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### Regulating Critical Mass: Performativity and City Streets

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## REGULATING CRITICAL MASS: PERFORMATIVITY AND CITY STREETS

Alexandra Flynn\*

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Critical Mass since its beginning has identified itself as a celebration more than a protest, and is for many of its participants a prefigurative experience, both calling attention to and actually creating a taste of a different way of life. The vibrant grass-roots culture is the best proof of this. Costumes, flyers, posters, art shows, concerts and parties all have promoted and extended Critical Mass into areas of life beyond mere bicycling, and have given creative voice to hundreds of riders.<sup>1</sup>

### I. INTRODUCTION

On the last Friday of every month, tens of thousands of cyclists across 300 cities ride their bicycles for about an hour. In these events, cyclists disregard laws and regulations by bursting through red lights, traversing highway overpasses, and occupying multiple lanes of the road. These cyclists form part of Critical Mass. For the time in which Critical Mass takes place, participants are part of a *nomos*, or “normative universe”,<sup>2</sup> which determines laws for their particular community.<sup>3</sup> Critical Mass’ conception as a *nomos*, together with its interaction or performance among the legal orders set out in municipal, provincial, and federal law, are analyzed in this paper. This

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<sup>1</sup> Chris Carlsson, “Cycling Under the Radar - Assertive Desertion” in Chris Carlsson, ed, *Critical Mass: Bicycling's Defiant Celebration* (Oakland: AK Press, 2001) 75 at 81 [Carlsson].

<sup>2</sup> See Franklin G Snyder, “Nomos, Narrative, And Adjudication: Toward A Jurisgenetic Theory Of Law” (1998-1999) 40 *Wm & Mary L Rev* 1623 at 1624.

<sup>3</sup> See Robert M Cover, “Foreword: *Nomos* and Narrative” (1983) 97:4 *Harv L Rev* 31 at 33.

paper presents an understanding of how performativity contributes to the interdisciplinary legal geography project by challenging the language of jurisdiction imposed by law.

## II. CYCLING IN TORONTO: REGULATION AND CONTESTATION

Analyzing a single jurisdiction in which Critical Mass takes place permits a clearer understanding of the many overlapping laws and governmental regulations that affect cycling. Toronto has been selected because it is a large city within which Critical Mass regularly takes place.<sup>4</sup> Like in other cities, the number of participants in the rides alternates between a sizeable movement and one with only a handful of participants. Critical Mass in Toronto has also had both hostile and peaceful interactions with authorities.

### (a) CYCLING AS A REGULATED ACTIVITY

The seemingly mundane act of mounting a bicycle in the City of Toronto triggers legal regulation at municipal, provincial, and federal levels of governments. Legal jurisdiction tells us that provincial law is the gatekeeper of municipal authority.<sup>5</sup> This means that the federal government does not have a constitutional right to impose law when it falls under a provincial power, and municipalities must act under provincial laws. Canadian jurisprudence has established that municipalities are nested within the jurisdictional space of the provinces.<sup>6</sup> As a result of this “creatures of the province” status, municipalities are greatly impacted by the divisions of provincial and federal authority prescribed under the *Constitution Act, 1867*.

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<sup>4</sup> See “Critical Mass Toronto”, online: <[www.criticalmass.com](http://www.criticalmass.com)>.

<sup>5</sup> Nicholas Blomley, “What Sort of a Legal Space is a City?” in Andrea Mubi Brighenti, ed, *Urban Interstices: The Aesthetics and the Politics of the In-between* (Farnham, UK: Ashgate Publishing Limited, 2013) at 4 [Blomley, Legal Space]

<sup>6</sup> See e.g. *R v Greenbaum*, [1993] 1 SCR 674, 1993 CanLII 166; *East York (Borough) v Ontario (Attorney General)*, 34 OR (3d) 789, 1997 CanLII 12263 (Sup Ct); *Eng v Toronto (City)*, 2012 ONSC 6818 (CanLII), [2012] OJ No 5661; *Wainfleet Wind Energy Inc v Wainfleet (Township)*, 2013 ONSC 2194, [2013] OJ No 1744.

While the province is the “gatekeeper” of municipal regulations, the federal government engages directly in urban cycling issues in practice. The federal government contributes to cycling regulation through its fifty-three billion dollar infrastructure funding program, which permits expenditure on municipal projects such as cycling infrastructure.<sup>7</sup> The federal government has also been repeatedly called on to amend the *Motor Vehicle Safety Act* by requiring the installation of guardrails on trucks to improve cyclist safety and to reduce cycling fatalities in Toronto.<sup>8</sup>

The province of Ontario plays a crucial role in the regulation of cycling in Toronto through two important mechanisms: the *City of Toronto Act*<sup>9</sup> and the *Highway Traffic Act*.<sup>10</sup> The *City of Toronto Act* broadly describes the city’s ability to “provide any service or thing that the City considers necessary or desirable for the public.”<sup>11</sup> Under the *Highway Traffic Act*, bicycles are defined as “vehicles,” and therefore entitled to a lawful, privileged presence on highways.<sup>12</sup> This means that the province ultimately determines the expected conduct of cyclists on roads and corresponding punishment for violations.<sup>13</sup>

The province has also led a number of inquiries related to cycling, including the Office of the Chief Coroner’s 2012 *Cycling Death Review*.<sup>14</sup> This review has recommended that “the province introduce Legislative change...aimed at ensuring clarity and consistency regarding interactions between cyclists and other road users,” including regulations imposing limits and conditions on Toronto’s authority under the *City of Toronto Act*.<sup>15</sup> To date, the province has not done so.

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<sup>7</sup> Infrastructure Canada, *Programs* (Ottawa: Infrastructure Canada, 21 October 2014), online: <[www.infrastructure.gc.ca](http://www.infrastructure.gc.ca)>.

<sup>8</sup> See Bill C-603, *An Act to amend the Motor Vehicle Safety Act (vehicle side guards)*, 2nd Sess, 41st Parl, 2014 (failed on second reading on 10 December 2014).

<sup>9</sup> SO 2006, c 11, Schedule A [*City of Toronto Act*].

<sup>10</sup> RSO 1990, c H.8 [*Highway Traffic Act*].

<sup>11</sup> *Supra* note 9 at s 8(1).

<sup>12</sup> *Supra* note 10 at s 1(1). For historical origins see *R v Justin*, 24 OR 327, [1893] OJ No 52 at paras 9-10 (CA).

<sup>13</sup> *Ibid* at s 56.

<sup>14</sup> Office of the Chief Coroner for Ontario, *Cycling Death Review: A Review of All Accidental Cycling Deaths in Ontario from January 1st, 2006 to December 31st, 2010*, (Toronto: Office of the Chief Coroner for Ontario, June 2012).

<sup>15</sup> *Ibid* at 5.

Toronto's municipal government sets the tone for and regulates the bulk of decisions that affect the day-to-day experience of cycling. The *City of Toronto Act* permits the municipality to enact bylaws,<sup>16</sup> such as how bicycles are to be used on roads.<sup>17</sup> The municipality regulates aspects of cycling such as what cyclists may carry on their bikes<sup>18</sup> and the regulation of cycling on sidewalks.<sup>19</sup> Bicycle lane decisions are now under the authority of Toronto's City Council, who makes rules that are prescribed by the *Toronto Municipal Code*.<sup>20</sup> Toronto's municipal government, with the Toronto Transit Commission and Toronto Police Services, also incentivize the practice of cycling through means such as providing bike sharing, reducing the number of motorists through investments in public transit, emphasizing bike-carriage on subways and buses, and increasing the fixed fine amount for stopping a vehicle in a cycling lane.<sup>21</sup>

Mariana Valverde has established that "jurisdiction disputes, in law, are disputes about who rules not just over a space but also over a particular spatiotemporal event, or more accurately a type of event, taking place on that space."<sup>22</sup> To understand what happens where legal jurisdiction is challenged or suspended, this paper examines how Critical Mass interacts with this regulatory landscape.

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<sup>16</sup> *Supra* note 9 at s 10(1).

<sup>17</sup> City of Toronto, by-law C 950, *Traffic and Parking* (2 October 2015).

<sup>18</sup> *Ibid*, s 950-201(D) ("No person operating a bicycle shall carry any package, bundle, or article which prevents the rider from keeping both hands on the handlebars").

<sup>19</sup> *Ibid*, s 950-201(C)(2) ("No person age 14 and older shall ride a bicycle on a sidewalk of any highway, except for those locations designated in § 886-6 of Chapter 886, Footpaths, Pedestrian Ways, Bicycle Paths, Bicycle Lanes and Cycle Tracks").

<sup>20</sup> City of Toronto, by-law C 886, *Footpaths, Pedestrian Ways, Bicycle Paths, Bicycle Lanes and Cycle Tracks* (15 October 2014).

<sup>21</sup> See e.g. City of Toronto, Public Works and Infrastructure Committee PW32.8, "Proposed Public Bicycle Program" (20 April 2010), online: <[www.toronto.ca](http://www.toronto.ca)>; City of Toronto, *City of Toronto Bike Plan – Shifting Gears* (Toronto: Toronto Cycling Committee, June 2001), online: <[www.toronto.ca](http://www.toronto.ca)>; City of Toronto, *Toronto Cycling Network Plan*, online: <[www.torontocyclingnetwork.info](http://www.torontocyclingnetwork.info)>; City of Toronto, *Cycling and Transit*, online: <[www.toronto.ca](http://www.toronto.ca)>; City of Toronto, municipal code C 886, *Footpaths, Pedestrian Ways, Bicycle Paths and Bicycle Lanes* (15 October 2014).

<sup>22</sup> Mariana Valverde, *Chronotopes of Law: Jurisdiction, Scale and Governance* (New York: Routledge, 2015) at 83.

## **(b) CHALLENGES TO THE EXISTING ORDER: CRITICAL MASS**

Critical Mass, now in its third decade, involves participants in approximately 325 cities around the world convening on the last Friday of every month at 6 p.m. to cycle through urban spaces while actively flouting traffic laws. Critical Mass claims to have no timetable, predetermined route, or leader.<sup>23</sup> The informality of Critical Mass is both a tactical decision to avoid city permit requirements,<sup>24</sup> as well as an organizational philosophy.<sup>25</sup>

In North America, Critical Mass began in San Francisco in 1992.<sup>26</sup> The first participants watched Ted White's documentary, *Return of the Scorcher*, which compared bike culture in the Netherlands and China with that of the United States.<sup>27</sup> In the film, American artist and designer George Bliss noted that, in China, both motorists and bicyclists had an “understood” method of negotiating intersections without signals. Traffic would queue up at these intersections until the backlog reached a “critical mass”, at which point that mass would move through the intersection. By the second event, the name “Critical Mass” had caught on, as it exemplified the core of the event.<sup>28</sup>

Critical Mass purports to not have a singular purpose, legal or otherwise. It claims to be “the most visible and public manifestation of urban cycling”, an opportunity to create a safe space by creating a spectacle of safety in numbers”, an opportunity to create a “brief and temporary, alternate spatial configuration or reorganization of the street”, and a symbol of “freedom from hierarchy.”<sup>29</sup> In many cities, upcoming Critical Mass events are framed as a “reclamation of public

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<sup>23</sup> Andrew Bieler, *Rhythmanalysis of Critical Mass: A Meeting Place* (MA Thesis, University of Toronto, 2009) [unpublished] at 1.

<sup>24</sup> Lincoln Anderson, “Police and Bikers Take Stand in Critical Mass Case”, *The Villager* (15 December 2004), online: <[www.thevillager.com](http://www.thevillager.com)>.

<sup>25</sup> Robert Rao, *Urban Cycling as the Measure of the City: Experience, Policy and the Cultural Politics of Mobility* (MA Thesis, Simon Fraser University, 2010) at 117-19 [unpublished][Rao].

<sup>26</sup> *Ibid* at 114-15.

<sup>27</sup> *Return of the Scorcher*, 1992, DVD (San Francisco: Ted White, 1992).

<sup>28</sup> *We are Traffic!*, 1999, DVD (San Francisco: Ted White, 1999).

<sup>29</sup> Rao, *supra* note 25 at 109-11.

space”. This suggests a broader mandate than simply a call for bike lanes or other infrastructure. While some Critical Mass participants advocate for particular outcomes addressing road safety, climate change, or urban space, there is no clear political position on any particular issue. Critical Mass “even seems to disavow the extent to which it is a political movement or that it is acting on behalf of a specific constituency.”<sup>30</sup>

Critical Mass is a locus of legal embattlement.<sup>31</sup> Critical Mass uses the tagline, “we’re not blocking traffic, we *are* traffic!”<sup>32</sup> In confronting the existing legal framework, a chief practice used by Critical Mass participants is to “cork” roads by preventing other traffic from passing through green lights in order to allow Critical Mass participants to pass as a group.<sup>33</sup> This practice originates from a survival technique for cyclists in Beijing trying to cross the impenetrable walls of automobile traffic.<sup>34</sup> In many cities, the use of corking has led to hostility between motorists and riders, even erupting into violence and arrests of motorists and cyclists alike.<sup>35</sup> For example, in New York City, the New York Police Department characterized the ride as a protest tactic used by political groups, which was argued as a justification for its criminalization.<sup>36</sup> At a Critical Mass event near the opening ceremonies of the 2012 Summer Olympics in London, more than 50 cyclists were detained for their involvement in Critical Mass.<sup>37</sup> In Toronto, police actively sought to shut down Critical Mass in the mid-1990s.<sup>38</sup> Later, the Toronto Police moved to more covert methods of restricting Critical Mass participants. For example, police have at times cycled along with the

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<sup>30</sup> Simon Parry, “A Theatrical Gesture of Disavowal: The Civility of the Critical Mass Cycle Ride” (2015) 25:3 *Contemporary Theatre Rev* 344 at 346 [Parry].

<sup>31</sup> *Carlsson*, *supra* note 1 at 79.

<sup>32</sup> Zack Furness, “Critical Mass, Urban Space and Vélomobility” (2007) 2:2 *Mobilities* 299 at 299.

<sup>33</sup> Rao, *supra* note 25 at 110.

<sup>34</sup> *Ibid* at 115.

<sup>35</sup> See e.g. Rachel Lau, “Cyclists and Police Face Off During Critical Mass Gathering”, *Global News* (28 July 2013), online: <[www.globalnews.ca](http://www.globalnews.ca)>.

<sup>36</sup> Jim Dwyer, “City Rebuffed in Trying to Bar Mass Bike Rides”, *The New York Times* (16 February 2006), online: <[www.nytimes.com](http://www.nytimes.com)>.

<sup>37</sup> Chris Helgren, “Mass Arrests at Monthly Cycling Event in London on Olympic Ceremony Night”, *Reuters* (27 July 2012), online: <[www.rt.com](http://www.rt.com)>.

<sup>38</sup> Guido Bruidoclarke, “Critical Mass Toronto” in *Carlsson*, *supra* note 1 at 39.

group, then a few blocks later have stopped participants and give them tickets for violations.<sup>39</sup>

Critical Mass has inspired many other bicycle movements that also engage with legal frameworks, including Oregon's Kidical Mass, which encourages bicycle riding for children and families. Additional spin-offs include the San Francisco Bike Party, Courteous Mass and RideCivil rides. These rides encourage participants to obey all traffic laws, such as stopping at red lights and signaling, and promote civility between motorists, pedestrians, and cyclists.<sup>40</sup> The World Naked Bike Ride also challenges dominant legal frameworks. This is an event where nude cyclists tour city streets in protest of oil dependency, while promoting biking safety and body positivity.<sup>41</sup>

### III. LEGAL GEOGRAPHY: LAW, JURISDICTION AND TIME

Legal geography is an interdisciplinary intellectual project that makes the interconnections between law and space.<sup>42</sup> It seeks to capture social regulation and jurisprudence as it relates to geography, recognizing that law is "literally constitutive of the nation state, the community, the firm, the market and the family" and that social relation is also "shaped by and understood in terms of space and place."<sup>43</sup>

A study of jurisdiction is foundational in analyzing Critical Mass through legal geography. The term "jurisdiction" tells us who has authority or power in a given matter, although the reality is that

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<sup>39</sup> Participant observation of Toronto Critical Mass by Alexandra Flynn, (2015). Notes are available upon request.

<sup>40</sup> Shanerh, "Welcome to Kidical Mass!", *Kidical Mass* (18 March 2010), online: <[www.kidicalmass.org](http://www.kidicalmass.org)>; "About" *San Francisco Bike Party*, online: <[www.sfbikeparty.wordpress.com](http://www.sfbikeparty.wordpress.com)>; "Basic Information", *Courteous Mass*, online: <[www.courteousmassdayton.com](http://www.courteousmassdayton.com)>; David Longdon, "RideCivil", *Velocity: The Seattle Area Cycling Blog* (1 August 2008), online: <[www.blog.seattlepi.com](http://www.blog.seattlepi.com)>.

<sup>41</sup> "Frequently Asked Questions" *World Naked Bike Ride* (12 July 2006), online: <[www.wiki.worldnakedbikeride.org](http://www.wiki.worldnakedbikeride.org)>.

<sup>42</sup> Irus Braverman et al, "Expanding the Spaces of Law" in Irus Braverman et al, eds, *The Expanding Spaces of Law* (Stanford: Stanford University Press, 2014) 1 at 1 [Braverman].

<sup>43</sup> David Delaney, Richard T Ford & Nicholas Blomley, "Preface: Where is Law?" in Nicholas Blomley, David Delaney & Richard T Ford, eds, *The Legal Geographies Reader* (Oxford, UK: Blackwell Publishers Ltd, 2001) at xv.

many governments often regulate the same kind of social action.<sup>44</sup> Nicholas Blomley states that “jurisdiction is a legal technicality. Jurisdiction is defined in law as the legal authority to judge or to act (literally, to speak the law) in a given situation or case.”<sup>45</sup> As Shiri Pasternak writes, jurisdiction “is both a spatial and a legal concept: it is a claim to governance that refers to the legal relationship between a politically organized community and the space it inhabits.”<sup>46</sup> The way in which governmental jurisdiction is articulated does not fully assist us in understanding the operation of law.<sup>47</sup> Legal jurisdiction is not only exercised through formal, bureaucratic structures, but also through ‘everyday’ situations, whereby “Local idiosyncrasies, modern scientific facts, institutional habits, ‘common knowledge,’ and situated knowledge of the ever-changing political context are all part of the decision-making processes in legal and regulatory governance.”<sup>48</sup> A layered, creative approach is needed to understand the legal dynamics at play in everyday life.<sup>49</sup>

Many of Critical Mass’ activities, like corking and riding through red lights, are prohibited across both provincial and municipal legal jurisdictions. Rather than a simple disregard of established laws, these actions illustrate a more nuanced idea of regulation. While there are occasional arrests when Critical Mass participants take to the streets, participants often ride without legal consequence. The legal jurisdiction set out under the law is present, but lies mostly dormant when Critical Mass takes to the street. Critical Mass alerts us to the omnipresence of legal jurisdiction, but also that the existence of law does not necessarily mean an enforcement of law.

A jurisdictional approach also permits an analysis of “different legal orders,” which are not “conceived as separate entities coexisting in the same political space, but rather the conception of different legal spaces superimposed, interpenetrated, and mixed in our minds as

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<sup>44</sup> Boaventura De Sousa Santos, “Law: A Map of Misreading. Toward a Postmodern Conception of Law” (1987) 14:3 *JL & Soc’y* 281 at 287 [Santos].

<sup>45</sup> Blomley, *Legal Space*, *supra* note 5 at 4.

<sup>46</sup> Shiri Pasternak, “Jurisdiction and Settler Colonialism: Where Do Laws Meet?” (2014) 29:2 *CJLS* 145 at 152.

<sup>47</sup> See Blomley, *Legal Space*, *supra* note 5 at 5.

<sup>48</sup> Mariana Valverde, “Jurisdiction and Scale: Legal ‘Technicalities’ as Resources for Theory” (2009) 18:2 *Soc & Leg Stud* 139 at 143 [Valverde, *Jurisdiction*].

<sup>49</sup> Braverman, *supra* note 42 at 17.

much as in our actions.”<sup>50</sup> These different legal orders consist of norms and conventions that may coexist, conflict, or complement formal legal orders. Shaunnagh Dorsett and Shaun McVeigh note the importance of this “meeting” of laws:

An engagement of laws could also be concerned with the processes, protocols, and procedures that create and arrange relations of laws. In the case of the engagement of laws, it could mean the acknowledgement of and contribution to the creation of a middle ground, or a meeting place, of laws. While a meeting point of law might suggest the observation of the meeting of laws, a meeting place directs attention to the understanding of the quality or character of the meeting.<sup>51</sup>

For cyclists, the rules set out in the *Toronto Municipal Code* and the *Highway Traffic Act* do not conflict as municipal bylaws will be trumped by provincial law. However, with their distinct norms and rules of conduct that “meet” municipal, provincial, and federal laws, these rules show overlapping legal space at play.

With Critical Mass, an overlap of legal jurisdictions occurs with conflicted meetings and everyday meetings. In a conflicted meeting, participants openly and directly challenge governmental and regulatory frameworks. While government regulation seeks an ordered, law-abiding vision of the road, Critical Mass participants instead imagine city streets devoid of car traffic, where bicycles are unobstructed by cars and allowed to flow freely. Differing legal orders are contested when Critical Mass participants knowingly violate traffic lights and cycle on sidewalks. This creates a direct conflict between formal rules and Critical Mass during the time that participants take to the streets.

Everyday meetings are an event of regular, everyday life. While Critical Mass claims not to have any formality as an

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<sup>50</sup> Santos, *supra* note 44 at 297-98.

<sup>51</sup> Shaunnagh Dorsett & Shaun McVeigh, “Conduct of Laws: Native Title, Responsibility, and Some Limits of Jurisdictional Thinking” (2012) 36:2 *Melbourne UL Rev* 470 at 471.

organization, its participants are drawn to a shared *nomos*, with norms that appeal to those who take part in the events. Critical Mass gatherings are a site of togetherness and the backdrop to developing personal relationships. This *nomos* impacts jurisdiction as it brings groups of Critical Mass participants together to depict a different way of using city streets, and celebrating freedom through bicycling.

The temporality of law affects jurisdiction as all elements of legal jurisdiction are subject to change. New legislation is constantly introduced and powers are delegated elsewhere through regular government activity. Changes to legal jurisdiction also occur when government actors choose to enforce particular laws or when new actors appear. The study and practice of law presuppose a certain comfort with the notion of change in that what is now may not always be so. Mariana Valverde outlines that “particular claims about history are often crucial elements in jurisdiction’s game, both within states and between them” and “each mode of governance has one or more distinct temporalities.”<sup>52</sup>

Critical Mass is temporal in that it takes place for a brief window of time once per month. While there may be longer term outcomes related to Critical Mass, including changes to municipal bylaws, cycling infrastructure, or other regulations, the contested and everyday meetings are limited to the brief time when participants take to the streets. While these meetings are fleeting, Critical Mass’ engagement with the law over time remains meaningful. The understanding that “the more that similar objects and bodies habitually settle in the same space, the more finely that space comes to be shaped to fit them” applies.<sup>53</sup> The ritual of participants weaving through the city has resulted in familiarity with city spaces and the laws which govern its streets.

Legal geography alerts us to a deeper understanding of jurisdiction than can be observed by studying doctrinal law alone. Critical Mass reveals the complexity of jurisdiction in that cycling laws are not necessarily enforced, engagement with law includes conflicted and everyday meetings, and the passage of time adds a further instability to our legal framework. Performativity builds on

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<sup>52</sup> Valverde, Jurisdiction, *supra* note 48 at 154.

<sup>53</sup> Sarah Keenan, “Subversive Property: Reshaping Malleable Spaces of Belonging” (2010) 19:4 Soc & Leg Stud 423 at 433.

this analysis of Critical Mass, providing further context for how Critical Mass contests a traditional understanding of legal jurisdiction.

#### IV. CRITICAL MASS, PERFORMATIVITY, AND LEGAL GEOGRAPHY

A theory of performativity allows us to look more critically at Critical Mass, to understand how bodies move in space, and what that means for the law. The connection between Critical Mass and performance is not new; the events have been referred to as a “festive, participatory spectacle.”<sup>54</sup> Participants frame the group ride as a “celebration of the simple joys and utility of the bicycle.”<sup>55</sup> Researchers have documented that Critical Mass has been called “a protest, a form of street theater, a method of commuting, a party, and a social space.”<sup>56</sup>

Legal geographer David Delaney comments that performativity offers “an intimacy” with law and space that allows for a richer analysis of norms.<sup>57</sup> This is because bodies illustrate the effects of law and how power finds expression in the world.<sup>58</sup> In this analysis, I suggest that the performativity of Critical Mass is best illustrated through considering its script, actors, and set.<sup>59</sup>

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<sup>54</sup> Rao, *supra* note 25 at 110.

<sup>55</sup> *Ibid* at 117.

<sup>56</sup> Susan Blickstein & Susan Hanson, “Critical Mass: Forging a Politics of Sustainable Mobility in the Information Age” (2001) 28:4 *Transportation* 347 at 352 [Blickstein].

<sup>57</sup> David Delaney, *The Spatial, the Legal, and the Pragmatics of World-Making: Nomospheric Investigations* (New York: Routledge, 2010) at 9.

<sup>58</sup> *Ibid* at 26.

<sup>59</sup> See Zizi Papacharissi, “Without You, I’m Nothing: Performances of the Self on Twitter” (2012) 6 *Intl J Comm* 1989 (“Performance conjures expectations of theater. Performativity is associated with preparation, presentation, script, symbolism, props, drama, and last but not least, an audience, actual or imagined” at 1989). See also Nicole Rogers, “The Play of Law: Comparing Performances in Law and Theatre” (2008) 8:2 *Queensland U Tech L Justice J* 429; Louise Amoore & Alexandra Hall, “Border Theatre: On The Arts of Security and Resistance” (2010) 17:3 *Cultural Geographies* 299, who describes the differences between law and theatrical performances.

### (a) THE SCRIPT

Critical Mass' jurisdictional relationships are visible as part of a broader script that does not make an explicit distinction between the orders of government and a cyclist's conduct. To those participating in a Critical Mass ride, it makes no difference whether a contested rule is local, provincial, or federal. What matters is vibrant expression. It is the weaving together of the conflicted and the everyday meetings that exemplifies Critical Mass.<sup>60</sup>

As with everyday meetings, everyday law is performed rather than written.<sup>61</sup> Critical Mass events are informal and unwritten as a means to distance itself from, as well as defy, its legal interactions. An avoidance of traditional laws is observed through the lack of formal planning of Critical Mass events. In part, this means that formal legal processes, such as obtaining a city permit, are unnecessary. Similarly, formal organizational structures, like setting up a corporation, collecting dues, or filing taxes, are unnecessary as well.<sup>62</sup> At the same time, Critical Mass participants openly invite interaction with the law. In reinterpreting the use of city streets, participants defy provincial legislation and municipal bylaws by "corking" roads, ignoring streetlights, and cycling on overpasses.<sup>63</sup>

Christopher Waters advocates for greater intergovernmental attention to cyclist safety, noting that bike activism "invites a discussion of what we want from spaces where people cycle: how do we deal with exclusion, citizenship, mobility 'rights', and non-violent insurgency in these spaces."<sup>64</sup> He observes that conflict between cyclists and other occupiers of roads is not a new phenomenon. He explains that "[a]s is the case today, cycling was a contested activity. Conflicts between horse riders or streetcar operators and cyclists on the streets, and between cyclists and pedestrians on the sidewalks,

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<sup>60</sup> Blickstein, *supra* note 56 at 352-53.

<sup>61</sup> Julie Lassonde, "Performing Law" (2006) 1:1 Intl J Arts Soc 151 at 155 [Lassonde].

<sup>62</sup> See generally Craig Forcese & Nicole LaViolette, *Every Cyclist's Guide to Canadian Law* (Toronto: Irwin Law Inc, 2014) at 121-52.

<sup>63</sup> See e.g. Sunny Freeman, "Bicycle Protest on Gardiner a 'Crazy Idea,' Police Contend", *The Toronto Star* (1 June 2008), online: <www.thestar.com>.

<sup>64</sup> Christopher P M Waters, "The Rebirth of Bicycling Law?" (2013) 91 Can Bar Rev 395 at 409 [Waters].

were common and disputes sometimes ended up in injury or court or both.”<sup>65</sup>

There are many different motivations to participate in Critical Mass.<sup>66</sup> Participants may be engaging with their community, seeking to transform city infrastructure, or challenging environmental norms.<sup>67</sup> In cycling with Critical Mass, participants are “turning up in a space where one is not expected, and moving around in the world in a way that defies normative categories.”<sup>68</sup> The monthly recurrence of Critical Mass events allows for an evolution of motivations over time, with the understanding that the setting itself transforms through the creation of new infrastructure, the reaction of authorities, and the politics of riding.<sup>69</sup> Thus, the common script across all participants is a commitment to performativity and to acting out an imagined version of the city.

## **(b) THE ACTOR**

Traditional law suggests that the individual has obligations based on a defined and particular role. In contrast, Rod Macdonald invites individuals to react to their relationships and settings without adhering to roles defined by traditional law. Individuals are invited to have multiple identities, which may exist, contradict, and appear in one or more settings.<sup>70</sup>

Critical Mass is a non-traditional performance. In Critical Mass events, participants are fluid entities. Participants are both individual cyclists and parties to a larger synchronized movement.

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<sup>65</sup> *Ibid* at 398.

<sup>66</sup> Rao, *supra* note 25 at 116.

<sup>67</sup> See generally Douglas George, “Organizing a Coincidence: Identity Work and Activism Among Local Critical Mass Enthusiasts” (2014) *J Contemp Ethnography* 1.

<sup>68</sup> Gillian Calder & Sharon Cowan, “Re-magining Equality: Meaning and Movement” (2008) 29 *Austl Feminist LJ* 109 at 113.

<sup>69</sup> See Waters, *supra* note 64 at 405-06 (“Canadian bicycle advocacy groups had fewer ‘big bangs’ in the 1990s, but, where they were organized and found allies on city council and in city transportation departments, they made important strides. Achievements include the fact that many Canadian municipalities now have bicycle use master plans and have significantly improved bicycle facilities and promotion”).

<sup>70</sup> See Martha-Marie Kleinhans & Roderick A Macdonald, “What is *Critical* Legal Pluralism?” (1997) 12 *CJLS* 25 at 39.

Debra Levine, a theatre arts scholar, describes that this dual role “is constituted in a unique manner. Its insistence on an ethic of leaderless disorganization is vital to the manner in which power oscillates between the body of the crowd and the body of the individual.”<sup>71</sup>

Critical Mass is a social movement, where actors seek to contribute to social transformations through the creation of new forms of identities, norms, and institutions.<sup>72</sup> The term “urban social movement” was coined in the 1970s by Manuel Castells to mean “urban-oriented mobilizations that influence structural social change and transform the urban meanings.”<sup>73</sup> Such movements focus on improving collective consumption, including housing, schools, hospitals, and mass transit. It also focuses on creating community culture and achieving political self-determination. Some scholars regard social movements “not as groups or organizations but as interactive performances or protest events.”<sup>74</sup> Understanding social movements in terms of performance has been said to enrich scholarship on such aspects as the cultures of social movements and their strategies and tactics.<sup>75</sup> Simon Parry states:

Critical Mass is not theatre but I refer to it as theatrical to account, in some way, for the transformation that occurs between the cyclists on their way to or from Critical Mass (or for that matter any other destination) and the cyclists during Critical Mass. It is theatrical in Josette Féral’s sense that it ‘create[s] a cleft that divides space into the “outside” and the

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<sup>71</sup> Debra Levine, “Becoming Traffic: Critical Mass, Visual Resistance and the Ghost Bike”, *Hemispheric Institute*, online: <[www.hemisphericinstitute.org](http://www.hemisphericinstitute.org)>.

<sup>72</sup> Adrienne Sörbom & Magnus Wennerhag, “Individualization, Life Politics, and the Reformulation of Social Critique: An Analysis of the Global Justice Movement” (2011) 39:3 *Crit Sociology* 453 at 455.

<sup>73</sup> Manuel Castells, *The City and the Grassroots: A Cross-Cultural Theory of Urban Social Movements* (Berkeley & Los Angeles: University of California Press, 1983) at 305.

<sup>74</sup> Verta Taylor et al, “Culture and Mobilization: Tactical Repertoires, Same-Sex Weddings, and the Impact on Gay Activism” (2009) 74 *Am Sociological Rev* 865 at 866.

<sup>75</sup> Kathleen Blee & Amy McDowell, “Social Movement Audiences” (2012) 27 *Sociological Forum* 1 at 2.

“inside” of theatricality’ in this case through the reallocation of the time and space of everyday life.<sup>76</sup>

While Critical Mass is a social movement, it is also a performance. On the last Friday of each month, Critical Mass performs an “imagined alternative” for an hour on city streets. In describing the basis of a legal universe, Robert Cover writes:

Law may be viewed as a system of tension or a bridge linking a concept of a reality to an imagined alternative - that is, as a connective between two states of affairs, both of which can be represented in their normative significance only through the devices of narrative. Thus, one constitutive element of a *nomos* is the phenomenon George Steiner has labeled “alterity”: “the ‘other than the case’, the counterfactual propositions, images, shapes of will and evasion with which we charge our mental being and by means of which we build the changing, largely fictive milieu for our somatic and our social existence.”<sup>77</sup>

Critical Mass presents an alternative for that brief period of time in which it dominates the road, riding under its own rules and not those prescribed under the multiplicity of government regulations. With these alternative customs and rules, it represents a universe with a different way of relating to space and other people. Critical Mass is not simply about the act of riding a bicycle, but is also a collective freedom from other social norms and legal codes. Participants come together to imagine what cycling would be like in the city if it were governed under a different regulatory framework.

In her ethnographic study of Critical Mass in San Francisco, Lusi Morhayim suggests that Critical Mass “fosters a community of bicyclists and a support network in which bicyclists can meet with

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<sup>76</sup> Parry, *supra* note 30 at 348.

<sup>77</sup> Robert M Cover, “The Supreme Court, 1982 Term -- Foreword: Nomos and Narrative” (1983) 97 Harv L Rev 4 at 9, citing George Steiner, *After Babel: Aspects of Language and Translation*, 1st ed (Oxford: Oxford University Press, 1975) at 222.

others who have similar lifestyles and values”.<sup>78</sup> It also “introduces new cultural codes, challenges existing ones, and culminates in a social, cultural, and physical transformation.”<sup>79</sup> Critical Mass is unlike traditional activism that proposes specific changes to laws or simply breaking the law to make a political point.

Critical Mass engages with the traffic of politics and the politics of traffic through testing out the boundaries of civility on urban streets. It does this through a set of gestures with open, yet precise, spatial, and temporal parameters. These gestures have apparent form but are distinguished by a politics of disavowal: resistant to responsibility, recordation, and representation.<sup>80</sup>

Critical Mass raises important questions regarding the temporal meanings of a *nomos*, such as whether it can exist beyond a brief snapshot of time. Jen Harvie asserts that Critical Mass’ intentions extend beyond the single hour-long ride to a repetitive participation month after month:

Although we might see Critical Mass as having theatrical elements – cyclists often wear costumes, for example – the point I want to emphasise is that it is performative; doing it effects change. During the rides, the change is material; the cyclists take over the streets. But even outside the scheduled rides, Critical Mass hopes to have an effect, through changing what we might call, after Butler, ‘*the stylized repetition of acts*’ of behaviour in urban space.<sup>81</sup>

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<sup>78</sup> Lusi Morhayim, “From Counterpublics to Counterspaces: Bicyclists’ Efforts to Reshape Cities”, *Spatial Justice* (2013) at 12, online: <[www.jssj.org](http://www.jssj.org)>.

<sup>79</sup> *Ibid* at 14.

<sup>80</sup> Parry, *supra* note 30 at 347.

<sup>81</sup> Jen Harvie, *Theatre & the City* (New York: Palgrave MacMillan, 2009) at 62.

### (c) THE SET

The geography in which the legal action occurs is as much a part of the legal event as the activities of the participants themselves. Performativity in Critical Mass challenges legal jurisdiction on three geographic scales: the road, the city, and globally. As Judith Butler has established, “material environments are part of the action, and they themselves act when they become the support for action.”<sup>82</sup> Through the redefinition and treatment of these three scales during Critical Mass rides, another version of law is performed.

Roads are managed and protected by city governments and through the *Highway Traffic Act*. In one sense, roads are civic property. They are objects owned by the collective through the municipal corporation. Provincial and municipal governments regulate how individuals may use the road. The public is informed of these regulations through legislation, which is enforced by signage and painted lines that are visible to those on the streets.

Critical Mass questions the complex space that forms an urban centre. Nicholas Blomley, in his work on the legal notions of the sidewalk, writes that “[w]e cannot understand the sidewalk – or public space more generally – without taking it seriously. It is a crucial manifestation of power and regulation that structures the ways in which state agents think about and act upon the spaces of the city.”<sup>83</sup> Blomley’s observation that pedestrianism views the sidewalk as a “finite public resource that is always threatened by multiple competing interests and uses,”<sup>84</sup> applies equally to cyclists in regard to city streets. Similarly, in her observations of coffee shop rituals, Julie Lassonde notes that there are many ways to perform within normative orders and to engage in shaping the meaning of our actions.<sup>85</sup> Through Critical Mass, road infrastructure is reimagined through the collective conduct of cyclists during the ride. The performance is external to the

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<sup>82</sup> Judith Butler, “Bodies in Alliance and the Politics of the Street”, *European Institute for Progressive Cultural Policies* (September 2011), online: <[www.eipcp.net](http://www.eipcp.net)>.

<sup>83</sup> Nicholas Blomley, *Rights of Passage: Sidewalks and the Regulation of Public Flow* (New York: Routledge, 2011) at 106 [Blomley, *Rights of Passage*].

<sup>84</sup> *Ibid* at 3.

<sup>85</sup> Lassonde, *supra* note 61 at 155-56.

normative order of the state. Critical Mass performs a different understanding of the streets, one without the laws that normally apply.

Toronto is an integral part of the Critical Mass performance. Jerry Frug has documented the tendency of heterogeneous cities to be more tolerant and accepting of differences, albeit imperfectly.<sup>86</sup> There is a long history of people reconceiving infrastructure in creative ways to challenge how city roads, overpasses, and sidewalks may be used.<sup>87</sup> The city acts as both a location of specific critique and as a setting that enables people to challenge norms. The reimagining of a city exemplifies Henri Lefebvre's "right to the city," describing the demand to collectively remake urban spaces so that they make become more inclusive and just.<sup>88</sup>

Analyzed through the lens of a social movement, Critical Mass seeks to remake the city. However, by examining it as an alterernity, Critical Mass performs a different version of the city. Valverde writes that "[t]he urban is a myth, a desire and an ideal as well as a set of experiences; it is a kind of place, perhaps, but one that has a distinct temporalization; it is also a legal assemblage that has always been shot through with non-urban knowledges and powers and rationalities, both public and private."<sup>89</sup> Chris Carlsson, one of the co-founders of Critical Mass, has observed the reimagination of the city:

At its festive best, Critical Mass allows participants a tantalizing and transformative glimpse of another, possible city, where the reconfiguration of public space away from its current dominance by the automobile transforms the streetscape into a more human-scaled environment and allows for a more sociable and livable urbanity.<sup>90</sup>

This iteration of Critical Mass imagines a version of the city where cyclists can ride on streets that celebrates their existence.

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<sup>86</sup> Jerry Frug, "The Geography of Community" (1996) 48:5 *Stan L Rev* 1047 at 1061-62.

<sup>87</sup> Note for example the creation of New York's Highline.

<sup>88</sup> Henri Lefebvre, *The Production of Space* (Oxford: Blackwell Publishers Ltd, 1991) at 381-82.

<sup>89</sup> Valverde, *Jurisdiction*, *supra* note 48 at 153.

<sup>90</sup> Carlsson, *supra* note 1 at 78.

Finally, the global geographic scale is integral to Critical Mass events. Transnational law exemplifies the complex iterations of multiple legal and quasi-legal activities happening in tandem.<sup>91</sup> Luis Eslava establishes that there is a “need to pay attention to the non-exceptional, usually ‘domestic’ everyday operation of international law.”<sup>92</sup> While Eslava focuses squarely on “international patterns of normative expansion and asymmetrical forms of social development, economic accumulation, and political control,”<sup>93</sup> much can be learned about how international movements influence our conception of the “local.”

Critical Mass was initially a local project, comprised of local actors, yet its scope and networks are now international. The city and its roads serve as a backdrop, or set, for Critical Mass. In this performance, Critical Mass participants act out a reimagined version of the law, which is connected to participants doing the same in other global cities. Critical Mass performs “a kind of politics of connectivity, a politics of relational responsibility which isn’t only local, which breaks the bounds of place, which goes beyond thinking of the territory of the electorate, a politics which looks beyond the gates.”<sup>94</sup>

## V. CONCLUSION

Critical Mass challenges the different jurisdictions that form an urban centre. Critical Mass makes no explicit distinction between the orders of government that are engaged by cyclists’ conduct. Yet, its conduct and rituals are inextricably connected to governmental rules. Critical Mass performs within a regulatory sphere, which shapes the *nomos* of the movement. By corking roads, refusing to stop at red lights, and cycling en masse, Critical Mass challenges government regulations by reimagining the cycling landscape.

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<sup>91</sup> See generally Peer Zumbansen, “Transnational Legal Pluralism” (2010) 1:2 *Transnat’l Legal Theory* 141.

<sup>92</sup> Luis Eslava, “Istanbul Vignettes: Observing the Everyday Operation of International Law” (2014) 2:1 *London Rev Intl L* 3 at 34.

<sup>93</sup> *Ibid* at 30.

<sup>94</sup> Parry, *supra* note 30 at 356, citing Doreen Massey, “The Strangers Beyond the Gates” (2004) 9:4 *Performance Research* at 122.

Critical Mass as a performance illustrates a more nuanced conception of cycling regulation. While events and motivations may change over time, participants share a commitment to performativity and to acting out an imagined version of the city. Critical Mass participants are both individual cyclists and parties of a larger synchronized movement. Further, the scales of the street, the city, and the global are key components of Critical Mass events.

Streets are rife with competing interests and intentions, which are not a “public sphere that is distinct from the state.”<sup>95</sup> This understanding reinforces the perspective that law is present in everyday situations, not only in formal, bureaucratic structures.

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<sup>97</sup> Blomley, *Rights of Passage*, *supra* note 83 at 4.