



UNIVERSITY  
OF WOLLONGONG  
AUSTRALIA

2005

# Blurred boundaries: a double-voiced dialogue on regulatory regimes and embodied space

R. Johnson

*University of Victoria, Canada*

Follow this and additional works at: <http://ro.uow.edu.au/ltc>

## Recommended Citation

Johnson, R., Blurred boundaries: a double-voiced dialogue on regulatory regimes and embodied space, *Law Text Culture*, 9, 2005.

Available at: <http://ro.uow.edu.au/ltc/vol9/iss1/7>

---

# Blurred boundaries: a double-voiced dialogue on regulatory regimes and embodied space

## **Abstract**

In this paper, I take up de Certeau's invitation to attend to the spatial practices that 'secretly structure the determining conditions of social life' (1984: 97). I do so conscious of Moran's reminder that 'the corporeal is never far away from the spatial themes of law' (2003: 91), and Eisenstein's assertion that to become more specific 'is actually to encompass more of humanity'. (1994: 4). Practices of democracy (and practices of justice) presume and implicate very specific kinds of spaces and bodies. In attempting to re-imagine democracy, Eisenstein suggests that we focus on the body of the pregnant woman, a body that has been the object of extensive analysis and regulation. The shifting and blurred boundary between the woman and the life she carries is the subject of contestation (Fried 1990). The body of the woman is characterised by some as permeable, by others as inviolable. The foetus is sometimes conceptualised as part of the woman's body, at other times as merely enclosed within her body, and the discussion often turns to contests of rights between mother and foetus (Thomson 1986). Always marked by race, class, and ability, the pregnant body is sometimes celebrated, sometimes reviled (Solinger 1992).

## **Blurred boundaries: a double-voiced dialogue on regulatory regimes and embodied space**

**Rebecca Johnson**

*I sit staring at the computer screen. Stuck. Blocked by all the blurred boundaries: bars, breasts, babies, bodies, barriers ... too much alliteration. And yet, spoken aloud, the production of all those 'B's' — 'voiced bi-labial plosives' — the sound produced by a restriction in the vocal tracts, combined with the coming together and parting of lips, the building and breaching of a boundary ...*

In this paper, I take up de Certeau's invitation to attend to the spatial practices that 'secretly structure the determining conditions of social life' (1984: 97). I do so conscious of Moran's reminder that 'the corporeal is never far away from the spatial themes of law' (2003: 91), and Eisenstein's assertion that to become more specific 'is actually to encompass more of humanity'. (1994: 4). Practices of democracy (and practices of justice) presume and implicate very specific kinds of spaces and bodies. In attempting to re-imagine democracy, Eisenstein suggests that we focus on the body of the pregnant woman, a body that has been the object of extensive analysis and regulation. The shifting and blurred boundary between the woman and the life she carries is the subject of contestation (Fried 1990). The body of the woman is characterised by some as permeable, by others as inviolable. The foetus is sometimes conceptualised as part of the woman's body, at other times as merely

## Johnson

enclosed within her body, and the discussion often turns to contests of rights between mother and foetus (Thomson 1986). Always marked by race, class, and ability, the pregnant body is sometimes celebrated, sometimes reviled (Solinger 1992).

I want to shift the lens of analysis to the woman's body *after* pregnancy, when birthing is done. Although a certain connection is severed when the umbilical cord is cut, where a woman breast feeds a child, a permeability of the bodily boundary between the mother and child remains. In this discussion of bodies and legal space, I begin with a body marked by interconnections, proximities, and instabilities of boundary. I focus on 'breasted experience' (Young 1998), where the breast in question is not the object of erotic desire, but that of 'alimentary obligation' (Kasirer 2005). I focus on this breasted body as a boundary site, using it as a location from which to explore the role of regulatory legal texts in constructing gendered legal space, and structuring the (exclusionary) determining conditions of social life (Smith 1987).

*All this talk about space and bodies is spoken in the supposedly neutral language of academic discourse. But I am not a disinterested party. The breasted body of this paper is my own. The exclusionary spatial practices that concern me are those I have experienced. I feel split. Sentences and ideas seep back and forth across the boundaries of genre, refusing to stay in their proper place. Personal experience seems fine in autobiography and memoir, but it does not fit comfortably in traditional legal discourse. And while the autobiographical mode is apt for some ideas, traditional legal talk gives me better purchase for others. And yet, the experience of genre seepage and disorientation captures my experience of being a breastfeeding mother as well as anything ever has...*

Before taking up a set of questions about legal texts, corporeality and spatial practices, I want to share the experience that started me thinking about the links between bars, breasts and babies (Johnson

## Blurred boundaries

2004). In 1998, carrying a newborn baby, I left Canada to join my partner who had taken a contract in England. Shortly after, Canadian Supreme Court Justice Claire L'Heureux-Dubé came to Bristol to speak at a conference. Having clerked for her some years earlier, I was excited to have a chance to catch up. She suggested that I bring my partner and baby, and join her for dinner at a great pub she had found. I was hesitant. New to motherhood, I was feeling awkward both with breastfeeding in general, and public breastfeeding in particular. I couldn't see any alternatives. I had an 8 week old baby who seemed to nurse constantly. If we were to go to dinner, the baby would have to come with us.

We met at the pub, and took a table near the back. When the waiter finally approached us, it was not to take our order, but to order me out of the pub. The problem? The baby. Their liquor licence was clear: no minors allowed. I was stunned and unable to form a coherent response. The judge, stepping into the void, blurted out in a tone of outrage, 'You can't kick her out! That is a violation of her human rights!' But, as sometimes happens, Justice L'Heureux-Dubé was in dissent (Belleau & Johnson 2004). We found ourselves on the street, searching for a different place to eat. It would be an understatement to say that I felt shamed by the experience. The intervention of the judge took the edge off the humiliation, but one expulsion was enough to keep me out of British pub space for the rest of my time in England.

Three years later, with the arrival of my second child, I discovered that Canadian liquor licensing regimes were similar to their British counterparts: on a house-hunting trip in British Columbia, travelling as a nursing mother with a 5 week old baby, I was denied entry to a lovely harbour-side pub: no minors allowed. This time, I was better prepared to do battle. I launched into legal arguments, asserting that I was being denied a service customarily available to the public on the basis of my gender, or, alternatively, my family status. Further, I asserted, as a matter of statutory interpretation, my voraciously nursing infant was less like 'a child' within the meaning of the legislation, than akin to 'a vacuum attachment'. The waitress remained singularly unmoved by my display of legal virtuosity, and we remained outside the pub.

## Johnson

*Get out?! At first, I smile, thinking it is a joke. But after a moment, I realise the waiter is serious. Time slows down. I feel the blood rush to my face. A hollow pit opens up in my stomach. The moment feels something like a slap in the face. No. More like a blow to the belly. I am breathless. Everyone is staring at us. Staring at me. I can't read their faces. Is it sympathy? Relief? Disgust? Are they wondering what kind of selfish and irresponsible mother would bring her baby into such a space? I can't say. I can't think. I can't breathe. My face is burning. I am being disciplined, publicly shamed. I am a mother with a baby, being taught rules about the boundaries of proper place. This is no place for a baby. This is no place for me. This place is no longer my place ...*

What is 'the law' that shapes the space of the pub? In British Columbia, several legal texts operate. The first is the *Liquor Control and Licensing Act*. Section 35 is the primary prohibition section: 'A person who holds a licence under this Act must not permit a minor to be on premises where liquor is sold except with lawful excuse, or in prescribed circumstances.' Section 1 tells us that the term 'minor' means a person under the age of majority established by the *Age of Majority Act*, and section 1(1) of that Act specifies that 'a person reaches the age of majority on becoming age 19'.

The 'lawful excuses' and 'prescribed circumstances', are set out in the *Liquor Control and Licensing Regulation*. The regulations draw a distinction between two kinds of establishments that sell liquor: 'liquor primary' (pubs, bars, lounges) and 'food primary' (restaurants).

8(1) A liquor primary licence in respect of an establishment may be issued, renewed or transferred if the primary purpose of the business carried on in the establishment is **beverage service, entertainment or hospitality.**

11(1) A food primary licence in respect of an establishment may be issued, renewed or transferred if the primary purpose of the business carried on in the establishment is **the service of food during all hours of its operation.**

The distinction between the two categories is central to the regulatory regime: minors may be present in 'food primary'

## Blurred boundaries

establishments (section 11(2)(b)), but generally *not* in ‘liquor primary’ establishments (section 9(a)). In both Bristol and British Columbia, I had failed to attend to the distinction between ‘food primary’ and ‘liquor primary’ establishments.

The rationale for the regime of legislative exclusion is articulated in the *Liquor Licensing Operating Manual* (BC 1997: 10.1):

The reasons behind these sections of the Act and the policies that support them are public interest concerns about the effects of alcohol abuse on growing young bodies and developing minds, and the effects on individuals and society of irresponsible drinking behaviours learned at an early age. The Act reflects a generally held view in our society that early exposure to alcohol consumption and the teaching of appropriate drinking behaviours are best provided in the home under the guidance of parents or guardians.

The Policy aims to support a regime where young people are socialised to liquor consumption in the home, rather than in public. But to the extent that liquor *is* present in many public spaces, the law attempts to distinguish safe from unsafe spaces.

There are many similarities between liquor primary and food primary establishments: both may serve alcohol from 9 am to 4 am the next morning (section 9(b) and section 11(2)(c)), and both must provide food (section 9(c) and section 11(2)(b)). The crucial difference between these two establishments lies in their ‘*primary purpose*’: food or drink. Section 11(3) of the Regulation provides guidelines to help determine the primary purpose of the business, authorising the general manager to consider: ‘kitchen equipment; furnishings and lighting; menu; type and hours of entertainment and games offered by the licensee; advertising; hours of operation; financial records; the ratio of receipts from food sales to receipts from liquor sales in the establishment; and any other relevant consideration’.

In British Columbia, there are about 5200 food primary licences, and 2400 liquor primary licences (BC 2005a). The initial application for a liquor primary licence is more labour intensive than for a food primary licence (BC 2005b, 2005c). It is also more expensive: in 2005, the cost for the first year of a new licence was \$2200 compared to \$900 for a food

## Johnson

primary licence (BC 2005d). In subsequent years, the licence fee for each is based on the volume of their liquor purchases. A food primary establishment can pay as much for their licence as a liquor primary establishment. And the reverse can be true. Patterns of drinking have shifted over the years, and ‘in some pubs, food sales as percentage of revenue can often reach 60 percent’ (Wilson 2005: C3). Regulators agree that it is sometimes difficult to distinguish liquor and food primary establishments from each other. Further, the Board does not always have sufficient resources to investigate and enforce the regulations — to police the boundaries between ‘food primary’ and ‘liquor primary’ spaces — leaving some regulators to assert that some operators are incorrectly holding ‘food primary’ licenses, improperly permitting children to be in what should be prohibited spaces. In the end, the matter turns on the determination of ‘primary purpose’.

The distinction is central to the design of the licensing regime, a regime structured to exclude young bodies from spaces where inappropriate drinking behaviours might be modelled or learned. According to the Liquor Control Policy Directive, ‘Minors in Liquor-Primary Establishments’:

Government has identified the issue of minors and alcohol as a major concern. Studies demonstrate that children are consuming liquor in greater quantity and at earlier ages than before. Alcohol consumption by minors is associated with unwanted pregnancies, smoking, youth violence, poor school performance, youth suicide rates, death and injury from driving accidents as well as negative impacts on the development of the component of the brain responsible for higher level thinking. Government has decided that one of the strategies to reduce the risk of children consuming liquor is to not generally permit minors in areas where the consumption of liquor is a primary activity (2002: 2).

The regulations identify a few exceptions to the exclusionary rule. Minors may be present in liquor primary establishments if they have been hired to entertain the customers (section 9(a)(i)). They also may be present in licensed stadiums and concert halls, as well as in licensed trains, planes, and ferries (section 9(a)(iii)). There is also a third more



## Blurred boundaries

discretionary-sounding exception, covering those situations in which ‘they are allowed to be in the establishment by the general manager in the public interest’ (section 9(a)(ii)). The policy directive makes it clear that the exercise of this discretion will be the exception rather than the rule:

Liquor-primary establishments will not generally be allowed minors in the areas where liquor is consumed under other circumstances unless the licensee can establish that it is in the public interest to permit minors in the establishment. This is a different test than establishing it is not contrary to the public interest. Rather than establishing that there is ‘no harm’ in letting children in the area, the applicant must establish that the benefit to the public is greater than the harm that government has identified in setting the policy of not permitting access by minors (BC 2000: 3).

Through the use of ‘food primary’ and ‘liquor primary’ licences, the legal texts construct a space that explicitly excludes minors. It does so to protect children from harm. The risk of harm is so significant that it justifies a shift in the traditional harm principle: it is not enough to show there is no harm to the child, one must go further and show that there is some sort of *public benefit* in bringing a child into such a space. It is not for the parent to make this decision on her or his own. The legal texts embed the presumption that the state is better placed than the parent to decide where a child should be. If a parent is not able to behave responsibly, the law will step in to protect the child.

But the child that is the focus of this attention — this ‘minor’ — is a very strange child indeed. It is an oddly amorphous, genderless, raceless, classless, ageless sort of thing. The legislation conflates the 3 week old, the 5 year old, the 10 year old and the 18 year old. There is no attention to the different needs those various children might have (though one might think that the law does have a specific kind of child in mind, since the harms identified in the policy directive speak of sexual activity, pregnancy and the ability to drive a car). The law finds it unnecessary to attend to the multiplicity of actual human beings bundled behind the semiotic marker of ‘the child’. In reducing that multiplicity, the law occludes variable patterns of growth and development.

## Johnson

But it goes further. Just as the famous Lennart Nilsson photos of the foetus in development render the body of the mother invisible (1977), the legal texts conceptualise ‘the child’ in a manner which occludes the specificity of their relationships to particular caregivers. Rendered invisible are the connections — ways in which the relationship between child and caregiver might make it relevant to think about what it means to exclude the ‘neutrally constructed amorphous child’. With its focus on ‘the minor’, the text obfuscates and denies the interpenetrations of the bodies of children and adults. It shuts its eyes to the difficulties of blurred boundaries. And it is to the corporeality of one such blurred boundary that I turn. I do so conscious of Vivian Sobchack’s reminder that critical thought must include an understanding of *our own* bodies: ‘bodies not merely as they are objectively seen, but also as they are subjectively and synoptically and synesthetically lived, as they enable and contain the very meaning and mattering of matter, as they give gravity to semiotic production and circulation, and suffer as its very ground’ (1999: 47).

*To insert the body as subjectively felt and lived into a discussion of law and space? Easier said than done. Where are the models for talking about the felt experience of breastfeeding? Not exactly a common topic of dinner conversation. To talk about breastfeeding is to breach some fairly significant social boundaries, to risk exposure and embarrassment: like leaving a zipper undone, or forgetting to close the bathroom door. It is hard to know how to start. How about here ...*

*I grow up in a large family. The oldest of both 8 children and 40 grandchildren, I see plenty of babies latched onto their mothers. And yet, all the experience of seeing does not prepare me for the visceral experience of being a nursing mother. I am less well acquainted with the breast than with the baby bottle. I imagine that my breasts will function somewhat like the bottle, with its rubber nipple: a single stream of milk coming from the centre, the flow easily started and just as easily stopped with a simple tilting*

## Blurred boundaries

*of the bottle. I do not imagine something more akin to a shower head, milk spraying in all directions. I am unprepared for the sense of shock and disbelief I feel the first time milk shoots from my own uncovered breasts. In confusion, I think the jets of fluid are coming from the baby I am in the process of trying to diaper. I am unprepared for the lack of control I feel in those moments when, hearing some other woman's baby cry, my own breasts tighten as if a giant rubber band has been wrapped around my chest, and warm milk streams down my front, soaking my clothes.*

*And there is engorgement, the felt experience of milk produced and stored, but not yet delivered. In the first few weeks of nursing, I go to a conference. Steve takes Alex for a walk while I listen to a panel. At the end of the session, I can't find them. It has been hours since the last feeding. My breasts starting to leak, I race frantically around the buildings trying to find them. I feel panic, urgent desperation and single-mindedness of thought I can compare only to the feeling of sitting in a darkened movie theatre, having drunk the entire 'super-large-colossal-beverage', and being trapped between two people who will not move, with at least 15 minutes to go in the movie. I feel a desperation that practically overwhelms all rational thought. I don't have a breast pump, and have not yet tried to express my own milk. I cloister myself in a narrow bathroom stall, and kneel down on the hard floor. Shirt pulled back, face flushed with humiliation, I inexpertly try to express my own milk into the toilet to relieve the unbearable pressure in my stone-hard breasts. My body teaches me that I must keep my baby close. I need to travel with my vacuum-attachment-like child in order to minimise the pain of engorgement, and ensure that my body will not leak across the boundaries of the socially acceptable. Where he cannot go, neither can I. We two are connected.*

*With my second child, the connections are even tighter, the boundaries more blurry. He is violently allergic to both dairy and soy. I cannot use commercial formula. He must be breastfed for the first two years of his life. But everything I eat passes into my breast*

## Johnson

*milk; I must pay obsessive detail to ingredient labels. Sometimes a bit of modified milk ingredient, or soy lecithin, or caseinate finds its way into my meal. I pay a high price: the baby vomits, cries and has diarrhoea for the next 36 hours. Though I have no allergies of my own, I must eat as if his allergies are mine. I stop asking whose allergies they are: they are 'our' allergies. We two are connected.*

*A vast and shifting range of feelings are tied up with the experience of nursing: panic, pleasure, resentment, joy, claustrophobia, amusement, ambivalence, gratitude. Our bodies are linked. The boundary between self and other is blurred for us both. I am not him. He is not me. And yet, the contact of his mouth on my breast softens the fixity of the boundary. He draws milk from my body to his. His growth and very life are contingent on this porosity of the boundary between us. My life is not similarly contingent on him. And yet, this process of nursing leaves an embodied mark on me as well. The porosity of boundary has implications for how I live in my own body, for where I live in my own body. We two are connected...*

I am not focusing on the breast-feeding woman as some sort of 'ideal'. There are many reasons why women choose, refuse, or are denied the opportunity to breastfeed; I do not think that nursing or not-nursing determines the quality of relationship between a parent and child. It is rather that I find it valuable to use the blurred boundaries around the nursing mother/child dyad as an entry point for examining how the liquor licensing regime participates in the (gendered) construction of legal space. I find Moran's observation particularly insightful here:

Boundaries connote lines that divide, separate and distribute, suggesting lines that have clarity, that are impermeable, stable and fixed. This threatens to erase interconnections, proximities, and instabilities and make us blind to the political dimensions of boundary sites and boundary events (2003: 90).

Asserting the need to protect the strangely improbable construct it calls 'the minor' — a construct that conflates the needs of the 6 week

## Blurred boundaries

old with those of the 16 year old — the liquor licensing regime demonstrates a blindness to the interconnections, proximities and instabilities that mark the blurred boundaries of the nursing mother/child dyad. This blindness is not politically innocent. The liquor licensing regime plays a very real role in the construction of gendered space, gendered identities, and gendered bodies (Johnson 2005).

The legislative regime is far *less* concerned with child protection than the explicit wording of the text might suggest. I am persuaded by Castañeda, who argues that the body of the child is often deployed as a ‘figuration’: a resource for wider cultural projects (2002: 2). In the liquor licensing texts, I see the ‘figuration’ of the child being made to do a certain kind of *work*: being made to play a material and semiotic role in the larger project of maintaining the gendered and sexualised world of a public space. The text’s ostensible protection of the child functions not to ‘protect’, but rather to press actual children, and those connected to them, out of public view.

Certainly, as a breastfeeding woman, public space became visible to me in new and increasingly hostile ways. I was always on the lookout for a place to sit and nurse. Countless times, people approached to let me know there was a mother’s room available close by. It was difficult to know what to make of these interventions. Touring the British National Gallery, I didn’t see why I should spend 20 minutes sitting in a bathroom nursing a child while staring at the walls and stalls, when I could be doing the same thing while looking at the paintings. Perhaps some were approaching me in the spirit of helpfulness, worried that I was uncomfortable and didn’t know a quieter space was available. But others seemed very uncomfortable with my presence.

The interventions were complicated because the interveners were sometimes ‘ordinary’ people, and sometimes people with ‘formal’ status: security guards, sales clerks, ticket takers, art gallery attendants, food service personnel. It was difficult to know whether they were offering personal advice, or enforcing a law or policy of the institution. I didn’t know how to respond, whether to thank them politely for thinking about my comfort but explain that I preferred to remain where I was; to retreat to a less comfortable environment if the discomfort I was causing to

## Johnson

others was too extreme; or to engage in civil disobedience. Every encounter, whether well-intentioned or not, reinforced a regime in which my presence in public space was an issue of some sort. Even without legal prohibitions, I often found it easier to restrict my own mobility, than to negotiate the terrain of social (and possible legal) discomforts and punishments. The experience of being a nursing woman made space hyper-visible to me: large portions of 'the public' had become inhospitable, other portions, completely inaccessible.

The inhospitability of space is felt not only by the nursing mother, but is shared by others (male and female) who have persistent connections to little ones. Consider, for example, the 'bathroom question' confronted by anyone who is travelling with a small child in need of a diaper change. Not infrequently, the bathroom is not big enough to accommodate a stroller. The parent must leave the stroller outside, hoping it will not be stolen, and must carry the baby in. If the parent also needs to use the toilet, they end up sitting in a narrow stall, trying to pee while holding a baby. Inside the bathroom, there is not always a baby change table. One can sometimes find space on the counter, though the sinks are often so close to each other that there is insufficient space to change a baby. Of course, few people appreciate a soiled diaper being changed beside them while they are washing their hands. The fall-back position is the floor. Aside from questions of hygiene, this position also produces sore knees and an aching back for the person kneeling over on a cold tiled floor. A change table makes the process less onerous for both the baby and the adult. Because women's bathrooms remain much more likely than men's bathrooms to be so equipped, there is also a structural incentive for a messy baby to be sent off with its mother rather than its father.

Butler argues that the very materiality of sex itself is constructed through a ritualised repetition of norms. As she notes, to claim that sex is constructed does not explain how the 'materiality' of sex is forcibly produced. As she asks, 'what are the constraints by which bodies are materialized as sexed? What bodies come to matter, and why?' (1993: xi) To this, one might add, 'and *where*?' The experience of looking for places to eat, to nurse a baby, to diaper a child, makes visible how the

## Blurred boundaries

structure of public space plays a role in the ritualised repetition of gendered norms for childcare. It reinforces a symbolic regime which presses children into the arms of mothers, and presses mothers out of public space, back towards the home (Buchanan & Johnson 2005).

*I sit at home on the couch, reading while nursing the baby: a Canadian study of attitudes on breastfeeding reports that most nursing mothers remain housebound or restricted in movements while breastfeeding (Samuel 1997). I read further. Another study reports that 90% of women who wished to, but did not breastfeed said they had not been able to do so for reasons beyond their control. Women who wished to breastfeed proved, in practice, unable to do so. (Balsamo 1992: 61). I am unsurprised. I slide a finger down by Duncan's mouth to break the seal, flip him over to the other side, and pick the paper up again ...*

The routine functioning of liquor licensing laws plays a part in the construction of gendered space, space that is hostile not only to children, but also to the (disproportionately female gendered) bodies of those who have persistent and sticky connections to those children. Pubs have had a history of legal regulation, regulation that was most often explicitly designed to construct and maintain gendered spaces. At the time of the temperance struggles, for example, male public drinking (whether in high status men's clubs, or lower status saloons) was a potent badge of masculine identity, and both the men's club and the saloon were strictly male spaces (Murdock 1998: 14). While social dictum would have kept most respectable women out of such places, the gendering of these spaces was also enforced by gender-specific law and policy (Gutzke 1994). As with gender, so too with race: liquor licensing regimes have played an influential role in creating white supremacist colonial spaces (Mawani 2002). Contemporary struggles over discrimination have led to the dismantling of most formal barriers to entry, whether to politics or to the pub. The British Columbia law is an exemplar of formal equality. It is only *the child* that is excluded from sites of public drinking.

## Johnson

But it is worth re-interrogating the distinction between licensed restaurants and licensed pubs. Both sites provide food and alcohol, and it is not always simple (even for liquor inspectors) to determine whether the primary purpose of the site is the food or the liquor side of the business. Let us put to the side the issue of child protection, and ask what other purposes the distinction might serve? Mary Douglas would remind us that drinking plays a role in the structure of social life, participating in constructing 'the world as it is' (1987: 3). The structure of social life includes a division into zones of work time and play time. Alcohol has often facilitated the passage between these zones. It is useful to ask some questions about context, that is, where and how and with whom is liquor consumed?

The pub, Gusfield argues, is a site of 'cultural remission', one which allows the conventionalised relaxation of social controls over behaviour (1987: 78). The pub, though providing food as well as drink, is symbolically a site of leisure, a site to be contrasted both with home and with work. Alcohol is an important part of making possible this particular site: it breaks down social barriers, sets the mood for play, offers a cover for responsibility, and authorises one to 'have fun'. But the physical presence of children enacts a disruption. They trouble the passage to the site of leisure, serving as visible reminders of home, responsibility and obligation. Though alcohol is also present in the restaurant, the restaurant is symbolically proximate to the home, functioning largely as a site of food and nourishment. As such, children are less troubling here: both children and the restaurant are markers of home.

Against this symbolic order, I want to return to the liquor licensing texts. Smith reminds us that, in our text-mediated societies, texts are far more than simple 'ideas'. They enter into the construction of social and physical environments by coordinating activity, they are 'key devices in hooking people's activities in particular local settings and at particular times into the transcending organization of the ruling relations' (2001: 164). Texts do real work. And what kind of work do these liquor licensing texts do? On the most explicit level, they construct a physical and social space that is childless. But the texts do not simply operate to remove



## Blurred boundaries

children. They also deny entry to those who have persistent connections to children. This happens through the operation of three different kinds of discriminatory adverse effects.

The first set of effects can be identified in the language of gender neutrality. Though the primary target is the child, the effect is the exclusion of any adult who is accompanied by a child. The pubs that denied me entry would also have denied entry to my brother, travelling with his little boy. So too would they have denied access to my parents, if they had been out for a day with the grandchildren. Thus, there is a gender-neutral adverse effect on parents, or caregivers. There is also a second set of gender-specific adverse effects. The current design of the work/family dyad continues to create different headwinds for men and women — headwinds that push and tug men in the direction of ‘the ideal worker’ and women in the direction of ‘domesticity’ (Williams 2000). The results of these headwinds are so well known that the Supreme Court of Canada took judicial notice of the fact that women disproportionately bear the social costs of childcare (*Symes v Canada*: 763). To the extent that women remain more *likely* than men to be travelling in the company of children, the ‘neutral’ exclusion will also produce some gendered effects, having a disproportionate impact on female caregivers. And, of course, we can return to the body of the breastfeeding woman, to see how the law also generates a third set of sex-based adverse effects. To the extent that her body is materially interwoven with the body of her nursing infant, the exclusion of the child necessarily entails the exclusion of the nursing woman.

Three sets of effects are put into play through the explicit exclusion of the child, effects that can be understood primarily in terms of sex/gender discrimination, or in terms of (gender-neutral) family status discrimination. While it is useful to keep these operations analytically distinct, one might note that, from the position of the nursing mother, the distinction loses some purchase: Is she *really* being excluded because of her gender? Is she *really* being excluded because of her family status? Whichever lens of analysis is chosen, she remains on the outside.

## Johnson

It has been many years since activists began to dismantle laws which explicitly denied women entry to bars and public houses. One could be forgiven a moment of cynicism in noting that the new legislative regime, one couched in the language of utmost formal neutrality, one aimed at the incontrovertible social good of child protection, nonetheless sustains the boundaries of a still gendered public space and social roles. Women may be present in pub space, but they may not carry in with them the visible markings of maternity (Johnson 2005: 194). Nor may fathers make visible any changes in their practices of parenthood by entering the pub in the role of primary caregiver. The space of the pub retains its character as a (gendered and sexualised) space of leisure and release from the visible marking of obligation, particularly of those obligations that are wrapped up with the bodies of children.

The liquor licensing regime makes participation in and enjoyment of public space (particularly the spaces of public entertainment and business) contingent on the ability to sever (or at least put to one side) evidence of connection to those who require care. I am reminded of Bauman's observation:

What is valued today (by choice as much as by unchosen necessity) is the ability to be on the move, to travel light and at short notice. Power is measured by the speed with which responsibilities can be escaped. Who accelerates, wins; who stays put, loses. ... Attachments to objects with a long life expectation goes against the precept to stay slim, light and fit. But that precept, in its turn, militates against taking up moral responsibilities, which may lead to commitments, obligations and other 'burdens' which would be rather, with the rest of the ballast, thrown overboard from the hot-air balloon (Bauman 2001: 95).

The body of the nursing mother makes visible some of the persistent gender and sex-based exclusions of our current distributions of public obligation and public leisure.

In invoking 'sex' as distinct from 'gender', I am conscious of de Beauvoir's insight that woman is made not born (1952). While I agree that talk about 'sex' often proceeds in a fashion which can too easily assume the matter of 'nature' to be given (Butler 1993: 9), I still find it

## Blurred boundaries

important to return to questions of embodiment, to emphasise that some experiences of exclusion are very much tied up with issues of biology. While the meanings and manners of breastfeeding are largely socially constructed (Maher 1992), there remains nonetheless a lingering kernel of 'the real' — an intransigent issue of biology that simply cannot be imagined away. And yet, the liquor licensing regime, with its language of formal neutrality, and its focus on child protection, does exactly that. It imagines away 'the real' — and it imagines away the interpenetration of bodies and selves. While the leaky body of the nursing woman should not be invoked as a site of some higher truth, attention to the materialities of her body ought to make us ask questions about her place in the ruling relations. Her location and experience can make visible a broader range of interconnections, proximities, and instabilities; can reveal something more about the concrete design of legal space, and the larger structures of power in which we *all* participate, in which are *all* implicated.

In this context, I see the operation of the liquor licensing laws in a different light. The laws participate in constructing a very embodied kind of public space. The focus on child protection serves to construct a site of public leisure in which visible indicators of responsibility or obligation are excised. Women and men may enter on the condition that they check all markers of childcare at the door. The legislation functions like the 'Child Catcher' in *Chitty Chitty Bang Bang*, sniffing out any evidence of children, moving them to the darkness of the private dungeon, constructing an adult space of play: a space for adults who have no obligations, or who can temporarily set them to the side, while they engage in their own fantasy of a world free from responsibility.

*I sit at the computer screen. Finished? I am not sure. In some senses, I suppose. Finished nursing, in any event. The boys are growing. They have long since been weaned. We remain connected, but my body no longer enforces such harsh discipline on me. One day, several months ago, Steve rearranged the furniture. He shifted the couch, and I saw the distinctive markings of a spray of white droplets*

## Johnson

*dried on the side of the dark leather. I have long since stopped nursing, but continue to find reminders in unexpected places. I stand beside the couch, wet cloth in hand, and smile, remembering the woman who told me that leather is the friend of the nursing mother. I feel a strange momentary pang of loss, and then wipe the couch clean. Yes. The fantasy of a world free from responsibility.*

## References

- Age of Majority Act* [RSBC 1996]
- Balsamo F et al 1992 'Production and Pleasure: Research on Breast-Feeding in Turin' in Maher 1992: 59–90
- Bauman Z and Tester K 2001 *Conversations with Zygmunt Bauman* Polity Press Cambridge
- BC 1997 Government of British Columbia *Liquor Licensing Operating Manual* Section 10.1
- 2002 Government of British Columbia Liquor Control and Licensing Branch *Policy Directive No: 03-03 'Minors in Liquor-Primary Establishments'* 3 March
- 2005a Government of British Columbia, Ministry of Public Safety and Solicitor General, Liquor Control & Licensing, 'Licensing facts and figures' (last accessed 11 May 2005)
- <http://www.pssg.gov.bc.ca/lclb/branch/facts-figures.htm>
- 2005b Government of British Columbia, Ministry of Public Safety and Solicitor General, Liquor Control & Licensing, Licensing, 'What documentation will I need?' (last accessed 11 May 2005) <http://www.pssg.gov.bc.ca/lclb/applicants/restaurants/documentation.htm>
- 2005c Government of British Columbia, Ministry of Public Safety and Solicitor General, Liquor Control & Licensing, Licensing, 'What documentation will I need?' (last accessed 11 May 2005) <http://www.pssg.gov.bc.ca/lclb/applicants/bars-pubs/documentation.htm>
- 2005d British Columbia Ministry of Public Safety and Solicitor General, Liquor Control & Licensing Branch, 'Licence Fee Schedule » (last revised 04/2005) <http://www.pssg.gov.bc.ca/lclb/publications/fees/LCLB010.pdf>

## Blurred boundaries

- Belleau M C and Lacasse F eds 2004 *Claire L'Heureux-Dubé à la Cour suprême du Canada, 1987-2002* Wilson & Lafleur Québec
- Belleau M C and Johnson R 2004 'La dissidence judiciaire : réflexions préliminaires sur les émotions, la raison et les passions du droit/Judicial Dissent: Early Reflections on Emotion, Reason and Passion in Law' in Belleau and Lacasse 1992 : 699–719
- Buchanan R and Johnson R 2005 'The *Unforgiven* Sources of International Law: Nation-building, Violence, and Gender in the West(ern)' in Buss and Manji 2005: 131–58
- Buss D and Manji A eds 2005 *International Law: Modern Feminist Approaches* Hart Publishing Oxford
- Butler J 1993 *Bodies That Matter: On the Discursive Limits of 'Sex'* Routledge New York
- Castañeda C 2002 *Figurations: Child, Bodies, Worlds* Duke University Press Durham NC
- de Beauvoir S 1989 *The Second Sex (1952)* Vintage Books New York
- de Certeau M 1984 *The Practice of Everyday Life* University of California Press Berkeley
- Douglas M 1987 *Constructive Drinking : Perspectives on Drink from Anthropology* Cambridge University Press Cambridge
- Douglas M 1987 'A Distinct Anthropological Perspective' in Douglas 1987: 3–15
- Eisenstein R 1994 *The Color of Gender: Reimagining Democracy* University of California Press Berkeley
- Fried M G ed 1990 *From Abortion to Reproductive Freedom: Transforming a Movement* South End Press Boston Mass
- Gusfield J R 1987 'Passage to Play: Rituals of Drinking Time in American Society' in Douglas 1987: 73–90
- Gutzke W 1994 'Gender, Class, and Public Drinking in Britain During the First World War' *Histoire Sociale/Social History* 27: 367–91
- Holder J and Harrison C eds 2003 *Law and Geography* Oxford University Press Oxford
- Johnson R 2004 'Bars, Breasts and Babies: Madame Justice L'Heureux-Dubé and the Boundaries of Belonging' in Sheehy 2004: 139–57

## Johnson

- Johnson R 2005 'Law and the Leaky Woman: The Saloon, the Liquor Licence, and Narratives of Containment' *Continuum: Journal of Media and Cultural Studies* 19/2: 181–99
- Kasirer N 2005 paper at the Legal Spaces conference
- Liquor Control and Licensing Act* [RSBC 1996, chapter 267]
- Liquor Control and Licensing Regulation* [BC Reg 244/2002, OC 792/2002]
- Maher V ed 1992 *The Anthropology of Breast-Feeding: Natural Law or Social Construct* Berg Publishers Oxford
- Mawani R 2002 'In Between and Out of Place: Mixed-Race Identity, Liquor, and the Law in British Columbia, 1850-1913' in Razack 2002: 49–69
- Moran J 2003 'The Queen's Peace: Reflections on the Spatial Politics of Sexuality in Law' in Holder and Harrison 2003: 85–107
- Murdock C G 1998 *Domesticating Drink : Women, Men, And Alcohol In America, 1870–1940* Johns Hopkins University Press Baltimore Md
- Naficy H ed 1999 *Home, Exile, Homeland: Film, Media, and the Politics of Place* Routledge London
- Nilsson L 1977 *A Child is Born* Delacourte Press New York
- Pearsall M ed 1986 *Women and Values: Readings in Recent Feminist Philosophy* Wadsworth Publishing Company Belmont Ca
- Razack S ed 2002 *Race, Space, and the Law: Unmapping a White Settler Society Between the Lines* Toronto
- Samuel J 1997 In *The Canadian Nurse* February: 47–8
- Sheehy E ed 2004 *Adding Feminism to Law: The Contributions of Justice Claire L'Heureux-Dubé* Irwin Law Inc Toronto
- Smith D E 1987 *The Everyday World as Problematic: A Feminist Sociology* Northeastern University Press Boston
- 2001 'Texts and the Ontology of Organizations and Institutions' *Studies in Cultures, Organizations and Societies* 7: 159–98
- Sobchack V 1999 "'Is Any Body Home?': Embodied Imagination and Visible Evictions' in Naficy 1999: 45–61
- Solinger R 1992 *Wake Up Little Susie: Single Pregnancy and Race Before Roe v Wade* Routledge New York
- Symes v Canada* [1993] 4 SCR 695

## Blurred boundaries

- Thomson J J 1986 'A Defense of Abortion' in Pearsall 1986: 268–78
- Weitz R ed 1998 *The Politics of Women's Bodies: Sexuality, Appearance, and Behavior* Oxford University Press New York
- Williams J 2000 *Unbending Gender: Why Family and Work Conflict and What To Do About It* Oxford University Press New York
- Wilson C 2005 'They're full of beans' *Victoria Times Colonist* May: C3
- Young I M 1998 'Breasted Experience: The Look and the Feeling' in Weitz 1998: 125–36