

# Turning Social Relations into Space: Property, Law and the Plaza of Santa Fe, New Mexico

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*ABSTRACT* In this article, a series of controversies in and over the central Plaza of Santa Fe, New Mexico, USA is examined. The complex and contradictory dynamics of law and property as they intersect to shape and define a critical public space that is the symbolic heart of Santa Fe's landscape are explored. It is argued that laws and regulations that determine the activities that may occur in the Plaza, that restrict some actions, or that adjudicate ownership disputes literally shape the lands to which they pertain. It is shown that one purpose of law is to negotiate just how the social relations that are property get transformed into the regulated space that is property.

**KEY WORDS:** Public space, property, regulation, tourism, youth

## Introduction

Laid out in partial conformance to the Law of the Indies, the Plaza in Santa Fe, New Mexico was surrounded in the 1850s by the key administrative buildings and the homes of the city's elite. Part commons, part ceremonial ground, part military drill field, the Plaza served as the political, social and symbolic heart of not only Santa Fe, but also the region of which the city was capital. Over the years the mud-or-dust open space of the Plaza was planted with shade trees and grass, laced with walkways and benches, and its size was reduced by half. In 1866, the territorial assembly voted to erect an obelisk—called the Soldiers' Monument—at the centre of the Plaza, directly in front of the Palace of the Governors (see Figures 1, 2). The obelisk was to memorialize men who died in New Mexican battles during the Civil War. Before the obelisk was erected, the Assembly voted to also memorialize “the brave victims who have perished in the various wars with the savage Indians”, which, with some alteration, was duly inscribed in the marble plaques at the monument's base. In 1974, in daylight and in front of a number of on-lookers, a young man stepped over the low fence around the monument and chiselled out the word ‘savage’. Looking just like any number of war monuments around the US, the hole he made gives the obelisk much of its distinction—and ensures that the monument will remain a

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**Figure 1.** The Santa Fe Plaza in 1882. By this time the Plaza had been reduced to half its original size (the cathedral is just out of the picture to the top left) and the obelisk had been erected at its centre. *Source:* Library of Congress.

lightening rod for controversy (Figure 3). At least since the 1950s, periodic calls have been issued for the removal of the monument and each time they have been rebuffed (Wilson, 1997, pp. 315–316). The most recent agitation to have the monument removed was in 2000 when the Santa Fe branch of the National Association for the Advancement of Colored People (NAACP) began a movement to have it replaced by a monument that would “make public space sacred” in the words of the President of the NAACP (Padilla, interview, 5 June 2001).

The monument is a lightning rod because the Plaza remains the symbolic heart of Santa Fe, and the monument is the symbolic heart of the Plaza (Figure 4). But there is more to the story than that. The degree to which the Plaza remains, and should remain, the social and political centre of the city depends on whose social and political life you are talking about. As the chiselling out of the word ‘savage’ indicates, the Plaza is a contested space—contested between Hispanic locals and ‘Anglos’; between residents and tourists; between non-Indian street merchants, the New Mexico Historical Society and surrounding stores; between teenagers and the city government; and between those who want to be rid of the obelisk and the historic preservation establishment that likes to point out that the obelisk is about the only thing of historic value left on the Plaza.

It should come as no surprise, therefore, that the Plaza is the object of a great deal of regulatory attention. The City Code—the laws and regulations that say what can and cannot be done in the city—devotes 10 pages to describing the ways the Plaza should be governed and maintained and the kinds of activities that can occur there. Nearly two pages are given over to definitions alone. Both ‘Plaza’ and ‘Plaza Park’



**Figure 2.** The obelisk at the centre of the Plaza. The plaque in front reads: “Monument texts reflect the character of the times in which they are written and the temper of those who wrote them. This monument was dedicated in 1868 near the close of a period of intense strife which pitted northerner against southerner, Indian against white, Indian against Indian. Thus, we see on this monument, as in other records, the use of such terms as ‘savage’ and ‘rebel’. Attitudes change and prejudices hopefully dissolve.” *Source:* Photo by Lynn Staeheli.

are defined, as are ‘skateboard’ and ‘recreational object’; so too are ‘flower peddler’, ‘artist’, ‘business’, ‘handicraft’, ‘commercial use’, ‘civic non-profit organization’, ‘major commercial event’ and more. The proliferation of definitions gives a good hint about the intensity—and the nature—of controversies in the Plaza. Other subsections of the Code for the Plaza govern the issuance of permits for major commercial and non-commercial events; the selection and regulation of Plaza vendors; the range of prohibited activities (from skateboarding to bike riding) and those activities that must be confined to specific locations, such as hacky-sack, which can only be played “in the southeast quadrant of the Plaza Park as long as due care for the safety of the public is exercised” (Section 23-5.4(D)). Hacky-sack is the only ball game permitted on the Plaza.



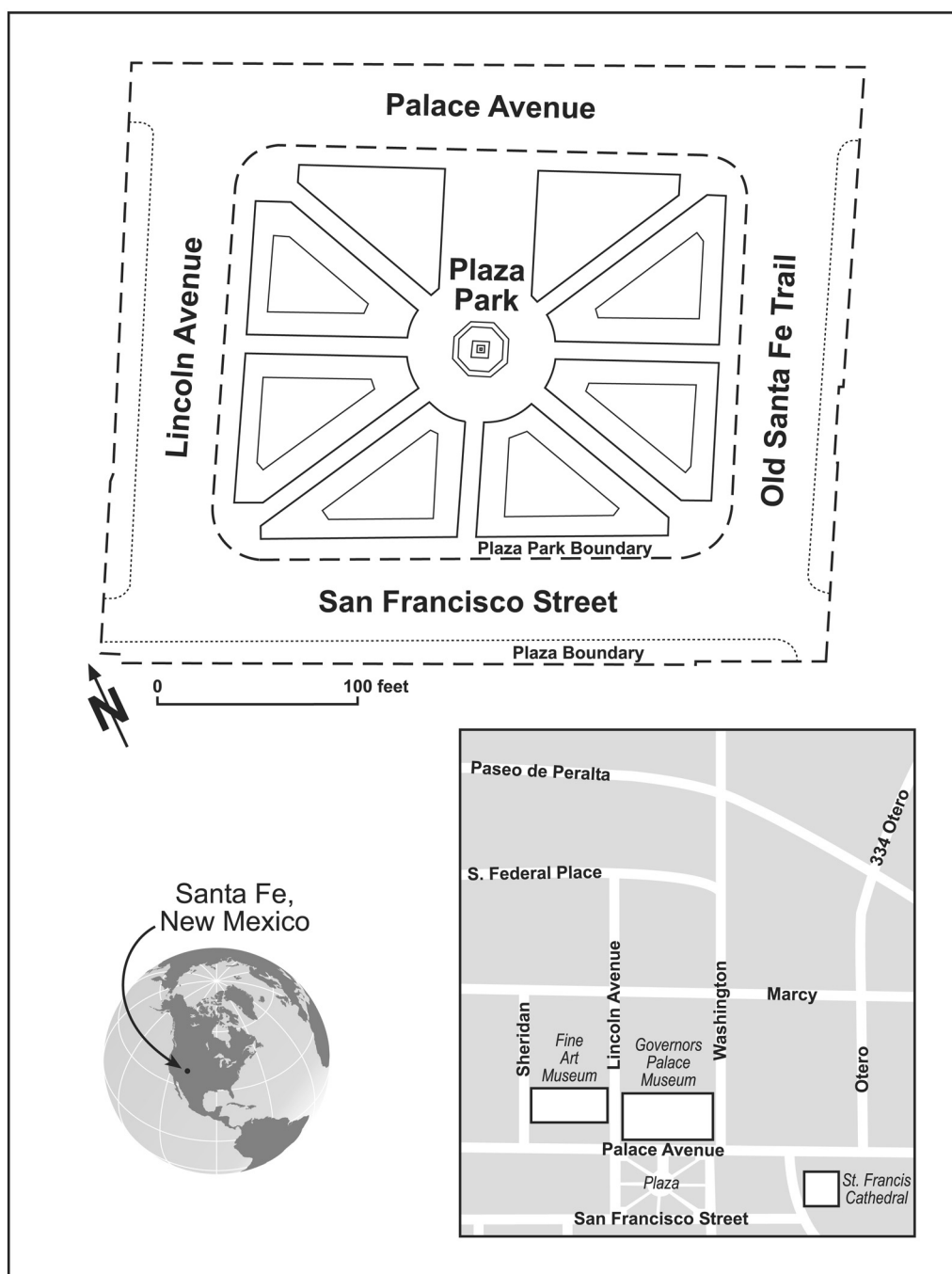
**Figure 3.** The altered text on the obelisk. *Source:* Photo by Lynn Staeheli.

What might come as more of a surprise, given the extent of these regulations, is their intent. Section 23-5 of the Santa Fe City Code begins with a preamble that outlines this intent:

The Plaza and Plaza Park are the heart of the city. Its usage should be creative, evolving, and non-institutionalized. Standards should encourage variety, equity in usage and regulations, and respect for the important role the Plaza and Plaza Park play in the life of Santa Fe.

At the heart of Santa Fe, in other words, sits a contradiction: the very space in the city that is supposed to be the least institutionalized—because of its symbolic and social importance—is in fact the most highly regulated.

Our argument in this paper is that those landscapes that are the most symbolically important are also the most contested, and *therefore* the most regulated. This is particularly true when space is meant to be ‘public’. This is because *different* publics have a claim to the space (Fraser, 1990; Harvey, 1979; Low, 2000; Mitchell, 1995; Young, 1990), with a differential relationship with regard to access to that space (Blomley, 2004; Staeheli & Thompson, 1997), and different conceptions of what their rights are (Mitchell, 2003). Conceptually, this is all clear enough, and practically the Plaza of Santa Fe seems to bear out this contention.



**Figure 4.** Santa Fe Plaza: redrawn from Santa Fe City Code, Ordinance 1981–39. Note the two different boundaries: The interior line indicates the legal limit of the ‘Plaza Park’; the outer line indicates the legal limit of the ‘Plaza’ as a whole, which includes the Plaza Park, the four surrounding streets, and a portion of the sidewalks across the streets from the park.

But if we stop the story there, we do not in fact gain much purchase on *why* certain controversies over the landscape unfold as they do, *why* certain activities and not others come to be regulated, and *what* the social effects of such regulation—such laws—might be in terms of access exclusion. Rather, we need to shift our focus from understanding a landscape like the Plaza in Santa Fe as a *space* and examine it instead as a *property*. For when we begin to understand that in advanced capitalist societies landscapes are always also property (Cosgrove, 1998), the relationship between policy and place—between law and landscape—takes on a different, more complex aspect. This is especially so when we understand that property itself is both a thing—a place, with definite boundaries and a clear spatial extent—and a social relationship that is in no way confined by those boundaries.

The purpose of this paper is to focus closely on a set of controversies centred on the Santa Fe Plaza; to explore the complex and contradictory dynamics of law and property as they intersect to shape and define a critical public space that is the symbolic heart of Santa Fe's landscape. In this exploration, we draw on a series of interviews with participants in Plaza controversies (city officials and planners, historic preservation experts, Plaza users, vendors and business people, the president of the NAACP, etc.) conducted in June 2001, and on a survey of New Mexico state newspapers from 1994 to 2004. These sources, which tell a story about conflict, will be set against theoretical arguments about law and property, which seek to tell a story about the resolution of conflict. It is worth beginning, then, with some brief theoretical comments about property and law before returning to the Plaza and its monument.

### **The Contradictions of Property, the Complexity of Law**

What does it mean to examine Santa Fe's premier public space and symbolic landscape as property? That depends on what we take 'property' to be. As Nick Blomley details, no matter how solid it may appear, property, even landed property, is never just a thing (Blomley, 2004). It is also a set of relationships: a "network of social relations that governs the conduct of people with respect to the use and disposition of things" (Hoebel, 1966, p. 424, cited in Blomley, 2004, p. 2). Much discussion of property understands these relationships to be primarily ones of ownership. The 'ownership model' of property, as law scholar Joseph Singer (2000, cited in Blomley, 2004, p. 3) calls it, takes as self-evident that ownership determines use, and that ownership is singular. Ownership is as clear as the deed upon which it is recorded. "The ownership model", Blomley says, "assumes a unitary, solitary, and identifiable owner, separated from others by boundaries that protect him or her from nonowners and grant the owner the power to exclude" (2004, p. 2). But, as Blomley (2004, pp. 3–4) makes clear, the ownership model is more a normative description of how things ought to be than how they really are. To see property in terms of the ownership model is to occlude the way property is really a network of social relationships.

But what are those relationships? On the one hand, they involve relationships between people and entities (e.g. government agencies) with specific rights and claims to the place in question. First, not only the deeded owner, but perhaps others too, will have the right of use; this might involve easements for utilities and

public access. Second, while one entity might own the land, another might own the things on the land, and be under no obligation to do with them as the landowner pleases. Third, formal deed restrictions, zoning rules and restrictive covenants might give third parties rights to limit how property is used. Fourth, there might be competing claims of ownership, not explicitly recognized in current law, as when native groups retain, or reassert, claims to land expropriated from them, throwing into question the very right of ownership and how it was derived (see, for example, Blomley, 2003; Harris, 2003; Sparke, 1998). And finally, there are the less formal, but every bit as important, claims of those who assert a right to be on a particular parcel of property. This last issue is particularly important, of course, with public property, which is held in trust by the state for 'the people'. The struggle over what property is and is not, is thus a struggle over who is, and who is not, included in 'the people'.

These struggles over property often remain invisible, precisely because they are often 'settled' (Blomley, 2004). They are taken for granted and understood to be resolved. But when they do burst into visibility—when claims become contentious—they burst into visibility through the law. The law—including formal written rules of behaviour backed by police power, and the workings of courts and other bodies of adjudication—is both the means to mediate or solve disputes and written as the result of disputes. Land-use laws that restrict how property owners may make their buildings look, how big they can be, and what can be done in them, are the result of contentious claims by some members of the community over the way the totality of property forms a landscape and thus over the ways that individual owners' rights must be restricted. Formal rules over the use of a park result from competing rights and use claims by different groups that seek to *belong* in a park (and often to exclude those they feel do not belong). Court decisions that determine the activities that may occur in the park, that restrict some actions, or that adjudicate ownership disputes literally shape the lands to which they pertain (Olwig, 1996, 2003). One purpose of law is to negotiate just how the social relations that *are* property get transformed into the regulated space that *is* property.

And in Santa Fe, at least, the complexity—and the sheer volume—of that law, especially as it relates to the Plaza, gives a good indication of just how contentious those social relations are, and thus how difficult that negotiation is.

### Who Owns the Plaza?

A first cut into understanding the complexity and difficulty of negotiating public space as property in Santa Fe might begin with the question that ought to be the easiest: Who owns the Plaza?

However, this is anything but an easy question. Any property exists not only in a tissue of social relations, but also in relation to other properties. In Santa Fe, it is not just that the Plaza is the symbolic centre of the city, it is also *literally* the centre of property. On 9 April 1900, a dozen years before New Mexico became a state, the US Congress decreed that the tip of the Soldiers' Monument was to be the starting point for all property surveys in the city. Every property deed in the city is keyed to the monument, and it is not unusual to hear arguments that the monument must be preserved in its present location for just that reason. Removing the monument is seen

by some not just as an assault on history, but also an attack on the sacred rights of property (Simmons, 2000).

The obelisk itself is owned by the state of New Mexico and nothing can be legally done to it unless the state agrees. The actual Plaza is city property, but what can or cannot be done to its property is closely tied to the monument, since the monument is the anchor of the Plaza's designation as a national historical landmark. Any alteration to the monument, even if the state allowed it, could threaten the historic status of the Plaza and thus significant financial aid for landscape maintenance and restoration (Hewat, interview, 5 June 2001; Martinez, interview, 5 June 2001). This is not an idle threat. In 1973, following a short campaign against the monument by American Indian Movement activists, the Santa Fe City Council voted unanimously to remove the obelisk. The National Park Service responded by threatening to withhold Plaza renovation funds. The monument stayed (Navrot, 2000).

Not just the monument, then, but the whole Plaza is defined, and regulated in the first instance, by its status as property. Law (not just ordinances, but property law) defines what can and cannot be done on the Plaza and what the Plaza looks like. In these terms, even the most mundane questions of landscape—like how best to pave the pathways—can take on startling significance. As a reporter for the Santa Fe *New Mexican* opened one story: “A dispute over what constitutes ‘historically appropriate’ paving material on the Santa Fe Plaza may develop into a showdown over sovereignty of the city’s historic heart” (Hummels, 1998, B1).

Such showdowns are quite common. Indeed, activists seeking to have the monument removed have found that its status as property is as strong an impediment as its status in history, or its role in social memory. For example, when the city decided not to remove the obelisk and thereby to remain eligible to receive a 1974 grant from the federal government to renovate the Plaza, it simultaneously traded away some of its ownership rights in the Plaza (see Hummels, 1998). Conditions attached to the grant stipulated that any changes to the Plaza—from changing the walkway paving materials, to uprooting trees, to building a bandstand, to paving over the grass lawns which in any event need to be re-sodded every year—had to be approved by both the New Mexico Historic Preservation Office and the National Park Service (Condon, interview, 5 June 2001; Hewat, interview, 5 June 2001; Montaña, interview, 4 June 2001). Part of this agreement stipulates that any changes will be in accordance with an historic preservation plan prepared by the famed Santa Fe architect John Gaw Meem. The city may *own* the Plaza (except for the monument), but it cannot *do* with it just as it pleases.

In these terms, the question of ‘who owns the Plaza’ is not easily answered. On the one hand, and in terms of the ownership model, the city owns the Plaza (except the monument); it holds deed to the Plaza and in that regard it is like other public property in the city, and as we have seen, is regulated as such. But, on the other hand, and in part *because* of the monument, the Plaza is *not* like any other property in the city. The ownership rights of the state of New Mexico considerably complicate what the city can do with its Plaza. Equally, the historic preservation agreement of 1974 in essence creates a permanent easement or deed restriction. And because it fronted the money for renovations during the 1970s, the federal government claims certain rights over the property of the Plaza. Property is a relationship between different kinds of rights claims, in this case fought out between different

governmental entities. In the 'ownership model' state title to the land should be clear, with no competing (or prior) claims, and the owner—a state entity—should be figured as a "fictive individual" (Blomley, 2004, p. 7). In reality, the Santa Fe Plaza is like most other property, where competing claims—ranging from sewer easements, to sidewalks, to prior Native 'ownership'—are abundant. Like other property, such competing claims become apparent only when they are in conflict (Harris, 2003). The question of whether to remove the monument from the Plaza brought these claims into conflict.

It brought them into conflict in a second way, too. Property is often defined as the right to exclude: the ability to determine who belongs and who does not belong in a particular space (Blomley, 1998, 2000; Macpherson, 1978). For Wanda Ross Padilla, the President of the NAACP, the monument was symbolic also of a larger struggle—a struggle over who owned the Plaza in the sense of feeling welcome there, welcome in the heart of the city. Like many of those with whom we talked, Padilla worried that the Plaza was no longer a space for locals. "A lot of the native Hispanics in this town feel like the Plaza has been taken away from them ... everything has been taken away from them [and] they don't feel comfortable going downtown" (Padilla, interview, 5 June 2001).

The Plaza, in this sense, is a metonym for the larger transformation of downtown Santa Fe. The Plaza area—the shops and streets around it as well as the park itself—is the historic centre of commerce as well as government in Santa Fe. In 1997, the last store on the Plaza that really catered to local needs closed. "The biggest thing that has happened to the Plaza", according to city councillor and tour bus operator Frank Montaña:

is that it has changed in terms of its commerce quite a bit. There were a lot of local people that came to the downtown area because of the services. And now you come down because of the events or you come down because you have someone that's visiting, you come down because your granddaughter or your daughter or your niece or your nephew is performing in an event that's downtown. (Montaña, interview, 4 June 2001)

For many local people, in other words, downtown is no longer an everyday experience, and the Plaza has increasingly become a place for spectacles and special events. "It used to be the heart of the community", said city planner Liz Wirth (interview, 4 June 2001).

This sense of wistfulness is important. It is more than nostalgia, and it is more than the voice of 'stakeholders'. The structure and meaning of the surrounding landscape creates a sense of belonging *in* the Plaza. "I think tourism saved the Plaza", says city planner Anne Condon (interview, 5 June 2001). But as she quickly admits, this 'saving' is double edged. In the 1980s, according to Chris Wilson, the city embarked on an intensive campaign of tourist promotion, using "the manipulation of the myth" (1997, p. 9) of Santa Fe. The campaign was quite successful. "The magnitude of the subsequent boom (millions of tourists and thousands of amenity migrants who came and stayed)", Wilson continues, "was more than a city of sixty thousand could comfortably absorb. In effect the entire community began to be gentrified, as more and more native residents could no

longer afford the city's cost of living" (1997, p. 9). As local residents were pushed out of the town, so too did many of them begin to feel pushed out of the Plaza.

As rents around the Plaza sky-rocketed and the retail mix changed, shifting almost exclusively to national-brand boutique chains, galleries and shops selling "Santa Fe style" jewellery, furniture and crafts,

locals do feel . . . they're getting the message when they're in some of the stores that they're not wanted. Unless you have money and you look like you have money, you're not really wanted. Browsing is discouraged. People follow you around stores. My kids get thrown out of stores all the time and they're not shoplifters. (Condon, interview, 5 June 2001)

Another long-time resident (who requested confidentiality) said:

I think [downtown] really has been lost. And not only to the local people but to the people who would come here to visit. Santa Fe used to offer something that was really special that a lot of other places didn't. And my perception of it was that it offered something that was plain and funky and down to earth and nobody cared who you were. Nobody cared if you had a lot of money. It wasn't important. That's all different now. Now it's glitzy, and there's almost been an attitude of snobbery that's evolving.

In what sense, then, has tourism saved the Plaza? According to city planner Anne Condon:

One time all of this [the commercial property abutting the Plaza] was local service retail, a little bit of tourists, not a whole lot, and my feeling is that it would have died out when the malls were built and Santa Fe would have gone the way of so many other downtowns, been kind of boarded up, vacant, maybe even some disastrous urban renewal. (Interview, 5 June 2001)

In other words, there is a dialectic of property at work in downtown Santa Fe. On the one hand the maintenance of the Plaza as a vibrant and open public space is essential to the survival of the commercial businesses that surround it, and for the collection of rents on the properties that host these businesses. Regulating the uses of the Plaza is thus essential to the survival of surrounding businesses. On the other hand, the collecting of rents—together with the spiral of gentrification that it is a part of—transforms the kinds of people who use the Plaza, who have easy access to it, and who feel like they belong.

The question of who 'owns' the Plaza is significantly complicated by just this dialectic, just this role property plays in defining the democracy of the Plaza. But the struggle over ownership—over what sorts of social relations of property will prevail—has rarely been engaged directly. Rather, it has tended to surface in a series of skirmishes over the use of property as decided by the 'owners' of the property and other social agents and processes that also define property. This dialectical relationship between commercial and social functions of property is written into the 10 pages of the City Code, as well as onto 'the public'.

### **The Plaza as Commercial Space**

Santa Fe City Code section 23-5.3, entitled ‘Plaza Vendors; Permits Allowed; Requirements Selection Process; Conditions of Operations’, alone covers some four and a half pages. The code is explicit. Licences to engage in commercial activity are “privileges of the holders”, and they “are not and shall not be construed as rights in property or otherwise” (Section 23-5.3(A)). But such licences do significantly limit what the city, as property owner, may and may not do. Licences, together with the code, outline a very strict set of rules and procedures that bind the city every bit as much as they bind the licensees.

For decades, Indian artisans have sold their goods across the street from the Plaza under the portico of the Palace of the Governors. The Palace of the Governors is owned by the state of New Mexico and serves as the home of the Museum of New Mexico. The Indian vendors are considered a ‘living exhibit’ of the museum and thus are not regulated by either regular commercial law or the rules of the Plaza. In the early 1980s local (predominantly Hispanic) artists, upset that the Indian artists had an exclusive right to sell merchandise on the streets, began illegally selling their work on the Plaza. Realizing that controlled vending on the Plaza encouraged rather than hindered tourism, the city implemented a programme to provide a limited number of vending licences for non-Indian vendors. A condition of the licence was that all goods sold had to be “handcrafted by the applicant or the applicant’s spouse, their children or one (1) relative” (Section 23-5.3 (C6-7)). Each licence application is scored by the city administrator in charge of the vending programme on the following criteria:

- (a) compatibility with Plaza activities;
- (b) experience of applicant;
- (c) addition to diversity of Plaza services;
- (d) residents of Santa Fe County shall be granted an additional 20% to their ranking;
- (e) applicants who hold a permit at the time of their application shall be granted an additional 5% to their ranking for each year they have held such a permit, but not to exceed 50% (not applicable to rotating vendors’ licences);
- (f) applicants who currently hold a permit for permanent tables on the Plaza [when this version of the system was implemented in 1995] shall be granted an additional five years to hold a permit on the Plaza;
- (g) artistic quality (Section 23-5.3 (D2)).

No vending is allowed during major events on the Plaza, such as Fiestas, Fiestas Market, Spanish Market and Indian Market, when the Plaza is given over to massive arts and crafts fairs organized by specific Santa Fe institutions, such as the Southwest Institute of Indian Arts.

The licensing programme is highly controversial, and the tortured syntax of this sub-section of the Code gives a good sense of how difficult it has been for the city to accommodate different interests. The programme has led to struggles among Plaza vendors, which have ranged from fistfights to lawsuits. It has required constant review and revision from city officials as they seek to create an equitable system for

awarding the licences. It has also called up significant opposition from local, store-based merchants, many of whom sell much the same kind of jewellery and craftwork as available on the Plaza. Merchants argue that the vendor programme undercuts their ability to make sales and threatens their viability. After all, the fixed costs of Plaza vending, from property tax to heating and electricity, are almost non-existent, and the ready access that Plaza vendors have to strolling tourists provides what some merchants see as an unfair competitive advantage (Brakley, interview, 6 June 2001; Coventry, interview, 4 June 2001; Montaña, interview, 4 June 2001; Morales, interview, 6 June 2001). As one Plaza vendor put it: “The Plaza vending ordinance, as the former city manager said, is a piece of crap... Even though I am part of it, I recognize what a special interest law it is” (Coventry, interview, 4 June 2001).

Despite its controversy, the vending ordinance has been maintained because it helps sustain the sense of life and informality that is meant to define the Plaza, and it helps create a sense of the Plaza as a heart of commerce. But the question is how the Plaza is to be commercial. The Santa Fe *New Mexican* is scathing in its evaluation of the ongoing attempts to revise the vending ordinance. In response to one proposed change, the *New Mexican* editorialized:

So why have restriction at all? Why not turn the Plaza into one big open-air market, replete with plastic toys, plastic shoes, stuffed animals and made-in-Malaysia souvenirs?

We have the makings of a souk, and [city council member] Heldmeyer wants to make it a monopoly for a mere 16 merchants.

¡No, doctora! First, let’s research, and build a monument to, the councilors who first opened the Plaza to vendors. We could hold a special annual fair in honor of those politicians. Then let’s fill every square inch of our central square with anyone who wants to sell anything legal. (*New Mexican*, 2002, Editorial, p. A7)

For the *New Mexican* all the vendors should be removed. But this does not mean that the Plaza should be completely decommercialized. The *New Mexican* supports the continuance of the large art fairs that are held on and around the Plaza each year, the selling of refreshments on the Plaza during fiestas, and the rights of Indian merchants under the portico of the Palace of the Governors. What concerns it, clearly, is class.

Similarly, the Santa Fe bureau of the Albuquerque *Journal* “would like to hear a fresh City Council discussion about whether vendors should be permitted on the Plaza at all” (*Journal*, 2002, p. 4). In part the *Journal* would like such a discussion, because “Selling goods on the Plaza is a privilege, and we bet a valuable one. It might not be a bad idea to require vendors to disclose how much they make from street sales and adjust fees upwards again, if necessary” (p. 4). In other words, not only are Plaza vendors unsightly (the *Journal* refers to the vending area as ‘cluttered’), and perhaps purveying cheap goods, but they continue to unfairly compete with the legitimate merchants of downtown.

Here we reach, once again, the heart of the contradiction that defines the Plaza landscape. First, trade is based in property, in the ownership of things. This

requires a certain level of order, and thus the policing of property, and especially the guarding against *impropriety* (bogus goods, unfair practices). And yet a market in goods (property) requires a certain level of ‘anarchy’—that is, impropriety—in order to be ‘free’. The dialectic of this contradiction gets worked out in code, in law, which, presumably is why the Santa Fe City Code not once but *twice* asserts that vending licences are “privileges” and may be “revoked by the city manager at any time” (Section 23-5.3(A), 23-5.3(F)). And it may also explain why the local newspapers so frequently comment on the quality (or lack thereof) of the art for sale on the Plaza, and rarely (if ever) raise similar issues about the local boutiques (Coventry, interview, 4 June 2001). Coventry, for example, came in second to last in the latest vendor application process and the *New Mexican* made a point of noting that he is primarily known for “using his license to set up displays of headless Barbie dolls and peanuts in a cash register on his table on the Plaza” (2002, p. 4), leading to exactly the sort of worries about unsightliness that both the *New Mexican* and the *Journal* complain about in their editorials. Nor is the city ordinance governing vending in the Plaza silent on this count: recall that it requires vending licence applications to be judged partly on “compatibility with Plaza activities” and “artistic quality”, both notoriously slippery concepts that immediately raise questions about who, how and in whose interest such judgments are made (City Code Section 23–5.3 (D)). While John Coventry (interview, 4 June 2001) argues that his work is original art and therefore of intrinsic value, planner Anne Condon says more generally:

I wonder why we don’t have some other uses on the Plaza like flower stalls and tomato stands and things like that that you see in Portland and New York that add a lot of color and beauty. There’s not much added by having the [current] vendors here, in my opinion. Not much of any real charm or character. (Interview, 5 June 2001)

### **Plaza Rats: Youth, Transients, Tourists and the Police**

Charm and character are thought to make the Plaza more inviting as a commercial space, and also as a space of sociability in which people can gather. Once again, however, maintaining sociability requires regulations addressing who can do what under which circumstances; through this regulation, the social relations of property are manipulated in the construction of ‘the public’. The evidence of this regulation is perhaps most clear in the portion of the City Code detailing the rules for playing hacky-sack. That a whole paragraph of the City Code needs to be devoted to hacky-sack, which is only one ‘recreational object’ among an infinite variety, might seem odd. It derives from the early 1990s when downtown business owners and city officials were worried about the large number of youth—‘Plaza Rats’ they are called—hanging out in the Plaza, riding skateboards, playing hacky-sack and other games, and, as Frank Montaña, the sponsor of the bill that outlawed all these things later put it, “experimenting with their freedoms, . . . assert[ing] themselves and let[ting] it be known that they’re young and free and they’re going to be wherever they want to be” (Montaña, interview, 4 June 2001) (see Figure 5). Skateboarding and ball games intimidated



**Figure 5.** ‘Plaza Rats’, hanging out at the obelisk. Note the skateboard. *Source:* Photo by Lynn Staeheli.

some visitors to the park, especially the elderly, according to Montaña. For skateboarders, a new skate park was built a few blocks away. Hacky-sack players, however, turned out to be a thornier problem.

Hacky-sack is usually played by three or four people standing in a circle, bouncing the sack off various parts of their body (like a soccer player showing off), and then passing the sack on to one of the others. The object is to keep the sack in the air as long as possible—with style. It is a relatively passive game, both a game of skill and a time-killer while hanging out. It is necessarily sociable. When the ban on skateboarding and ball games went into effect, local youth interpreted it as “an attempt to drive young people from the Plaza” (Neary, 1994, A1). As an employee of the local ski area, who hung out in the Plaza on his days off, put it, “I don’t see why they want to kick us out” (Neary, 1994, A1). Plaza Rats, and a lot of others, saw the ban on hacky-sack as the clearest symbol of how the city understood the Plaza: it was not for them. It was instead for “financially well-off transients”, as planner Anne Condon defined tourists, only half in jest (Condon, interview, 5 June 2001).

After much lobbying by area youth, the city council backed down and voted for a specific exception for hacky-sack to its prohibition against “project[ing], throw[ing], kick[ing] or strik[ing] any type of recreational object” in the Plaza (Section 23-5.4(A3)) (see Hummels, 1999a,b). Even so, as one planner put it, “for all practical purposes we threw our teenagers off” the Plaza (Condon, interview, 5 June 2001). And as another said, “There’s nowhere for teenagers. It’s terrible”

(Hewat, interview, 5 June 2001). For Condon (interview, 5 June 2001), the lack of youth on the Plaza is an indication that it is under-used and thus an inviting place not only for well-off, transient tourists, who in any event tended to stay away at night and in the early morning, but also for transients of the other kind: “when a public space is unused, people take it over, like transients”. Pushing youth out of the Plaza, making them feel like it did not belong to them, Condon suggested, had the effect of making the Plaza more open to homeless people.

From another perspective, however, the youth are, and remain, the problem:

It seems like [the Plaza] doesn't include everybody or there are certain groups, and those groups change, I think, who seem to kind of take over the Plaza and especially those groups [that] seem to be participating in some activities, they're playing some games out there. It discourages others because of their little hacky-sacks in the air and it sort of makes people want to stay away from it. (Morales, interview, 6 June 2001)

The City Code is both a result of this tension—between different groups that want to feel that the Plaza is ‘theirs’, the desires of planners and city officials to create a lively public space, and the people whom they want to discourage—and a means to mediate it. It is evidence of the simmering controversies that not only occasionally erupt in and over the Plaza, but also actually *shape* it. As in most cities, Santa Fe planners worry about the placement and amount of seating, and whether it will encourage ‘passive’ use of the park without also encouraging ‘lodging’ and therefore allow certain groups (like the homeless) to “kind of take over the Plaza” (Brakley, interview, 6 June 2001).

But law—and design—is not everything. The Plaza is also policed, both formally and informally. Perhaps one of the most remarkable things about the Plaza in Santa Fe is that although it is heavily regulated in terms of formal law, it appears to be quite *lightly* policed, except, perhaps, during the big art festivals (Coventry, interview, 4 June 2001). Unlike many public spaces in the US—such as the parks and squares in Manhattan, the sidewalks and plazas of San Diego, the Mall in Washington, or the thousands of shopping malls around the country—there are no prominent signs on the Plaza indicating what is and is not allowed, when the Plaza is and is not open, and how visitors should and should not behave. And while the police are not absent, they are also not very obtrusive. “We have usually a couple of policemen on bicycles whose basic beat is the Plaza to make sure that nothing happens that shouldn't, because we don't want to scare the tourists off”, says planner Condon (interview, 5 June 2001). “If somebody is very obviously drunk, the police will suddenly materialize and hustle the person off ... but we're not aggressive about it. No. There aren't a lot of rules and there's not a lot of oversight. There's more behind the scenes.” Perennial city critic John Coventry agrees. While he thinks policing during the big tourist events is heavy-handed, he says: “on a daily basis, the presence of a patrol officer who everyone knows [provides] a wonderful, lowest level of control” (Coventry, interview, 4 June 2001). The Chamber of Commerce's Vice President for Public Relations Simon Brakley thinks that, on the Plaza, “A lot of times you can

achieve a result without an ordinance, you know, with sensitive enforcement”, which he argues the city has, but largely because the cop assigned to the beat is a “good guy. And he’s very good at balancing all these different things. So it all comes down to one person and one personality. If you had a real jerk down there, it could be real trouble between people” (Brackley, interview, 6 June 2001).

This informal level of control is apparently quite important to the ‘success’ of the Plaza. But it also serves as a reminder of the inherent contradiction that defines the Plaza as property: the informality as it is lived and policed in fact is formed through a quite elaborate and formal, if behind the scenes, regulation—regulation that itself is the result of near-constant battles over who owns the Plaza (in all senses of that term). That is, those ten and a half pages of City Code that regulate the Plaza as the city’s pre-eminent space are the result of constant attempts to answer the questions “To whom does the Plaza belong? Who belongs to the Plaza?” For now the answer seems to be that vendors, tourists and hacky-sack players belong, but poor transients and skateboarders do not.

### **Conclusion: City as Landlord, City as Sovereign**

There is another way to phrase those questions of belonging. Legal scholars, advocates and judges often distinguish between a government’s role as ‘landlord’ and as ‘sovereign’ (see court case *Virginia v. Hicks*<sup>1</sup>). As landlord, it is an owner of property with many of the rights that pertain to such a status. As landlord, it can determine who is allowed in and who is not, which activities are permitted on its property, and which ones are not. As sovereign, it is the embodiment of power. In a democracy, this embodiment of power is itself an expression of how power works through social relations. In terms established above, the state’s role as landlord assumes something like an ‘ownership’ model of property. Its status as ‘sovereign’ requires that even property be understood as produced through social relations.

This dialectic between the state as landlord—its ownership of property—and its role as sovereign—its accountability to a public—is crucial for shaping landscape out of property. But the very public nature of some property threatens its value as landscape. Law—the pages of rules and regulations that make up the City Code—arises to mediate this dialectic between landlordism and sovereignty. It is the way that, through struggle over meanings, activities and specific activities, the landscape is given shape.

Lefebvre (1991) argues that any social order, any society, ‘excretes’ space. Space and spatial relations are produced out of the struggles and process that make social life; space and social life are co-productions. Similarly, any society, any social order, ‘excretes’ law and regulation. The form and functioning of the Plaza of Santa Fe is perhaps best understood as a dual ‘excretion’ in this sense. As government-owned property, over which any number of contending groups have staked claims, it is produced through the contradictory dialectic of landlordism and sovereignty. Something like the ‘ownership model’ of property tells only part of the story. It is a premature settling of controversies in theory that continue to rage in fact. Indeed, if the evidence from Santa Fe is anything to go by, the ownership model does not even do a very good job on its own terms, since even ownership *per se* of the Plaza is so occluded. Legitimate, codified, rights claims by

those who are not ‘landlord’ but who must be represented as part of the ‘sovereign’ significantly complicate the story of property and thus of the transforming landscape of the city. In its role as sovereign, the city government must write rules governing the use of the park; it must adjudicate conflicts between rightful users; it must police the park. All these activities, attendant upon the state as guarantor of social order, hem in its powers as ‘landlord’, as legal owner of property. The more than 10 pages of City Code devoted to regulating the use of its own property—the central Plaza of Santa Fe—are not mute, but in fact exceptionally loud testimony to just how hard it is to, in the words of the City Code, institutionalize ‘non-institutionalization’—in other words, to formalize informality. Or, as we put it earlier, it is loud testimony to just how hard it is to transform the social relations that *are* property into the space that *is* property.

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### Note

1 *Virginia v. Hicks* 123 S. CT. 2191 (2003).

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