

COMMENT

"Street-level Justice": governing metropolitan public space , *December 16, 2005*

by Jonathan Chaplin

Here's a fact you probably didn't know about and likely won't care about: a private bill passed a century and a half ago empowers the City of Toronto to sell hay and fodder at any cattle market. Now here's a fact you also probably didn't know about but will care about (well, at least if you care about Toronto): the City doesn't possess the independent legal power to buy new busses for its transit system but has to ask the province for permission.

This is just one of the quirker anomalies lying behind an impending major overhaul of local government in Toronto. Canada's largest city is governed by what has become a patchwork quilt of provincial acts, including the [City of Toronto Act, 1997](#) and the [Municipal Act, 2001](#), and an accumulation of *over 350* private acts, many of them of nineteenth-century origin and each conferring a small deposit of authority on the City Council. This is all about to change. Following extensive consultations with the City and other key stakeholders, the Ontario provincial government has [introduced](#) an amended [City of Toronto Act](#) which will serve as the city's new "constitution." This will expand and streamline the City's capacity for decision and coordination, transforming it, in effect, into a new "order" of government alongside provincial and federal authorities. Today, the City can only act where it has been granted specific legislative power delegated by the province. Under the new *Act*, it will possess broad permissive powers akin to those of provinces, enabling it - so its advocates claim - to deal far more effectively and strategically with the mounting city-wide problems currently confronting it. (By the way, here's another fact Torontonians should care about: the depth of the briefing materials currently presented to City Councillors ahead of Council meetings is - well, about twenty centimetres. Hardly conducive to reflective, strategic municipal policy-making.)

All of this is part of the local Hogtown response to the current "Cities Agenda" being promoted nationally by the federal government. Now I realize that for those of you not living in or near the Greater Toronto Area (GTA) - including those who live in such far-flung locations as, say, Hamilton, Ontario - the intricacies of municipal reform in Canada's most

self-obsessed city may not be of overwhelming interest. So I won't say any [more](#) about it. I raise it merely as a pertinent instance of the concrete, institutional challenge of "street-level justice" - or what I want to call, more precisely, "metropolitan public justice": the doing of justice within the public spaces of our alluring, heaving, problem-ridden urban communities.

"What does justice have to do with it?"

"Justice?" some might reply. "What have bus purchases, or garbage collection, or zoning laws, got to do with lofty principles like justice? Just give me a bit more efficiency and I'll go quietly." Of course we'd all like our cities to be run more efficiently. But issues of efficiency can't be neatly cordoned off from issues of distribution (of jobs for disadvantaged immigrants, or affordable housing for those on low incomes); of access (to public buildings, for the disabled); of sustainability (for our threatened urban landscapes and eco-systems); of opportunity (for budding entrepreneurs thwarted by punishing property taxes); of voice (for alienated electors - that's plenty of you); or of security (for the silenced communities of the victims of a different kind of "street-level justice" currently being brutally meted out by gun gangs in Toronto).

Each of these clusters of issues raises vexing but urgent questions of how the urban public realm should be ordered justly, and how its interactive spaces, avenues of opportunity, and material benefits should be made available equitably and safely to all. Contrary to widespread public perceptions, many city politicians understand this well. That's why they're there, and they deserve from urban citizens the critical support, active participation -- and the demands for accountability -- that are necessary for them to do their jobs effectively.

If we are to hold our elected representatives accountable for the doing of metropolitan public justice, then we'd better have some idea of what that principle entails (or, perhaps, come up with a better one). Let me begin by reiterating a vital distinction between two senses of the term "city" made by [David Koyzis](#) in [a previous issue of *Comment Online*](#). The City understood as a *political community* is a unit of local *government*, a municipality. It is a "political subcommunity within the larger body politic," as he puts it. Literally, it is a "metro-polis" - a metropolitan-sized political community. I have indicated this sense so far with a capital "C." A City or municipality is *but one* of many communities inhabiting the second sense of the term

"city," which Koyzis defines as "a multifaceted network of local, differentiated communities - a community of communities." *The City* is a political structure; *the city*, a territorially-defined network of non-governmental communities.

This distinction between City and city is routinely overlooked in the public rhetoric - and sometimes the public policy -- of municipal politicians who sometimes speak as if they represented, and were responsible for, the whole teeming mass of human social activities which happen to occur within the jurisdictional boundaries of their municipal councils. They don't, and they aren't. I want to suggest that their brief is defined and delimited by two closely related concepts. It extends specifically to matters in which issues of *justice* arise, and to matters where these justice issues acquire a *public* dimension. These are not new ideas, but they do invite clarification.

(For those interested in the lineage in Christian social thought of the specific term "public justice," see David Koyzis, Political Visions and Illusions, chapters 7 to 9, and Jonathan Chaplin, "Defining Public Justice in a Pluralistic Society," Pro Rege, March 2004, pp. 1-10. The plausibility of the term does not, however, presuppose familiarity with or agreement with that lineage. The term is an item of public philosophy, which means it should resonate with members of the public at large holding quite diverse moral or religious perspectives. It probably won't cut much ice, however, with radical libertarians or unreconstructed state socialists).

In the first place, and as the examples cited above make clear, the term "justice" as I am using it here does not refer only or primarily to what is often called the "justice system." By this is meant the operation of the judicial branch of government, the branch responsible for interpreting and applying the law, and backed up by enforcement agencies like the police. This is but one part of the scope of public justice. Nor does the term "justice" imply a narrowly procedural view of the role of government, as if that were merely one of maintaining impartial lawmaking and public policy procedures ("you had your chance to have a say; if you didn't show up, don't complain if the Council's decision shuts your business down"). Instead, public justice refers to the active rendering of just laws and decisions across the complex of public spaces within a whole political community. Authorities at all levels of government are charged with rendering public justice, municipal as much as provincial and national governments.

The claims of public justice potentially reach very far. This is especially so

in communities like modern cities characterized by high levels of functional complexity, demographic density, and interactive intensity. In such communities, many justice issues will manifest themselves within the public realm and demand governmental action of many sorts. Now many issues of justice arising within the independent communities, associations or local neighbourhoods of civil society are properly and adequately dealt with by the agents concerned, and normally involve no recourse to political authority. (By neighbourhood, I mean the local manifestation of the "city," rather than the local manifestation of the City - which would be smaller subunits of government like Community or neighbourhood councils). For example, when private businesses decide on the price of a product, governments, *prima facie*, do not possess the competence to override that essentially economic judgment. Governments would need to construct a specific and compelling public interest argument to justify exceptions to that principle. But such an argument might well be available. One might be the need to hold back unscrupulous and economically unjustified gas price hikes during a temporary oil crisis. Such an intervention would aim to ensure that businesses were themselves abiding by a norm of economic fairness which, if violated, would cause *public* damage.

Or - and here I'm at odds with a key assumption of many metropolitan school systems - if parents wish to decide on the choice of school for their children, public officials ought not to frustrate that essentially familial choice or to penalize it by funding only government-controlled schools. Limits to the scope of that choice could be justified in order to prevent or remove serious inequities in access to finite educational resources. It's hard to conceive how justice could be done to the public entitlements of the majority of children living in a massive twenty-first century city like Toronto without there being *something* like the Toronto District School Board. However, having steered two children through four of this Board's schools, it seems clear to me that this Board, and the provincial government it receives its powers from, currently wield disproportionate bureaucratic and regulatory power over the properly educational decisions of individual schools and families.

The notion of public justice, then, does not at all imply that governments have no jurisdiction at all in areas like business or education, as libertarians—and some of their misguided Christian apologists—absurdly propose. It implies, rather, that such jurisdiction must always be pursuant to, and so constrained and disciplined by, the clear and compelling imperatives

of the *public* good. (This is the clearly stated purpose behind the proposed expansion of the legal powers of the City of Toronto. On the other hand, the distinction between governmental and non-governmental authorities is not adequately recognized in [the documents urging this expansion](#)).

Manipulating the "public"?

The term "public" has proven very difficult to define, but some delineation is obviously necessary if the notion of "public justice" is to have any concretely applicable meaning. The word "public" is employed routinely in political debate, lawmaking, public policy, and judicial process, as in the appeal to "the public interest." Of course such language has been and continues to be invoked only to justify almost anything a government happens to want to do. Now the fact that it is a slippery and fickle term leads some to propose abandoning it altogether. But that is to play into the hands of vested interests who want to justify government action for *their* sectional ends while denying it to their opponents,' and who would benefit enormously from having no clear guidelines at all for the impartial administration of public authority.

We might put it this way: no social activities are ever absolutely beyond the scope of the public realm, but that realm does not go "all the way down." It does not envelop the unique internal spheres of responsibility of independent communities and associations, but embraces only one specific dimension—the public dimension—of their activities. So while parents can choose their children's school, they must respect the physical and emotional integrity of their children, and where this integrity is seriously violated, a *public* offence has been committed that will require action by the state. Arguably, one component of that integrity is granting access to adequate educational experiences to one's children. This is the basis for the justified power of government to make education, of some kind (including home schooling), compulsory. We should therefore say that children's rights to physical and emotional integrity, and thus to educational opportunity, do not derive from the family's *internal sphere of justice* but from the *children's public status as citizens*. So when the arm of the state removes a child from an abusive family, or compels parents to ensure a child's education, it is not interfering in the internal rights of the family—no family has the right to abuse its children or deprive them of the opportunity to become mature and responsible adults—but simply requiring parents to respect their children's public rights.

We must hold on, then, to the importance of a strong and substantive sense of the "public good," even while acknowledging that its meaning and limits are continually contested, and that its concrete implementation is always revisable. The borders of the public realm can never be fixed once and for all, because the historical and societal circumstances in which public justice is to be pursued are always shifting. Let me suggest just some of the complex contemporary developments relevant to identifying the scope of metropolitan authority at this historical juncture. I noted earlier that the scope of the public realm will inevitably be wider the more a society tends to be characterized by the typical features of a modern city, which I summarized briefly (but by no means exhaustively) as functional complexity, demographic density and interactive intensity.

Those are, indeed, features typical of the *modern* city. In the nineteenth and early twentieth centuries these compelled a substantial extension of the scope of municipal public authority (in fact, in many cases, its first creation). Indeed, many of the great struggles for public justice at that time required the empowerment of such authorities to address the scandalous injustices associated with what was called "the social question" - the generation of masses of impoverished city-dwelling wage labourers and their families by urban industrial capitalism. Today arguments for further extension (or reduction) of municipal authority need to be justified case by case, but that currently being advanced in favour conferring greater discretionary authority on the City of Toronto deserves careful consideration. In this case, what is occurring seems not so much a net increase in the overall scope of public authority *vis à vis* civil society but only a downward delegation of authority from the provincial to the municipal level, in the interests - one hopes -- of better municipal public justice. The need to be vigilant about the boundary between government and civil society is relevant at every level of government. But such vigilance need not exclude, and indeed may call for, shifts in either direction in the distribution of such public authority across the three tiers. At least, such a shift should not be ruled out in advance of a careful empirical assessment of current historical circumstances in which municipal public justice is to be rendered.

This line of argument also needs to be applied to other pressing contemporary questions which I can only name here in the hope that others with greater expertise in urban politics might explore them. What, for example, might a notion of municipal public justice imply for the

relationship between city and countryside, or between city and city, or, across national borders, between "global cities"? Let me suggest analogy worth pursuing. National governments, while responsible primarily for those living within their own jurisdictions, also stand under the obligations of global public justice, and these should direct and limit what national governments may do. For example, whatever one thinks of the specific provisions of the Kyoto Protocol, recently revisited at a UN gathering in Montreal, it is clear that all national governments today must respond collaboratively to the serious threats of potentially catastrophic environmental deterioration emerging across the globe. The scope of the public justice obligations of a political authority at any level can and increasingly do stretch beyond its particular jurisdictional boundaries, and require trans-territorial cooperative action. So Cities are indeed responsible under the norm of public justice for the implications of their numerous activities and decisions on, say, the countryside around them, or on the economic regions of which they may be the hub, or on other cities within their state, or indeed on the national and even global natural environment. It is entirely commendable that over 100 American city mayors should join together to announce their own municipal initiatives to combat global warming pursuant to the Kyoto Protocol. They did not need to wait for a sluggish and blinkered U.S. federal government to see the light. One might even say that here we have an application of the "principle of subsidiarity" in reverse. Whereas it is pre-eminently the role of national governments and international bodies to act against a threat to the global public good such as global warming, where higher political authorities fail effectively to discharge that task, lower bodies need to step in do whatever they can to address it. In general, where Cities have the wherewithal to contribute to the resolution of pressing matters of regional, national or global public justice, they should indeed do so.

(This recent action of the American mayors seems a lot more effective than the proclamations of some Cities as "nuclear-free zones." While I personally support the objective of keeping nuclear weapons out of populated areas - indeed taking them out of existence altogether - it is the case that municipal governments generally lack any authority in military matters, and so can't remotely enforce such declarations in any way. Such proclamations can easily be ridiculed as empty posturing).

Levelling the richness of cities of old

Let me return to the immediate local role of municipal authorities. I noted that the characteristic features of functional complexity, demographic density and interactive intensity are essentially modern. While these are, of course, not problem-free developments, they do account for much of why we find cities so attractive and stimulating. But in the late (or post-) modern city, such features have attained an extremely advanced - some would say "hyper" -- level of development. And as many observers have noted, such developments are beginning to turn in on themselves, and so undermine the very benefits they have often provided to modern urban people:

1. As late modern western societies have become increasingly dominated by individualistic and consumerist hyper-capitalism, the functional complexity of earlier times—the rich diversity of social activities and the relationships they generate—is increasingly being replaced by a *depressing functional uniformity*. More and more, the modern city is moulded in the image of and at the behest of purely economic forces. Housing and infrastructural developments follow the homogenizing imperatives of corporate growth, instead of economic activities organized to serve human, social and environmental flourishing;
2. *Demographic density*—marked, for example, by lots of people and families of all kinds living downtown—is thinned out as people are compelled by high real estate prices or business taxes, or by pressure on under-resourced public services, to move to soulless, fabricated suburbs oriented wholly to the automobile and the strip mall; and
3. *Interactive intensity* is also weakened as urban civil society associations struggle to survive and attract voluntary funding in the face of the individualism of consumerist activity and the attendant transience of social contacts.

Such a hypermodern levelling of the city will therefore add to the demands for government to intervene to address the complex social problems of isolation, alienation and fragmentation such developments inevitably compound. The capacities of the communities and associations of civil society to be part of the solution to these problems will be simultaneously corroded. Perhaps one crucial objective for practitioners of municipal public justice, then, should be to deploy the legitimate power of City governments so as to mount resistance such hypermodern uniformity. To protect, restore,

and enable the diverse communities of civil society - that dense network of interacting social bodies that make up the city - to make their own unique and irreplaceable contribution to the public good. "Street-level justice" requires not just good Cities, but good *cities*.

© Work Research Foundation 2007