Public Safety Canada 2008). The significance of such process offences (Murphy 2009) is particularly troubling when one considers that through breaches, we end up criminalizing behaviour that would not have been regarded as criminal if it were not included in a court order (Myers and Dhillon 2013) such as, in this case, being found in a public park, on a particular street corner or within a specified zone. It is even more so when we realize that we criminalize the mere presence of street populations in certain public spaces on the basis that such spaces might (but might not) be criminogenic, as opposed to prohibiting specific acts posing a real threat to public safety or public peace.

Thirdly, zone restriction orders are likely to contribute to socio-economic inequality by putting the safety and security of individuals at risk. In recent cases, Canadian appellate courts recognized the impact of the criminalization of certain activities on the life and security of sex workers and drug users, and in particular, for the most vulnerable among them living or working in the streets. In *Canada (Attorney General)* v. *PHS Community Services Society*, (2011), the Supreme Court of Canada found that the Minister of Health's decision to deny an exemption under s. 56 of the *Controlled Drugs and Substances Act* to Insite - a health care facility that provided a supervised safe injection site located in Vancouver's Downtown Eastside where the risky and potentially life-threatening hazards associated with drug use and injection could be reduced - infringed drug users' rights to life, liberty and security of the person and was not in accordance with the principles of fundamental justice. Without such an exemption, both the staff and the clients at Insite could be found in violation of subsections 4(1) and 5(1) of the *Controlled Drugs and Substances Act* which prohibit the possession and trafficking of illegal drugs (2011). In *Canada (A.G.) v. Bedford* (2013), the Supreme Court of Canada held that subsections 210, 212(1)(j) and 213(1)(c) of the *Criminal Code of Canada,* prohibiting bawdy-houses, living off the avails of prostitution and communication for the purposes of prostitution forced sex workers to work in unsafe conditions. In this context, street sex workers were prevented from screening potential clients for intoxication or propensity to violence, they were often forced to move to remote locations to avoid the police and they were prevented from working in indoor venues with paid security staff and client screenings.

Similarly, zone restriction orders that indirectly criminalize the fact of being in certain places may force sex workers, drug users and the homeless to move to more remote locations within a city or to another city where their lives and security will be at risk because they will find themselves more exposed to physical violence, have limited access to income, and face more health problems (Bruckert and Hannem 2013). They will also end up being more marginalized and excluded. The Courts' reasoning in several of these cases also contributes to isolating street populations in that respect by portraying them as a group of people to be avoided altogether. For instance, in *DPJ v. D.B (Le directeur de la protection de la jeunesse, c. D.B. et M.G., et V.B.-G.* 2002), a zone restriction order was issued only because the accused, a young girl, had some friends who were sex workers.

Finally, criminal courts who issue these zone restriction orders may indirectly contribute to maintaining socio-economic inequality by penalizing and neutralizing individuals who challenge the social or political order in various ways. This is particularly true in the case of political activists involved in anti-globalization movements or anti-poverty movements such as Occupy, who mobilize against socio-economic inequalities and the concentration of wealth and resources in the hands of a few. In these cases, the courts sometimes impose spatial restrictions

combined with prohibitions to attend or to participate in public demonstrations or meetings within the specified perimeter in probation or conditional sentences orders (*R.* v. *Manseau* 1997, *R*. v. *Clarke* 2000, *R*. v. *Thibodeau* 2004, *R*. v. *Bicari* 2012, *R*. v. *Huot* 2006, *Hébert* v. *R.* 2007, *R*. v. *Fortin* 2004).

Most cases however do not reach sentencing or even trial, for that matter. In fact, restriction orders are most often used *during* political events or in subsequent criminal proceedings, as police measures of surveillance and neutralization of activists and protesters (Esmonde 2002). In 2001, Commissioner Ted Hugues, who investigated the conduct of the federal police, the Royal Canadian Mounted Police (RCMP), in the context of the Asia-Pacific Economic Cooperation (APEC) Summit held in Vancouver, condemned the fact that the RCMP had planned to arrest political activists and released them under a pre-established set of conditions consigned in undertakings or bail orders to prevent them from participating in the demonstrations (Commission for Public Complaints against the RCMP 2001). Despite the fact that these tactics were then found to be in violation of constitutional rights, they appear to be still widely used by the police. In the context of the meeting of the G-20 (an informal group of 19 countries and the European Union with the participation of the International Monetary Fund and the World Bank) in Toronto or of the Winter Olympic Games in Vancouver, both held in 2010, large numbers of individuals involved in largely pacific protests were arrested and released under red zone conditions prohibiting them from occupying strategic sites in downtown Toronto or Vancouver while the G-20 and Olympics were actually taking place. For instance, in the context of the Vancouver Olympics, protesters were released on bail on the condition not to "be within 100 meters of a security fence surrounding Olympic Winter Games Competition and Non-Competition Venue, Training Venue, Athletes Village, UBC University Endowment Lands and the District of West Vancouver, the Resort Municipality of Whistler and the Integrated Security Unit Office, between now and March 23 2010"[6]. The impact of State surveillance on social movement mobilization and on individual freedom of expression and association is well documented (Cunningham 2004, Fernandez 2008, Starr *et al*. 2008). Similarly, the use of zone restriction orders may have had the effect of discrediting demonstrators' legitimate concerns about the commodification of sports, environmental destruction, displacements and increases in homelessness, and the erosion of civil liberties, as well as preventing them from even voicing them (Hill 2010).

As a result, many individuals arrested during such political events are ultimately released, free of charges (on this strategy, see Balbus 1973, Starr, Fernandez 2009). For instance, according to the Toronto police, 1,118 people were arrested in the context of the mass arrests of the G-20 (Toronto Police Service 2011). However, according to the most recent update on G-20 prosecutions issued by the Ministry of the Attorney General of Ontario, less than a third of those arrested (330 individuals; 29.5%) appeared before the court, while 207 of those 330 individuals had their matters stayed by the Crown, withdrawn or dismissed, 40 low-risk offenders were dealt with through direct accountability outside of the criminal justice system, 9 were listed by error and 12 were released with a peace bond (again not charged with a criminal offence). In the end, 4.9 % of those arrested were charged with a criminal offence: 55 individuals pleaded guilty or were found guilty after trial and 2 have affairs pending before the court (Ministry of the Attorney General of Ontario 2014).

In other contexts, zone restriction orders are used to neutralize individuals during criminal proceedings, which can span over several years. In these cases, individuals arrested are released under restrictive bail conditions, only to be found not guilty for lack of evidence years later (*R*. v. *Aubin* 2008, *R*. v. *Singh* 2004). For instance, in *R.* v*. Bédard* (2009), a group of 30 political demonstrators were arrested in

[6] On file with the authors.

October 2000 in the context of a meeting of the Finance Ministers of the G-20 held at the Sheraton Centre in Montreal and charged with illegal assembly, rioting, mischief and obstruction of a police officer on duty. While the charges for illegal assembly and rioting were withdrawn, the cases proceeded on the remaining charges. The accused had a joint trial which lasted no less than 30 days between June 2002 and September 2003 at the Municipal Court of Montreal and they were found guilty in a judgment released in February 2004, some three and a half years after the events. Their convictions were ultimately overturned by the Court of Appeal in 2009 (*R.* v. *Bédard* 2009). In *R. v. Aubin*, the proceedings against more than 300 individuals arrested in the context of a demonstration against police brutality lasted more than six years. In various cases, the proceedings were stayed for unreasonable delays, charges were withdrawn or the accused were found not guilty for lack of evidence (*R*. v. *Aubin* 2008). In the meantime, these individuals were prevented from exercising their rights and, perhaps more strikingly, from challenging the economic and political order.

4. Conclusions: indignation at the role of criminal courts and concerns with the rule of law

The use of zone restriction orders issued against poor and marginalized populations who occupy public spaces raises important concerns with respect to the role of criminal courts and the rule of law. In the last decades, the adoption and the enforcement of anti-disorder programs, anti-panhandling statutes and by-laws, regulatory changes to the status of public spaces, local architectural projects and zero-tolerance policing practices have participated to the "annihilation of space by law" (Mitchell 1997) or more specifically to the privatization and domination of public spaces (Harvey 1990). In this context, the courts have not only on several occasions supported such initiatives and practices, but have also themselves contributed to the development of this new "spatial governmentality" (Merry 2001, Huxley 2006) by monitoring the access and uses of public spaces and by neutralizing individuals who might challenge the social and economic order through the use of spatial tactics, such as zone restriction orders. In fact, this is where our indignation begins: zone restriction orders have developed alongside and in addition to other forms of regulation and measures of control used by the executive branch of the State as well as by non-State actors.

Our indignation is aggravated by the potential threats to the rule of law that these orders might represent. Zone restriction orders trigger different legal regimes depending on the actors and the moment when they are issued. For instance, police officers, who can require that a person comply with "any other condition" he or she deems "necessary to ensure the safety and security of any victim of or witness to the offence" (ss. 499 (2)(h) and 503 (2.1) h) *Criminal Code of Canada*), have less discretion than justices who can also impose "any reasonable condition" they consider "desirable" in a bail order (s. 515(4) f) *Criminal Code of Canada*) and "any other reasonable conditions as the court considers desirable for protecting society and for facilitating the offender's successful reintegration into the community" (s. 732.1 (3.1) *Criminal Code of Canada*) in a probation order. Generally speaking, however, Canadian law provides limited guidance, provided that the conditions issued are not contrary to the law or to the *Canadian Charter of Rights and Freedoms* as well as being "reasonable", and all legal actors have largely unchecked discretionary powers at all stages of proceedings (Myers and Dhillon 2013).

Second, zone restriction orders, like other similar orders issued by the courts, seem to be protected from legal and constitutional challenges. In some cases, these orders could be challenged for being unlawful, issued in violation of the statutory regime of the *Criminal Code of Canada*: for instance, bail should be granted at the earliest reasonable possibility and on the least onerous grounds (referred to as the

"ladder principle": s. 515(3) *Criminal Code*[7]*)*, whereas a great proportion of accused persons are released under strict and largely unjustified conditions. In other cases, zone restriction orders could be found unconstitutional in violation of street people's fundamental human rights, including freedom of expression and of association (s. 2 of the *Canadian Charter of Rights and Freedoms*), mobility rights (s. 6 of the *Canadian Charter*), the right to life, security and liberty of the person (s. 7 of the *Charter*), the right to equality before the law (s. 15 of the *Charter*), as well as socio-economic rights such as the right to health, the right to housing or the right to work protected in other human rights legislation with quasi-constitutional status (e.g. *Quebec Charter of Rights and Liberties*). These rights are all directly connected to achieving socio-economic equality.

While there have been instances in which the courts have refused to declare unconstitutional provincial statutes which prevented poor people from begging in certain public spaces (*R*. v. *Bank* 2007), there have also been interesting cases in which the courts accepted constitutional challenges, such as those mentioned above with respect to the criminalization of prostitution and safe injection sites, as well as cases in which the courts held that the general prohibition to erect temporary shelters in public spaces in circumstances in which there were insufficient alternative shelter opportunities for the City's homeless violated the rights to life, liberty and security of the person (*City of Victoria v. Adams 200*8, Young 2009). Police measures and courts orders do, however, fall in a different category than statutory provisions and by-laws, with the result that they are more effectively shielded from review. This is particularly true of bail conditions which can only be challenged in separate proceedings and not in the context of the criminal trial, but also of sentencing orders which are so closely connected to judicial discretion (*R*. v. *M.C.A*. 1996). As a matter of fact, preliminary research shows that these conditions are rarely contested from a rights perspective with the exception of some (exceptional) political activists' challenges based on freedom of expression and association (e.g. *R. v. Manseau* 1997, *Hébert v. R*. 2007, *R. v*. *Singh* 2011). There are several possible explanations for this which will need to be further explored. For instance, when these conditions are issued at bail hearings, alleged offenders who are held in custody might not be in a position to negotiate or contest their release. They may also lack the appropriate legal venues and funding to organize such challenges. For instance, in 2009, the province of British Columbia suggested that there could no longer be legal aid in cases of breaches of bail or probation conditions (CBC News 2009). In turn, at the sentencing level, such conditions seem to rely on a therapeutic and rehabilitative discourse which goes unquestioned given that they are applied to the offender for "his or her own good".

Law, rights and the justice system are best conceived as both swords, used by the State to repress dangerous groups and individuals, and shields, used by the people to resist State power. Zone restriction orders represent a threat to the second component of this framework, running the risk of definitely elevating one perspective (repression) at the expense of the other (resistance). This is clearly something which must call for our indignation.

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[7] According to s. 515(3), "the justice shall not make an order under any of paragraphs (2)(b) to (e) [which provides for conditional releases] unless the prosecution shows cause why an order under the immediately preceding paragraph [which provides for unconditional release] should not be made": see *R. v. Anoussis* (2008).

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