

# On visible homelessness and the micro-aesthetics of public space

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## Abstract

In this article, we investigate the circumstances that have produced the current municipal regulatory approach to homelessness in the City of Melbourne, Victoria, and the ways in which visibly homeless people are policed through a micro-aesthetics of their presence in public space, which involves the monitoring of their bodily demeanour and their physical possessions. Our study contributes to and draws from a range of debates, including studies of the governmental conjunction of poverty and crime, analysis of the co-implication of law and spatiality, research on the criminalisation of homelessness and homeless people, and the burgeoning criminological interest in the significance of the visual field for our understandings of crime and criminality. This article recounts how homelessness, public space and questions of aesthetics have recently coalesced in debates about the regulation of homelessness in the public space of Melbourne's city centre. It approaches the issues through comparative consideration of genres of municipal management frameworks in other jurisdictions, detailed textual consideration of the Protocol on Homelessness in the City of Melbourne and an empirical study of visible homelessness in the public places of central Melbourne.

## Keywords

Aesthetics, criminalisation, homelessness, municipal regulation, public space, visual criminology

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## Introduction: Appearing homeless in the city

A young man is sitting outside a department store in the centre of Melbourne. There are many individuals nearby, also seated. They are sitting on metal seats, part of the

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municipal street furniture provided as amenity for members of the public. The man is not sitting on these; instead, he sits on the ground, with his back against the wall of the department store. He sits on a blanket folded to a square just big enough to provide some cushioning against the hard concrete. His legs are drawn up in front, and a dog curls up with its head in his lap. In front of him there is a plastic cup; beside it, a sign states 'Homeless, need food and tram fare'.

This individual occupies a position of great uncertainty. His posture, actions and location mean he might be infringing the criminal law (begging is an offence in Victoria under the Summary Offences Act 1966); he is vulnerable to being moved on by the police or city officers; and he could be contravening the City of Melbourne's Protocol on homelessness. In this article, the focus of our investigation is not the substantive experiences, causes and narratives of homelessness detailed by numerous researchers (Amster, 2008; Carlen, 1996; Fitzpatrick, Bramley, & Johnsen, 2013; Snow & Anderson, 1993) but rather the evolution of a current municipal approach to homelessness, with a focus on the monitoring of homeless people's bodily demeanour and physical possessions as components of the municipal streetscape.

We draw upon three substantial and intersecting strands of research with respect to regulatory responses to homelessness. First, much has been written on how poverty in general and homelessness specifically have been targeted by governmental condemnation: advancing consumer capitalism has been intertwined with the criminalisation of poverty and disadvantage (see, e.g., Desjarlais, 1997; Ferrell, 2001, 2018; Standing, 2011; Wacquant, 2009; Willse, 2015). In the 1990s and 2000s, a focus developed around the effects of the so-called 'quality of life' paradigm, 'a way of reorienting the efforts of city government away from directly improving the lives of the disenfranchised and toward restoring social order in the city's public spaces' (Vitale, 2009, p. 1) and a by-product of the widespread adoption of the 'broken windows' model of city governance. Wilson and Kelling (1982), the originators of this model, had reframed the 'minor incivilities of urban life' (vandalism of buildings including the titular broken windows, begging, street litter and public urination or drunkenness) as the primary causes (as opposed to symptoms) of urban disorder (Gibson, 2003, p. 162). In consequence, policing tactics were recalibrated such that low-level disorder became a high priority. Although most prevalent in the United States, the associated policing tactics have been adopted in many jurisdictions, resulting in the isolation, exclusion and incapacitation of the homeless and other disadvantaged groups.

Just as capital and the condemnation of poverty are co-implicated, a comparably intimate entanglement can be found between law and spatiality, in the second strand influencing our analysis. Gibson (2003) showed the impact of Seattle's redevelopment (2003) upon that city's homeless population; Valverde (2012) analysed everyday negotiation and regulation in Toronto, from management of signage to control of street vendors; and Iveson (2007) showed how public spaces are both shrinking and hyper-regulated. Perhaps the most extensive analyses of the law-space inter-relation have been by Mitchell, from the large-scale changes of gentrification to the minutiae of local 'buffer' zones (1997, 2005).

The final body of work from which our analysis builds is the more nascent strand regarding the role of the aesthetic in revanchist development or harsh social policies regarding homelessness. The domain of the aesthetic has sometimes been considered

epiphenomenal to the nitty gritty of everyday life; a luxury, perhaps or an aspect of 'culture' rather than 'society'. Increasingly, however, scholarship within criminology and sociology has moved away from this limited position to acknowledge the interconnections between the aesthetic and criminal justice, law and social relations (see Brown & Carrabine, 2017; Carrabine, 2012; K. Hayward & Presdee, 2010; Millie, 2008; Young, 2005, 2014). In relation to homelessness, Speer (2018) posits the importance of 'untangling the broad connections between capitalist growth and aesthetic norms, and the historic relationship between... urban beautification projects and the aesthetic rejection of visible homelessness... it is crucial to re-examine hegemonic visions of the desirable city' (pp. 3–4).

In the following analysis, we situate the emergence of the City of Melbourne's Operating Protocol on Homelessness within extant and past Victorian law and policy regarding begging and vagrancy as a means of acknowledging the socially and historically constructed nature of the perceived problem. We engage with the focus of the Protocol – the street – and consider how the authority of law is to be used to secure a desired version of that space. Finally, we examine municipal interest in the appearance of the street. As we will go on to discuss, that the Protocol defines this as requiring regulation of individual bodily gestures, postures and possessions reveals that the City's regulatory approach can be described as municipal micro-aesthetics.

In order to understand the emergence of this new regulatory approach toward homelessness in Melbourne – one that has condensed its efforts around the micro-governance of an individual's appearance, possessions, behaviour and location within the streetscape – we offer, first, its location within a typology of municipal strategies for regulating homelessness; second, a detailed textual consideration of the current Protocol on Homelessness in the City of Melbourne; and, finally, an empirical study of visible homelessness in the public places of central Melbourne, in which, as exhorted by Hayward and Presdee, we aim to 'fuse precise visual attentiveness with politically charged analysis' (2010, p. 3).

## **Regulating place, person and poverty: A typology of genres**

Cities have a long history of conflict with stigmatised categories of people, often manifesting in contests over space, place, appearance, behaviour and disposition. Goffman (1963) conceived of stigma as a 'spoiled' social identity signalling an individual or group's deviation from core social norms. Responses to stigmatised populations are typically characterised by repression and control, where authorities seek to isolate, exclude, correct or punish. While certainly highly stigmatised, the stigma relating to homelessness and the regulatory responses it animates are not distributed equally. It is the *visibly* homeless that bear the brunt of coercive management efforts, being considered to pose the greatest challenge to the maintenance of attractive, socially homogeneous public spaces for consumers and tourists (Gibson, 2003, p. 161). Returning to the 'broken window', homelessness becomes regarded as a harbinger of further and more serious problems. However, since a homeless person is not an inanimate object (however much they are objectified), 'fixing' homelessness is complex, presenting a significant challenge for policymakers. They have the unenviable task of balancing welfare against the need to accommodate the increasingly urgent views of those who regard the

homeless as, at best, public parasites or, at worst, criminals (Barak & Bohm, 1989). Typical policy frameworks display confused or contradictory logics that may, for example, seek to simultaneously displace and protect those targeted. A city's municipal strategies might exemplify just one of the following genres of management or combine elements from each.

### *Indirect criminalisation*

The criminal law is generally not applied to being homeless itself but to activities associated with that experience, particularly through offences relating to begging or to vagrancy (Adams, 2014; Lynch, 2002; Petty, 2016; Walsh, 2011). The rationale for these examples of direct criminalisation derives from the distinctive conduct they address: asking for money or itinerancy. The ordinary citizen, it is assumed, does not beg, and has a fixed address. Indirect criminalisation arises when homeless persons become subject to criminal regulation for conduct that is shared by all citizens, such as sleeping on a mattress, or ownership of clothing – what is rendered criminal is their performance of these ordinary activities in particular locations, or beyond a level deemed permissible by the law. Thus, lying on a mattress in a doorway and the possession of a tent that is pitched in a public square can be construed as a problem for the criminal law or the police because the activity's location indirectly betrays the homelessness of the individual.

Indirect criminalisation has been significant in recent years in Sydney. Although the regulation of visible homelessness in Sydney is guided by the New South Wales Government's (2013) Protocol for Homeless People in Public Spaces, which seeks to 'ensure that homeless people are treated respectfully and appropriately and are not discriminated against on the basis of their situation' (p. 4), the Protocol only applies 'to homeless people who are in public places and acting lawfully', with the implication that those acting unlawfully are not protected (p. 6). New South Wales does not directly criminalise activities associated with homelessness: begging is not an offence, for example. However, police and municipal officers have utilised a range of enhanced powers in order to indirectly criminalise homeless people. In 2011, the New South Wales Parliament amended the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) granting police additional powers to move people on if they are obstructing another person, their presence 'constitutes harassment or intimidation', or 'is likely to cause fear in a person of reasonable firmness' irrespective of whether another person is present. The Summary Offences Act 1988 (NSW) was also amended to create an offence of failing to comply with a police directive, clearly intended to work in tandem with the enhanced move-on powers. Police are thus granted the kind of discretion seen in numerous jurisdictions to have an excessive impact upon the homeless (Adams, 2014; Walsh, 2008). To these already boosted police powers, in 2017, a new power to evict was added: in order to remove an encampment of homeless people in Martin Place in Sydney's central business district (CBD), the New South Wales Parliament passed the Sydney Public Reserves (Public Safety) Bill 2017 (NSW), granting police additional powers to remove those unlawfully occupying Crown land (Dulaney, 2017). Thus, while begging is not a criminal offence in New South Wales and while the right of homeless people to be present in public places is nominally recognised, legislative interventions can

indirectly criminalise in order to target visible homelessness and their perceived public disorderliness.

### *Limited legalisation*

The declared legalisation of homeless encampments would seem to imply a progressive and tolerant governmental strategy regarding homelessness. However, legalisation is always contingent: it can be withdrawn, either wholesale at a later date or from groups or individuals who fail to meet the strictly defined standards that must be met in order to be 'legal'. In 2015, in America's Washington State, Seattle city authorities announced a plan to respond to worsening rates of homelessness by legalising homeless encampments on city property (Sparks, 2017; Speer, 2018). While this legitimised some homeless camps, it also made them directly subject to regulation by the city, requiring regular access by city officials and representatives from services, as well as maintaining city-defined standards of upkeep (Sparks, 2017, p. 87). While some camps are 'approved', the illicit others are subject to 'sweeps' by city officials (Baker, 2016, no pagination), involving the removal of belongings which are sometimes disposed of, the forcible eviction of residents and destruction of their temporary shelters (Boarder-Giles, 2017, p. 333). In 2017, more than 400 unauthorised camps were estimated to exist, of which 165 were cleared by the city during an 11-month period (Davila, 2017, unpaginated). The legalisation strategy thus created a new category – the unapproved, or *unlawful*, camp – while simultaneously authorising as *lawful* the city's regulatory interventions within any unapproved encampment.

It should be noted that the adverse consequences of limited legalisation in Seattle were bolstered by its parallel enactment of ordinances that indirectly and directly criminalise the homeless. Prohibitions on panhandling, 'spanging' (begging without a sign), loitering, pedestrian interference, nuisance (relating to noise, public urination, intoxication, obstruction of access and solicitation), trespassing on government land, and sitting in the street have all been used against people experiencing homelessness (homelessyouth.org, n.d.). Apparent legalisation, then, might in fact intensify the policing of homelessness through the effective separation of individuals into those who are 'legally' and 'illegally' homeless.

### *Welfarist prohibitionism*

Just as municipal responses to graffiti sometimes displayed welfarist sensibilities within the overall tendency towards repressive regulation (Halsey & Young, 2002), so the municipal management of homelessness is occasionally characterised by an expressed intention to improve the lives of the homeless. While such approaches are often merely expressive (such as the City of Sydney's declaration of respect for the homeless while enacting enhanced powers for their removal from Crown land), council authorities in Manchester, in the United Kingdom, demonstrate a rare commitment to substantive amelioration. Manchester City Council has for years aimed to reduce the numbers of homeless through coordinated service efforts. Despite this, the number of rough sleepers in the city has quadrupled since 2010 (Perraudin, 2017, unpaginated).

A plan to end homelessness in Greater Manchester by 2020 formed a key pillar of the 2017 election campaign of the new mayor, Andy Burnham. Mayor Burnham announced he would donate 15% of his personal salary to establish a mayor's homelessness fund and encouraged the local business community to join in. Burnham has also publicly opposed national reforms to welfare payments ('Universal Credit') because it will likely further double the numbers of rough sleepers (Halliday, 2017). However, reform of laws directly criminalising behaviour associated with homelessness does not appear to be part of the strategy: those will remain in place. While ostensibly recognising the need for homeless people to take shelter, the meaning of 'shelter' was given a narrow definition when the city council sought a court order for the removal of an encampment: doorways, cardboard boxes, bus shelters and sleeping bags were acceptable, while tents and other structures have been banned (to enable the city to distinguish protestors from 'genuine' rough sleepers, and thus to evict the former) (Williams, 2015). While a stated commitment to welfarist improvements can cast a municipal strategy in a less punitive light overall, it has proved difficult for city authorities to relinquish powers of removal and criminalisation with respect to homelessness and its associated activities.

These singular and hybrid strategies employed by cities to manage homelessness all seek to address the same tension: that homelessness is simultaneously an experience demanding assistance and a condition that has become associated with undesirable disorder. While the criminal law represents a hard limit on the behaviours of the homeless, the formal recognition of homeless peoples' rights (to inhabit public space, to seek shelter and to be homeless in public) has become a significant primary vector, designating, on the one hand, those who merit tolerance and, on the other, those whose visible difference from the tolerable demand regulation. As we will discuss, the current Operating Protocol on homelessness in the City of Melbourne conforms to this tactic, explicitly stating its intention not to discriminate against the homeless while doing exactly that. Just as the municipal strategies mentioned above are characterised by an incoherent amalgamation of regulatory techniques, the City of Melbourne's Protocol marries permission with policing and demonstrates a fourth genre of municipal response: the municipal micro-aesthetics of the streetscape.

### *Visualising the problem: Homelessness in the City of Melbourne*

Several events in recent years brought homelessness in Melbourne under heightened governmental and public scrutiny. In 2014, a homeless man (Morgan Wayne 'Mouse' Perry) was stabbed to death in a homeless camp in the centre of the city, and in the same year a homeless man, Scott Allen Miller, was convicted of the murder of a young chef as she walked to work. Concern was also building within the media about homelessness in general. From 2015, many homeless people had moved into central parts of the city. The local tabloid newspaper, the *Herald Sun* claimed members of the public were at risk of criminal victimisation by homeless individuals (Gillett, 2015; Masanauskas, 2015). In 2016, a protest camp was set up outside the Melbourne Town Hall (Davey, 2017; Jefferson, 2016; Precel & Mannix, 2016). City officials and police dismantled the encampments and evicted homeless protesters repeatedly between May and July in 2016.

An encampment of homeless people was established on Flinders Street, outside Melbourne's central train station in January 2017. The camp appeared during the



Australian Open, an international tennis tournament regarded as one of the city's most significant events, attracting many thousands of tourists. The encampment was located outside Melbourne's busiest railway station, a tourist attraction as well as a hub for thousands of commuters every day. The existence of the encampment was extensively, and negatively, covered in the news media: according to Victorian Police Commissioner Graeme Ashton, the camp was 'disgusting' and 'a very ugly sight' (Booker & Dow, 2017, unpaginated).

Under intense pressure and scrutiny during this period, Melbourne's then Lord Mayor, Robert Doyle, announced plans to amend Melbourne's Local Laws to grant city officials expanded powers to clear encampments and remove the belongings of homeless people with fines and other penalties for those found to be in breach. Mayor Doyle claimed that homeless people's belongings were impeding free movement within public space and blocking access to city amenities for its other users, and local businesses were being adversely affected by the presence of rough sleepers (Doyle, 2017). Accompanying such claims were more general assumptions regarding the visual impact of homelessness in the city: the camp was described as a 'cesspit' and 'like something you'd find in Delhi' (Panahi, 2017, unpaginated) and Mayor Doyle declared homelessness 'a blight on our city' (No Author, 2017, unpaginated).

The proposed amendments were strongly opposed. The homeless community, advocacy groups and many members of the public attended public hearings and submitted online responses: 85% opposed the changes (Council for Homeless Persons, 2017). A decision not to adopt the changes was taken in September 2017: Mayor Doyle admitted the proposals might not be compatible with Victoria's Charter of Human Rights and Responsibilities, and that 'any change to the local law would be tested in the courts, which would tie [the council] up in expensive legal proceedings. . .' (Mills & Dow, 2017, unpaginated). Instead, the City of Melbourne announced a new formal operating Protocol, in partnership with Victoria Police, the Department of Health and Human Services and homelessness service providers (City of Melbourne, 2017b). The move was regarded by opponents as a major concession and a retreat from punitiveness by the council.

But closer examination reveals the apparent concession to be ambiguous and uncertain. While the proposed reforms to the Local Laws would have installed enforceable limits on conduct, numbers of individuals, bedding and possessions, the Protocol has functioned as a Trojan horse. It introduces similar ideas about desirable limits as operational directives: less amenable to legal challenge, while still being highly effective as a repressive regulatory device. In November 2017, approximately one month after the new Protocol was adopted, local media reported that 18 arrests had been made under the Protocol's guidelines (Masanauskas, 2017). The conduct, appearance and material belongings of homeless individuals within the City of Melbourne will still be judged according to notions of what is 'appropriate' and 'reasonable' in the city's public spaces, thus installing a regulatory approach based around the governance of *appearance*. Securing the aesthetic dimension of urban space has long been of interest to law (Mitchell, 1997; Speer, 2018; Young, 2014), but what is distinctive in the City of Melbourne, as we will show, is the council's commitment to a governmentalised choreography of bodily gestures, postures and possessions.

## **A protocol on the appearance of homelessness in Melbourne**

The City of Melbourne's 2017 Protocol manifests a tendency towards indirect criminalisation, while stopping short of it, combined with an implicit desire to remove those deemed to fall outside 'lawful' homelessness, and a weak statement about connecting homeless individuals to welfare services. It thus manifests aspects of three of the genres of regulatory management, but subordinates each to its overweening interest in the appearance of the urban streetscape. As such, the Protocol stipulates a range of restrictions on homeless people as well as criteria for intervention. The gathering of groups of more than four homeless people in any one place is 'strongly discouraged'; possessions must be confined to a 'reasonable minimum, being two bags which can be carried and a sleeping bag, blanket or pillow' (bedding options are listed as alternatives: homeless people must choose to have a blanket or a pillow, but not both).<sup>1</sup> At the same time that it sets these constraints on the homeless, the Protocol guarantees unimpeded movement and the enjoyment of public space by non-homeless members of the public: 'behaviour in the public space should not impact the enjoyment of other users of public space' and 'entrances to businesses and residences must not be blocked, and customers are to be free to enter and exit all buildings when open'.

Several features within the Protocol merit attention. According to the council's media release, it will 'address rough sleeping in the city' and 'prevent and remove group encampments in the city' (City of Melbourne, 2017a, unpaginated). 'Rough sleeping' is an activity that can be done by an individual, a couple or small groups. For homeless individuals, sleeping in groups may be attractive because it engenders community, a pooling of resources, increased warmth in winter months and a sense of safety and belonging. For city authorities, a group of rough sleepers is harder to overlook than a single individual, who necessarily occupies less space and may appear to be more docile. However, the media release elides rough sleeping by solitary individuals or small groups with the perceived problems of encampments, such that encounters with small numbers of rough sleepers could be viewed as similarly in need of regulatory intervention.

The Protocol itself identifies the creation of an environment 'that feels safe, friendly and accessible for the 900,000 people who daily live, work, study or socialise in the city' as its primary aim. That homeless people are not envisaged as belonging to this group is made clear by the fact that only one of the 10 clauses promises any obligation to the homeless ('CoM will ensure that rough sleepers are connected with appropriate services'); the remainder outline obligations owed by homeless individuals to the City of Melbourne and its citizens. These delimit the amount of belongings (which must be carried with the individual rather than left in any one place) and their type (just as tents were banned in Sydney and Manchester, so here goods such as mattresses are banned from 'the public space'). The Protocol discourages spending time in groups and explicitly prohibits behaviours ranging from 'the use of drug paraphernalia, blocking the thoroughfare, intimidation, or unruly activity' to any actions that 'impact the enjoyment of other users of the public space'.

To illustrate the boundary between acceptable and unacceptable versions of visible homelessness, the Protocol provides scenarios with appropriate regulatory responses indicated for each. Two scenarios relating to individuals or small groups are deemed



acceptable by the City of Melbourne. The first describes a group of fewer than four individuals setting up their bedding (sleeping bag, blanket or pillow) during the evening or night and sleeping in parallel formation 'alongside the shop fronts, without blocking the doorways'. When the homeless sleepers wake and leave the area, if they take their bedding and two bags with them, then 'CoM has no issue' (although it should be noted that several thresholds must be met to achieve this permissibility). Presumably sleeping in another formation might constitute an issue; or a group of more than three sleepers would signal a problem, as would the accumulation of possessions or leaving them temporarily unattended. Thus, an apparent statement of tolerance is in fact rigorously controlling and exclusionary in its formulation.

The second scenario resembles the first: the same number of people in the group, the same bedding and bags, the same required placement of bedding in relation to shop fronts. The one variation relates to temporality: if individuals behave in this way 'during the day', then 'CoM will monitor for breaches of the Protocol'. Stipulation of a timetable according to which sleeping on the streets is more or less lawful or unlawful, demonstrates how the Protocol is attempting to control the point at which the appearance and experience of its streets intersects with the idiosyncratic temporal rhythms that pertain within the homeless community, narrowing the range of permitted lawful activities by subjecting them to the restrictions of a timetable.

Beyond these scenarios of limited permissibility, other examples lead immediately to intervention: the 'CoM will use its power...' or 'will ensure that VicPol is informed'. The City of Melbourne is authorised by the Protocol to take such steps when their employees decide that a homeless person has failed to meet any of his or her nine obligations. Unattended belongings or bags that block the footpath or entrance, or any prohibited goods such as mattresses can be removed by the City of Melbourne: 'with personal items stored and the remainder disposed of'. If 'a safety risk' is perceived, based on the appearance or conduct of individuals within the streetscape, council employees will always call Victoria Police, indicating that the Protocol retains an investment in the criminal law and the criminal justice system to patrol the boundaries of acceptable visible homelessness. It is not criminalisation as such – because there is no offence attached to having too many bags, or sleeping in the wrong formation on the street – but the police are able to enforce its micro-aesthetics despite them being *un-criminalised*.

As in other jurisdictions discussed, being homeless is not in itself a crime in Victoria, but a number of activities associated with homelessness do fall within the prohibitions of the criminal law. Vagrancy has long been a concern for the criminal law (Adams, 2014; Ferrell, 2018; Hawk, 2011; Walsh, 2008, 2011): the Vagrancy Act 1966 (Vic) contained offences related to 'consorting', 'gathering alms' and 'cheating', and authorised police informants to give evidence as to a defendant's known 'bad character' through being found in the company of thieves or 'those with no visible lawful means of support'. While this statute was abolished in 2005, uneasiness remains about the links between transience and criminality. 'Being an idle and disorderly person having no visible means of support' was an offence under s.4(i) of the Police Offences Act 1890. When poverty led individuals with no fixed abode or means of support into situations of vagrancy or begging, their methods of survival could cause them to be arrested. Under s.49A of the Summary Offences Act 1966, begging or 'gathering alms' carries a maximum sentence of

12 months' imprisonment. Despite repeated campaigns for repeal, 825 charges were laid under this provision during the five years preceding 2016 (Dow, 2016, unpaginated).

Municipal policies on homelessness generated by the City of Melbourne (such as their Homelessness Strategy 2014–2017, designed to develop 'sustainable pathways out of homelessness'), have always existed within a framework that includes the criminal law. However, thanks to the prominence given by the council to the role of the police in preserving the appearance and experience of the streetscape, the 2017 Protocol signals a shift towards the conjoining of the force of criminal regulation with the problem of visible homelessness. Victoria Police are positioned as the necessary force to underline the governance of the street. While this role is commonplace for the police in respect of the protection of the public from street crime, what is noteworthy here is the perception that this role is required in respect of the 'threat' posed by small groups of homeless individuals or even by one individual with more than the mandated amount of possessions to the tidy look of a pavement and the free-flowing circulation of citizens through the street. In this way, the City of Melbourne's approach has hardened into a punitive model of *municipal micro-aesthetics*.<sup>2</sup>

### Investigating visible homelessness

From the media furore around the encampment outside Flinders Street Station through the initial proposed amendments to the city's Local Laws to the new Protocol itself, it is *visible* homelessness, rather than any or all homelessness, that is of regulatory concern. Municipal micro-aesthetic policing is triggered when the homeless gather together in numbers that catch the eye of the public; when an individual is sitting or sleeping outside a shop or building, as if a member of the public cannot simply walk past or around her; and when personal items or bedding might constitute an impediment to the public (or simply act as a visual reminder of an intractable social problem).

To investigate the impact of visible homelessness within Melbourne, we sought to interrogate the key claims that have animated recent public debates, and which underpin these triggering scenarios. Field research was conducted over several weeks, both before and after the implementation of the City of Melbourne's Protocol. Multiple locations were investigated in two areas of Melbourne: its CBD, which falls within the municipality of Melbourne, and, to take account of possible displacement of homeless individuals from the CBD, in the City of Yarra, a neighbouring inner-city municipality to the east and north-east of the CBD. The views of local traders regarding homelessness and how it affects them were gathered through interviews; observational fieldwork was conducted in order to document the physical spaces and belongings connected to those visibly experiencing homelessness.

We define 'visible homelessness' as occurring when members of the public can readily see individuals who appear to be homeless (e.g., sleeping in public places or displaying signs stating their homelessness) or goods that appear to belong to homeless individuals. However, neither visible homelessness nor the micro-aesthetics that underpin its current management in Melbourne are restricted to the visual sphere, although visibility may well be what draws the presence of a homeless person to the attention of other individuals. Being homeless in public places means that many aspects of an individual's bodily existence are available for judgement by others: lack of access to showers, laundry

services or barbers can result in an individual being defined as problematically homeless through the activation of many bodily senses (Kawash, 1998).<sup>3</sup>

But visibility dominates these debates: concerns about noise or odour have been subordinated to the issue of how individuals *look* when sitting or sleeping on the street. Our argument is that the City of Melbourne's adoption of a municipal micro-aesthetics concentrates attention on a narrow range of bodily postures and qualities while attributing to members of the public (who walk through the street in which a homeless person is present) and traders (whose businesses are located near areas used by homeless persons) condemnatory judgement of the homeless person's *appearance* in public places. Some of the sites at which we conducted fieldwork were very obviously 'public': main thoroughfares provided highly visible locations in which the homeless person or their goods could be seen by many individuals at a given time. Others were visible only to a few individuals, such as laneways at the rear of commercial or residential premises. In addition to documenting the physical spaces in which visible homelessness was located, interviews were conducted with 30 traders operating in close proximity to these sites.<sup>4</sup>

### *Trading in the midst of homelessness*

Business types varied widely and included restaurants, grocery and food stores, clothing retail, travel agents, supermarkets, convenience stores and a tattoo removal parlour. Premises were situated along Victoria Street in Richmond, Smith and Brunswick Streets in Fitzroy and along Swanston, Collins, Flinders and Bourke Streets in Melbourne's CBD. These areas were prioritised for their high concentration of commercial operations as well as a noticeable presence of homeless people and members of other marginalised communities. Overall, views within these business communities about visible homelessness were diverse. All interviewees acknowledged the visible presence of homelessness and regarded it as relevant to the operation of their business. The issue's salience, however, was not correlated to its having a direct effect upon the business: 83% (n25) said that the presence of homelessness had no impact on the business or that the impact was small or manageable.

When traders did report being adversely affected by homelessness, it arose from two circumstances. Firstly, the presence of street drug use or sales in one area resulted in local respondents conflating homelessness with the specific features of the street drug trade. One interviewee stated: 'They have homes, they're all using drugs. They pretend, so they can avoid work and not pay taxes, that's how they get government money and free housing: using drugs'. Another respondent in the same area said: 'All homeless, all use drugs. Very, very bad'. Secondly, the association of homelessness with the generation of rubbish or waste led some (30%, n9) to comment that they might have to clear up litter that they believed had been left by homeless people. However, at the same time, the majority of respondents (66%, n20) reported other issues (theft, drug use, public drunkenness, busking) as having a more serious impact on their business than homelessness. One trader commented: 'I know this is a terrible thing to say, but someone sleeping in my doorway stops drunk people pissing and vomiting in it'.

Public intoxication lead to multiple problems: litter, vomit, urination in the vicinity of businesses and pranks being played on traders. Shoplifting was mentioned as a far

greater adverse economic issue than the presence of homeless people outside premises. In addition, 56% (n17) of respondents stated that they regarded the homeless community positively and empathise with individuals' situations, and 56% (n17) reported having positive or friendly interactions with homeless people on a regular basis. One respondent who described homelessness as having detrimental effects on his business still donated cardboard boxes for use as bedding and allowed homeless people to use the toilet in his premises. The kindness of passers-by sometimes resulted in what business owners saw as litter. One woman, in whose doorway homeless people regularly sleep, said: 'People leave things for them while they're sleeping but it's stuff they don't want or need, so obviously they don't take it with them [when they leave]. So I end up clearing away other people's donations'. One consequence of the limits on belongings set by the Protocol (two bags that can be carried) will be an increase in the transformation of donated goods into 'rubbish' to be cleared by council staff or by traders.

Overall, traders viewed homeless people with sympathy, and most respondents endorsed the idea of welfarist policy responses, such as greater support and service provision, rather than increased regulation or criminalisation. Some simply wanted any approach that would work, stating 'arrest them, move them, help them, anything!' and 'police come but don't do anything. Help comes but they just come back. Do something!'. It is the apparent intractability of the issue rather than a desire to punish or deter homeless people through criminal sanctions that seemed to animate those who endorsed stronger regulatory responses. In this way, the limited public support for criminalisation that does exist may be the product of the perceived failure of past municipal policies rather than an actual desire to punish those who are homeless.

### ***Public homelessness***

Within the general claims about the aesthetic impact of public homelessness on the public, both the failed amendments to the Local Laws and the eventual Protocol are based around a specific claim that homeless people and their belongings constitute an impediment to other city users. In addition to seeking the views of traders in areas associated with visible homelessness, our study investigated how visible homelessness might appear to the passer-by, documenting the organisation of sites used by visibly homeless people, the possible impact of their belongings upon public access to shops and buildings and the types of encounters that resulted.<sup>5</sup> In the CBD of Melbourne, we conducted observations at 28 locations in total (one of them on multiple occasions since it was commonly used for begging). In the City of Yarra, observation was conducted at nine locations, with two of these resulting in multiple periods of observation, either because the site was a long-lasting one or because it was used repeatedly by different individuals and in varying ways.

Many locations in our study were in busy commercial areas. In these cases, the people observed were usually begging (an activity requiring a level of public visibility). However, others were more secluded and were being used solely for living and sleeping. Shifts in the practices of the homeless and rough sleepers meant several highly active areas were suddenly abandoned, as occupants moved on to other places. Such transience and instability are an unavoidable aspect of any research involving homelessness; thus,

the presence of individuals rough sleeping, begging and the materials associated with these activities tends to be inconsistent and impermanent.

The sites and types of materials observed varied. Some consisted of a single person sitting on the street, arms and legs pulled in close, with nothing but an upturned cap in front of them. At such sites, the impact on other people accessing the space was negligible. Pedestrians had to avoid stepping on or walking into the person, but this is the same amount of care required for any non-homeless person encountered on the street. Other sites had multiple people, mattresses, milk crates, animals, blankets, food, bags and even homely decorations and utilities in them. The City of Melbourne Protocol designates the use of locations in this way as a cause at least for 'monitoring', with a possible escalation to 'use of its powers' by the council.

Most sites observed were highly organised and were being maintained with a high degree of neatness. The City of Melbourne correctly notes that the presence of more material possessions at a location has a greater impact on the physical space of the street and its other users. The more belongings present at a site, the less space is available for others. However, locations with a lot of belongings were less likely to be in prime commercial spaces or on major pedestrian through-routes. Only three sites in prime commercial areas, notably in and around Elizabeth Street in the CBD, were both large and obviously disorganised. Here, pedestrians were required to proactively navigate around the materials used by people at the locations, although all those observed managed this with ease.

An important distinction should be noted between sleeping rough and begging. These may co-occur and tend to be conflated with one another. But a person may be begging in one area but sleeping elsewhere, inhabiting prime commercial space but not begging, or sleeping in and begging in the same space. The implications of these differences may seem minor but are important: the type of activity often determines where it will take place as well as what kind of goods will be present. For example, many of those observed begging had very few belongings with them, while sites with a lot of belongings were often being used primarily for sleeping. Occasionally people would beg from an area that was clearly also being used for sleeping, but a begging location usually involved a single person, a blanket or piece of cardboard to sit on, a cup, hat or other receptacle for coins, a sign, and, often, a dog for company. An individual's posture would also vary: some individuals sat hunched over, head on drawn-up knees; some covered their heads with hoods or blankets; and others stared straight ahead.

On multiple occasions, members of the public engaged with the people inhabiting the selected sites, usually to donate. Donations usually appeared to be money, with food or drink observed as a common alternative. No unsupportive or aggressive interactions were observed. Members of the public either continued their activities apparently unaffected or engaged in an apparently supportive interaction with the homeless person. The relative frequency of donations and conversations indicates that many hold a sympathetic perspective on homelessness and wish to engage in a helpful or positive manner. However, interactions were more frequent in Yarra than in Melbourne; and it also transpired that in the CBD donations and conversations tended mainly to occur on weekdays. Despite the increased numbers of passers-by in the CBD during Saturday afternoon shopping periods, all homeless persons sitting with a sign received many fewer donations than at other times (in our study, only one donation was observed during a total of four hours during

Saturday afternoon observations). It may be that the presence of a visibly homeless person acts as an uncomfortable counterpoint to the socially licensed leisure consumerism taking place within a city's CBD (Hayward, 2004), such that each shopper prefers to pass by without donating; or it may be that homeless individuals become more invisible as the crowd of consumers expands.

### **Conclusion: Visible homelessness and the municipal micro-aesthetics of public space**

Homelessness has long inspired the enforced conjunction of the criminal law, criminal justice system and social welfare strategies in an often uncomfortable and contradictory assemblage. Activities associated with homelessness, such as vagrancy and begging, have constituted criminal offences at various times (and are still criminal, in many jurisdictions). The presence of homeless individuals within populated public places in the contemporary city has been construed as a situation that can be risky for the non-homeless individual: as has been documented, homeless individuals behaving in an erratic or unconventional way will frequently be moved on by police, or charged with a range of offences relating to public order or public nuisance, often involving swearing, drunkenness, or disorderly conduct. What is distinctive in recent years is, through a preoccupation with *visible* difference in public places, the emergence of a set of circumstances that now seem to be accepted by criminal justice agents and municipal authorities as precursors to disorder or as public nuisances in themselves (Millie, 2011). These circumstances are increasingly activated not through behaviours such as shouting or swearing, but through the municipal micro-aesthetics of the street.

A range of signals that are being regarded as precursors of imminent trouble can be identified. Firstly, the homeless person's demeanour is treated as offering a constellation of signs to be interpreted: disorderly responses to any routine inquiry can breach the Protocol. If the homeless person's demeanour fails to meet the required standards of civility or docility, they can be moved on or arrested. Secondly, the presence of the homeless person in public space is itself a sign – an imminent threat to the appearance or the experience of the location for everyone. Simply being homeless in a public place within the city now requires being subject to judgment. In Melbourne, judgment is authorised when homeless people hang out with their friends, since congregating in groups of more than three people can lead to being moved on (whereas previously rowdy or unruly behaviour indicated disorderliness; now their number constitutes the disorder). The manner of sleeping is subject to judgment: homeless people who arrange their bedding in a non-prescribed manner are regarded as a problem.

Thirdly, in the relationship between the non-homeless user of public space (a consumer, or tourist or worker) and the homeless person, it is the latter whose presence continually threatens to reduce the 'amenity' of the location for everyone else, and whose presence is thus rendered subject to the standards set for them. Finally, in the midst of a city where all around the citizen is encouraged to make, sell and buy things, homeless people have been given strictly defined limits as to the amount of things that they can own, as if, for them, capitalism has been suspended and their attachment to any material objects disavowed.



Such are the contours and consequences of the regulatory approach taken in the City of Melbourne, although it does not yet determine the shape and nature of encounters within public space between homeless and non-homeless people. We documented multiple, repeated instances where pedestrians spoke kindly to homeless individuals, stopping to ask if they are alright, giving them a few coins or taking them into shops to choose food. The majority of traders working in the midst of visible homelessness expressed frustration at the situation but did not allow frustration to close off the opportunity to engage in acts of hospitality or compassion to the homeless individuals begging near their business: it was routine for traders to allow homeless people to use their toilets or sleep in their doorway at night. The Protocol, then, does not (yet) govern the interactions between citizens within public space. But when the supposed impact of visible homelessness becomes a justification for punitive intervention, as the Protocol encourages, how long before expectations change as to the experience and aesthetics of public space? It should not be assumed that we can rely for long on the continuing kindness of strangers, when municipal and criminal justice authorities advocate that we look on the homeless individual as permitted to be present within the city only within these narrow limits of aesthetic acceptability.

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### **Notes**

1. The source for this quotation, and for all others from the Protocol, is City of Melbourne (2017b).
2. Associated with the views of the then Mayor of the City of Melbourne, Robert Doyle, the Protocol seemed likely to be abandoned in 2018, after Doyle stepped down and a new Mayor, Sally Capp, was elected. Although an announcement was made distancing the contemporary approach of the local council from that of the Doyle era, the Protocol remains operational.
3. Mobile laundries and barbers provide services to assist with personal hygiene and clothes washing.
4. Interviews were split evenly between municipalities, and interviewees were approached at their place of work. Where possible, researchers interviewed the owner or manager; where this was not possible, the interviewee's length of employment at the business was established, and no interviews were conducted with anyone employed there for fewer than six months.
5. Observations were conducted discreetly and following protocols established in conjunction with the University of Melbourne's Human Research Ethics Committee. If a person was present with their belongings, care was taken to not alert them to our purpose. In addition, care has been taken to not include any identifying details in data analysis. Periods of observation

usually lasted between 30 minutes and an hour, though some were significantly shorter (e.g., if an individual packed up their belongings and left the area). Sites were chosen both when the researchers encountered people engaging in rough-sleeping and begging, and when the researchers were informed that they were currently inhabited by a homeless person.

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