Home Invasion

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Abstract

This article discusses the debate on the Crimes (Home Invasion) Amendment Bill (1999), in which the New Zealand Parliament was engaged in forming a definition of home. The article traces the debate and the versions of home that surfaced**,** then draws upon de Certeau’s space/place discourse in order to speculate on the concept of home that the legislature arrived at.

Keywords

home legislation, home gender, Michel de Certeau, New Zealand law, home invasion

Introduction

The New Zealand Crimes (Home Invasion) Amendment Act (1999), surfaced in the year of a general election as a response to a perceived climate of “rising crime,”[1] with the intimate and disturbing details of recent “home invasions” circulating in the media. In the legislative and public debate that surrounded the first and second readings of the Crimes (Home Invasion) Amendment Bill,[2] a definition of home was sought; a definition that could place the home as a significant site, in order that a lengthier custodial sentence could be bestowed upon the convicted perpetrator of a *home invasion* crime.

The rhetoric surrounding the presentation of the Bill exposed many conflicting assumptions regarding commonly held understandings of home. “Home” was readily collapsed with “house,” assumed to be a physical entity with identifiable interior and exterior conditions, and a place of security and privacy. It was located as a gendered

site, with politicians declaring the need to protect the grandmother, the mother, and the wife, in the home. While drawing to some extent from discussions in law and anthropology, in this article an architectural lens is employed to consider the formal properties of home that were discussed throughout the Bill's progress, and the version of home arrived at when the Bill was made into law. Michel de Certeau's notion of the place/space relation is then employed in order to unravel the complex positions regarding home that surfaced.

"Home invasion" as a term is not exclusively linked to the New Zealand cultural context;[3] however, this article will be concerned with the specifics of the New Zealand debate. The spatial and cultural references in terms of the concept of home drawn upon in the debate are somewhat unique. Housing histories and typologies, the urban form and geography, the immigration patterns and bicultural context of this country, all provide the specific context in which this debate was formed. It is the contention of this article then, that the debate that emerged, while resonating with those from other sociocultural contexts, was intimately related to the specific conditions that propagated it, in this country.

Place and Space in de Certeau's Project on the Everyday

Ben Highmore describes the philosopher Michel de Certeau's project on the everyday as that of championing the "clandestine tactical arts" of the weak over the "strategic and powerful" projects of institutions (Highmore 2002: 147). Everyday life is the scene from which these tactics emerge. The everyday, for de Certeau, is characterized by creativity and inventiveness, where acts of re-employment and appropriation are carried out to re-form culture.

In examining the properties of the everyday, de Certeau navigates a difference between place (*lieu*) and space (*espace*). For de Certeau place is aligned with order, the institution, stasis, and the proper. In places, elements are distributed with proper, clear, and distinct relations. De Certeau says of place:

> The law of the "proper" rules in the place: the elements taken into consideration are *beside* one another, each is situated in its own "proper" and distinct location, a location it defines. (de Certeau 1984: 117; original italics)[4]

Place then requires that positions are always configured and fixed: places maintain stability. de Certeau contrasts this with space, which, in his discourse, comes into being as the result of tactics and actions. For de Certeau, space operates in relation to time and movement. It is generated or activated by vectors of direction and intersection, by variables and mobile elements. According to de Certeau, space, "occurs as the effect produced by the operations that orient it, situate it, temporalize it" (de Certeau 1984: 117).

To clarify this dialectic further, de Certeau makes a useful analogy between the place/space relation and that of text/speech. While the written text, with is grammatical structures and rules, is aligned with place and the proper, space is aligned with speech, with its "ambiguity" of actualization (de Certeau 1984: 117). Space therefore is the realm of the improper and unstable. As speech enacts the transgression of the proper rules of grammar and syntax so space may allow for the transgression of "proper" order. In short, the relationship between place and space is described by de Certeau thus, "*space is a practiced place*" (de Certeau 1984: 117; original italics).

This article will begin with a description of the home invasion legislation, followed by a general discussion on the home as a concept in law. A discussion of the particular version of home that the debate and legislation arrived at will also be given. Finally, de Certeau's discourse on the place/space relation will be returned to. This particular place/space relational model will prove useful in understanding why arriving at a definition of the meaning of home, as occurred in this specific location and context, became so problematic.

The Legislation and the Climate of "Rising Crime"

The Government introduced the Crimes (Home Invasion) Amendment Bill to the New Zealand Parliament in March 1999, an election year.[5] The intention of the legislation was to provide a mechanism whereby longer prison sentences could be conferred by the judiciary upon those who were convicted of committing a crime within an occupied home that they had unlawfully entered, or had remained within once their license to enter had been revoked by the occupier.[6]

By introducing the Bill the Government sought to assert the “special” nature of the home and they claimed that the Bill would send, “a powerful message to the judiciary and to the police. The courts will see that the public will expect a firm treatment of those who commit violence on individuals or families in the sanctuary of the home” (House of Representatives 1999a, March 2: 15161). The opposition parties perceived the Bill as a cynical electioneering ploy, through which the Government could be seen to be “getting tough” on crime.[7] Further critique of the Bill from the opposition centered on the question of whether sentence length acts as a deterrent to potential criminal offenders.[8]

The Bill proceeded through the required three readings and the select committee process and was passed into law as the Crimes (Home Invasion) Amendment Act 1999, an amendment to the Crimes Act 1961. It came into effect on July 1, 1999.

The introduction of the Crimes (Home Invasion) Bill was preceded by a number of violent crimes in rural communities of the central North Island. In December of 1998, Beverly Bouma and her husband Hank, dairy farmers in the remote area of Reporoa, were brutally attacked by four masked and armed men who burst into their home. The couple resided in a “modest farmhouse” (Sell 1998[a]: A1), on an isolated farm bordering the Kaingaroa forest, between the tourist centers of Taupo and Rotorua. The attackers stole the couple’s bankcards and forced them to reveal their security pin number. Hank was bound and gagged and Beverly was murdered. Taking the couple’s car the attackers withdrew cash from the Bouma’s bank account as they traversed the hinterland of the central North Island.

This murder was widely reported as shocking for an already traumatized community that had seen a spate of similar crimes. The murder of Beverly Bouma came five months after four men attacked another Reporoa farming family, Allan and Beth Crafar and their three children, in their home, less than ten kilometers away. Only weeks later armed intruders attacked a man and two women in their home at Kaingaroa, about fifteen kilometers away from the Bouma residence.

In the weekend following Mrs Bouma's murder a national newspaper reported that, "violent attacks on people living in rural tranquility are becoming an alarming trend" (MacLeod 1998: A17). Headlines reporting this event were as follows:

> Brutal killing of "a great Mum" (Sell 1998a: A1)
> Mother shot dead for $2000 (Sell 1998b: A1)
> Rural fear and loathing as killers on the prowl (MacLeod 1998: A17)

While the term "home invasion" had appeared in the New Zealand press prior to this crime being committed,[9] the imported term "home invasion" was never used in an article, either in a headline or the body text, to describe the murder of Beverly Bouma. It is difficult to trace the relationship between the use of the term "home invasion" and this particular murder however there is no doubt that those promoting the Crimes (Home Invasion) Amendment Bill, as it was introduced to Parliament, did so while capitalizing on its currency in the media. National MP Wayne Mapp clearly situated the proposed legislation as responding to this particular event when he said, "There is no doubt that one of the motivating factors for this Bill was the event in Reporoa—the brutal attack of Mrs. Bouma in her home, extending over many hours" (House of Representatives 1999a, March 2: 15176).

The Home in Law

In making legislation, precise definitions of terms are required in order that the courts may interpret the legislation as was intended by the Parliament. In the debate on the Crimes (Home Invasion) Amendment Bill, a legal definition of "home" was therefore sought. This article concentrates on the Parliamentary and public debate coalescing around this Bill, and is not concerned with a broader discussion of the concept of home within a legal framework.[10] However, "home," within a legal policy context, has proved difficult to define and defend, and a brief discussion of this is useful to situate this particular legislative issue.

The difficulty of adequately defining "home" in a legal sense has not only arisen in relation to the idea of the "home" being "invaded." Homes, whatever their typology and providence, constitute a large and important part of both the global economy and built environment. While their form and temporality varies greatly, the home is a

universal condition and its importance in terms of physical amenity (shelter), psychological growth and stability, identity, and the enactment of cultural processes is recognized and explored through many disciplinary positions (see Altman and Werner 1985). The idea of home is pervasive, and the legislature and judiciary, in various jurisdictions and contexts, have acknowledged the particular significance and value of “home.”

In a historic sense there are examples of the home acquiring special juridical meaning in relation to violent crime such as murder. In early Nordic law special sanctions came into force regarding attack in the home, sanctions that became greater the closer one got to the center of the home (the seat of honor; Benjamin 1995: 296). Contemporary examples of legal frameworks in which the special nature of the home has been considered include tax law (exemption from capital gains tax for homes in some jurisdictions), family law (recognition of the matrimonial home in divorce settlement), the loss of a house occupied as a home under the terms of compulsory purchase, and some land law contexts.[11] The home is also given special consideration under the European Convention on Human Rights**.**

It can be assumed then, that in these various contexts, in order to weigh the competing interests in a legal case concerning home, or in forming legal policy concerning home, a definition of home would be required, and it is useful to look briefly, in a general sense, at why the law has had difficulty with such a definition.

In her research on the home in law,[12] Lorna Fox articulates the problem of the definition of the home within a legal context. According to Fox, the home in a legal sense is readily understood as a house, a physical structure, and an economic asset. Fox sees the problem of the home in law, and this prevalence of reducing “home” to “house,” as residing in the law’s preference for rationality, for objectively definable, provable interests. Fox says that:

> the relationship between an occupier and his or her home, inherently intangible and difficult to define, is not readily comprehensible to lawyers. Legal analysis tends to favor the rational, the objective and the tangible [...] the idea that the home bears specific and identifiable meanings beyond the

> physical structure or capital value of the house remains, to the legal perspective, an unverifiable and illusive position. (Fox 2005: 34–5)

Fox contends that some difficulty in recognizing home as having weight in a legal dispute stems from the fact that the notion of home is seen as "sentimental and emotive" (Fox 2002: 586), and is therefore easily trivialized, "particularly when measured against the objective and quantifiable claims of creditors to the capital value of the property" (Fox 2002: 586). Fox identifies a lack of a solid ground in terms of a legal concept of home. Home she says, "presents challenges of definition and measurement, and, as an ultimately experiential phenomenon is difficult to prove" (Fox 2002: 607). In the law, the case for *home* then, is readily displaced by the asset of the *house,* and once this emphasis on the "exchange value" of the property takes precedence in creditor/occupier disputes,[13] the law tends to find in favor of the more readily understood contractual claims of the creditor.

These two reasons then, the fact that the law prefers the rational and the objective, while the home is seen as a sentimental concept, contribute to the current position whereby the home as a concept in law, in the Western tradition, has only occasionally moved beyond the object of the house and the property rights associated with the house and surrounding land. While she acknowledges some impact of the concept of home in law when made in relation to the *family home*[14] Fox says:

> Although law is not inherently unable to accommodate a coherent concept of home, developments in other disciplines have yet to make any significant impact on legal reasoning and, if anything, the historical shift has been *away* from *home*-oriented thinking in law. (Fox 2007: 523)

One instance where the law has recognized the home as having unique properties, and where the home has not been reduced to the object of the house, is the European Convention on Human Rights. Article 8 (1) of the convention states that, "everyone has the right to respect for his private and family life, his home and his correspondence" (European Court of Human Rights (ECHR) Registry (Research Division) 2007). Through case law the European Court of Human Rights has defined

home as, “the existence of sufficient and continuous links with a specific place” European Court of Human Rights (ECHR) Registry (Research Division) 2007). Home, through case law associated with Article 8, includes non-fixed abodes such as caravans, being resident in houses belonging to others if this is for a significant period, and is not limited to residences that have been lawfully established. It has also been established that home in relation to Article 8 may apply to “business premises in the absence of a clear distinction between one’s office and private residence or between private and business activities” (European Court of Human Rights (ECHR) Registry (Research Division) 2007). Under Article 8 it would seem that the actual object of the house, the “bricks and mortar” is less significant in terms of home that the temporal aspects, the time spent maintaining “sufficient and continuous links with a specific place,” home as a *social* rather than a *financial* investment.

The intention of the Crimes (Home Invasion) Amendment Bill was to affirm the home as privileged in relation to other spaces. The Bill sought to assert “the sanctuary of the home” (House of Representatives 1999a, March 2: 15161), and the Parliament was thus required to define the “home” that might be “invaded.” It is commonly understood, and empirical research demonstrates (Sixsmith 1986) that the home acquires a meaning encapsulating of, but moving beyond, that of house, and it is this more complex meaning of home, a meaning of home that the law finds conceptually difficult, that the Bill *initially* sought to represent.

Home Territory

Fox, usefully condensing the research of others from various disciplines,[15] identifies four areas of meaning in relation to the home: home as physical structure, offering material shelter; home as territory, a site of security and control, a locus in space offering permanence and privacy; home as a means of identity and self-identity, as a reflection of ones values, ideas, and status; and home as a social and cultural unit, the locus for relationships especially those of family (Fox 2002: 590).

As has been already discussed, Fox sees the law having no conceptual difficulties with the home as house, a physical and material entity, and it is the “physicality of

the house [that] enables the other attributes of the home to be experienced by occupants" (Fox 2002: 592).[16] The function of the house is concrete, "bricks and mortar" readily define the limit of the house and the property law reinforcing these limits is well established. However, in the New Zealand Parliament questions were raised about the nature of this house/container, how far would it extend, what would it include, where was its edge? In this particular context, the context of the "invasion" of the home, the demarcation of the spatial limit of home in itself became problematic.

This relates then to the second of Fox's criteria of home, the home as territory, a site of security and control, a locus in space offering permanence and privacy. The home as territory satisfies a number of social and psychological needs. Dovey, discussing the home through a phenomenological lens, describes the home as, "a center of security, of possessed territory, a place of freedom where our own order can become manifest, secure from the impositions of others" (Dovey 1985: 43). The crucial exercise in this debate on the home invasion legislation then became one of locating the edge and defining the limit of this *home territory.*

The promoters of the Crimes (Home Invasion) Amendment Bill claimed to have "drawn a line around the family home, around the residence"[17] (House of Representatives 1999b, June 29: 17759). If the home is not merely a container, of "bricks and mortar" but is in fact a territory, that offers security, order, and control, those forming the Home Invasion legislation needed to ask how far this territory should extend. To be attacked by an "invader" inside the physical space of the house is one thing but what, the politicians asked, about offenses occurring in ancillary buildings and spaces such as gardens and garden sheds, on front decks[18] and paths or by letterboxes? This difficulty with the range of home territory held particular resonance in Aotearoa/New Zealand where cultural identity and spatial practices have been historically strongly molded by the rural, where the territory of home may extend into a large and open field. As opposition MP Phil Goff noted:

> The other misunderstanding that New Zealanders will have in relation to the term "home" is that they will assume it means the house in which one lives, it might mean the garage next to the house, or the hobby shed, and if one is a

> farmer it might mean the barn or the cowshed. At the very least, “home” might mean the backyard and the front yard of one’s property. That is what most New Zealanders will assume “home” means. But the committee found out that under the original Bill an offender can go up to the doorstep of a home [...] and blow a man away in the sanctity of his own home, but if the offender is standing outside the doorstep he has not committed home invasion. (House of Representatives1999b, June 29: 17761)

Goff’s argument points to the fact that the spatial properties and building typologies of our dwellings affect the perceived limit of the home/territory. For those living in high-rise apartment buildings the shared spaces of foyer and circulation may or may not constitute the territory of home. For those living in a rural context the territory of home may refer to the area immediately surrounding the house and out buildings or it may extend many kilometers to a remote fence-line.

We commonly refer to places other than our houses as “home,” for example when abroad our country of origin is often termed home and for many of us, even though we reside in our own home, the house or place in which we grew up is sometimes referred to as home. Within an even broader context we can say that, “I feel at home (with people, places, ideas, situations, a language etc)” (Rapoport 1995: 27). As Rapoport, who argues against the use of the term “home,” demonstrates (see Rapoport 1995: 46), “home” is revealed as a fluid construction, a construction that is individually, socially, and culturally formed and that can shift with time.

In the context of the Crimes (Home Invasion) Amendment Bill however, the law required a proper and fixed definition of terms. However, much the intention of the Bill was to support the commonly held view of the home as a territory, encapsulating aspects of “haven,” security, privacy, and family, these attributes of home proved too difficult for the objective position of the law, and “home” became conflated with the object of the house. At the final reading of the Bill the then Minister of Justice made this clear; “the definition of the home is that it refers to the house itself and not the outbuildings or surrounding land” (House of Representatives 1999b, June 29:

17759). The Bill as passed into legislation was one of *house* rather than home invasion. The question then shifted, it became that of how to identify the spatial order of the "house/home"—around *what kind* of homes (as houses) could "the line be drawn?

What Constitutes "Home" in New Zealand?

> "Dwellinghouse" means—
> "(a) A building or other structure, or part of a building or other structure, that is used by the occupant principally as a residence; or
> (b) A mobile home, caravan, or houseboat, that is used by the occupant principally as a residence." (Crimes (Home Invasion) Amendment Act 1999, section 17 A)

The home described in the Act is a "dwellinghouse." The "dwellinghouse" is primarily an object, a "building or other structure." Further, this object is located as whole and complete, it is a separate "part," and, even when mobile but "used principally as a residence," the dwellinghouse is a caravan or a houseboat, a discreet unit or container with edges or boundaries differentiated against a wider spatial field.

The legislation concentrates the idea of home within a structure, and, as it does not include the "surrounding land," it assumes that the dwellinghouse sits on such "surrounding land," that is, in an open, contrasting spatial field. This suggests that the dwellinghouse is placed in a suburban context, where a detached house sits wholly within delineated and legally constituted property boundaries. All dwelling typologies that operate with a different spatial and/or programmatic arrangement, and with a less clear demarcation of containment, have to be therefore considered counter to home as defined in the Bill. Consequently the debate over the Bill in Parliament raged considering other possible sites of home; rest homes, hotels, hostels, hospitals, sleep-outs, campsites, baches,[19] and dwellings connected to places of commerce, were all discussed in turn. Phil Goff illustrated the confusion that reigned when he said, "It does not make sense that if the attack takes place in a caravan it is home invasion but in a motel it is not. It does not make sense that if the attack took place in a rest home it is home invasion, but in a hospital it is not" (House of Representatives 1999b, June 29: 17762).

While this definition of home as “house,” as an object, may be merely indicative of the law’s preference for rationality, for objectively definable, provable interests, in many ways it is not surprising that this *particular* image of the home, as a discreet container, spatially segregated from other programs, and sited on “surrounding land” prevailed in the Parliamentary discourse. The historian Barbara Brookes claims that this image of the home is peculiar to New Zealand:

> [ex]As my experience of the word widened, I realised that New Zealand had a distinctive idea of the home as a detached house, surrounded by a garden—flowers in the front, vegetables out back, often weatherboard with a painted corrugated iron roof. (Brookes 2000: 1)

The home that Brookes describes locates the dominant image of home in New Zealand as that of the suburban bungalow, surrounded by a garden and providing private space for the nuclear family unit.

This paradigm of the home, as the domestic site of the private individual or family, segregated from the wider kin, from the community and from other programs, such as the place of work, can be construed as closely aligned with Victorian views of the home. Walter Benjamin gives a claustrophobic description of the idea of *dwelling* that emerged in this period:

> [ex]The 19th century, like no other century, was addicted to dwelling. It conceived the residence as a receptacle for the person, and it encased him with all his appurtenances so deeply in the dwelling’s interior that one might be reminded of the inside of a compass case, where the instrument with all its accessories lies embedded in deep, usually violet folds of velvet. (Benjamin 1999: 220)

This articulation of the Victorian home as a dwelling, a hollow container, with a lined interior encasing the individual, reveals the home as “private,” and therefore in opposition to a “public” realm. These spatial demarcations are reinforced then by the form of homes and gardens in colonial New Zealand. Investigating the design of houses and gardens in the late Victorian period in New Zealand, Leach locates a concern with the maintenance of a public–private spatial order. She identifies a spatial change from a period in which wealthy families had live-in servants, and had

therefore to maintain social propriety within the house interior, to the period after this when:

> the other late Victorian polarity, public–private, was then paramount. The outside public world was divided into stranger and invited guest, with design trends reflecting the extent to which one was to be excluded, and the other made welcome, both in the house and garden spaces. (Leach 2000: 88)

The Home Invasion legislation then, in defining the home as "house," maintains this late Victorian arrangement of the home as operational of a public and private polarity, a spatial arrangement that arrived in newly colonized Aotearoa/New Zealand in the mid-nineteenth century.

What was never considered in the Home Invasion legislation debate was any more culturally specific concept of the space of "home." In Aotearoa/New Zealand the *marae* offers an indigenous, more spatially distributed idea of home. A *marae* is a community home (Austin 1976: 230). Spatially it is an "architectural complex" (Austin 1976: 232) with open space at the center.[20] The *marae* is both spatial and performed. *Tikanga*, particular to each *marae*, is performed and observed to allow for the ordering and maintenance of relationships specific to it. In a contemporary sense it is true that the *marae* is not a primary residence for most Maori, yet, given Aotearoa/New Zealand's bi-cultural context, it is surprising that the concept of the *marae* was never considered in the debate on the Bill. Austin contends that the *marae* indicates the existence of a specific and unique Maori spatial world, in which, "the community home was of far more significance than the individual family home"[21] (Austin 1976: 230). Austin observed this in the 1970s when the migration of previously rural Maori to urban centers was rapid, and continuous links with the rural *marae* were becoming fractured. He, however, also anticipated the evolution of the urban *marae*, which has since come about. This evolution of the *marae*, to contend with shifting population demographics, reinforces the strength of the argument that a "Maori spatiality" continues to exist, yet this unique and indigenous sense of space, place, and home was entirely overlooked in relation to this Bill.

In the home invasion debate the home is inevitably and frequently described as a castle. The independent MP Rana Waitai sweepingly invoked this "traditionally" held

view: “this notion of a person’s home being his or her castle is very deeply embedded in the psyche of not just New Zealanders but all people” (House of Representatives 1999a, March 2: 15173). The castle analogy was also recurrently invoked in media discussion on the Bill. In just one example, Detective Senior Sergeant Boreham, a member of the New Zealand Police investigating a high-profile home invasion crime said in an interview, “We’re more alert when we walk down Queen Street,[22] but when we are at home we are off-guard. Our homes are our castles. For something to happen in them is more chilling” (Wilson 1998: 40). It has been suggested that colloquial idioms about the home, such as “a man’s home is his castle,” reflect real and experienced responses to the territorial characteristics of the home. Fox cites an empirical study from the early 1990s on the “essential qualities of the home,” where it was concluded that:

> such common expressions as “a man’s home is his castle” are supported by [...] research findings, which suggest that this feeling of control within the home is salient for most people and is linked to the satisfaction of basic psychological needs.” (Sixsmith, cited in Fox 2002: 593)

While a castle may operate as a site for (internal) control, this does seem to gloss over the radical spatial form of the castle that is invoked in this adage. In architectural terms, what distinguishes a castle from other forms is that, as well as being a residence, it functions as a mechanism for defense. The formal elements of a castle illustrate this defensive function; a castle is of solid construction, weighty and dense materials forming ramparts allow the interior space of the castle to be used as a retreat and defended from the hostile elements outside.[23] The castle form, with battlements, drawbridges, arrow slits, and other defensive technologies, declares the lack of openness and trust by those inhabiting it of those surrounding it. What does it mean then that we colloquially invoke the (man’s) castle when describing the home? The pervasive image of the castle, as a strong, impermeable boundary, enclosing a safe interior from the hostile elements outside, is an image of the interior/exterior binary condition, and perhaps it is was an articulation of this binary state that was at stake when the definition of home was sought in the Parliamentary debate.

Home–Body

Through a close reading of the Parliamentary discussion on the Bill several assumptions regarding "home" may be identified. Introducing the Bill for its second reading in Parliament on March 2, 1999, the then Minister of Justice Tony Ryall opened the debate by stating:

> The aim of this Bill is clear. Criminals who violate the sanctuary of the home will face tougher jail sentences. I do not need to tell members about the outrage our people feel about home invasion. One cannot go anywhere in our nation without hearing disgust at the few who seek to violate the security of our homes. (House of Representatives 1999a, March 2: 15160)

In this statement Ryall exposes a first assumption made in relation to the home, that being that the home is *inevitably* assumed a place of sanctuary. Ryall then goes on to articulate a second assumption when he says, "if longer sentences deter one violent attack on a grandmother, a mother, or a wife, then I will be happy" (House of Representatives 1999a, March 2: 15161). It quickly becomes apparent from this statement that the "sanctuary" of the home is gendered, those found, and protected, in the home are women.

The Bill sought to assert this assumed position of the "safe home." According to National Party MP Dr Wayne Mapp, "New Zealanders rightly regard their home as a secure haven" (House of Representatives 1999a, March 2: 15176). An important critique of the Bill however, came from women's groups who drew attention to the fact that the home is *assumed,* first and foremost and without examination, a secure environment. Advocacy groups such as Rape Crisis pointed to the high domestic crime statistics in Aotearoa/New Zealand and revealed the anomaly in the Bill whereby someone who is legally within a home, whether their own or someone else's, could commit a crime within that home and receive a lesser sentence than had they been a stranger who had forced entry to the home. Opposition MP Phil Goff articulated this ambivalence when he said:

> Most people would believe that if the sanctity of the home was what the word suggested, it would not matter who committed the offence. If a person is in their own home, he or she has the right to be free from fear of crime, and if a crime is committed against that person, why should there be a lesser penalty

> for the molester who happened to be there lawfully? (House of Representatives 1999b, June 23)

The New Zealand architectural theorist Sarah Treadwell identifies the strange inversion that emerges when the home is, without examination, *assumed* the location of safety for women and children. She reminds us that the family home is frequently identified as the site in which moral standards are maintained, the home is seen to act as a protective container for the "bodies and minds of children and women from the exposure and violence of the public arena" (Treadwell 2005: 285). Yet,

> violence, however, is already within the home; beatings, degradation and abuse of women and children are statistically prevalent. It is the place where women are most likely to suffer accidents or attacks. Despite the horror that statistics reveal we continue to sustain an image of the home as a safe haven. (Treadwell 2005: 285)

The version of home Treadwell describes then is an anomaly. It is an architecture that is concerned with conserving tradition, that of the "safe and moral home," but that denies, and in fact hides, reality (Treadwell 2005: 285).

The home then is *not* inherently safe, and contrary to MP Mapp's assertions, cannot be "rightly regarded" a secure haven. Non-invading, dwelling perpetrators commit crimes against women and children in the home. However, in the discussion on the Bill, the legally present perpetrator, dwelling in the home, is disregarded. Instead, the interior of the home, assumed inherently safe and secure, is construed as a site of bodies, already free from harm or crime. The safe home, and the safe, female bodies, are then conflated with each other.

Patricia Schnauer, an ACT Party MP,[24] whose party supported the Bill, was the first in the debate to identify the problematic nature of defining "home invasion." She said:

> I would like to talk about the definition of home invasion in the Bill, because it is a hugely difficult topic. Everybody knows that the criminal who smashes

> down the door of someone's home and kills an innocent person while he or she is inside has committed a home invasion. (House of Representatives 1999a, March 2: 15168)

In drawing attention to the difficulty of definition Schnauer maintains the coupling of the two terms, "home" and "invasion," rather than attempting a more meaningful definition by asking the underlying question of what is meant by "home," and how might it be described as "invaded." In this statement an important "slip" or collapse of meaning occurs. Schnauer states that the deliberate killing of a person, in a home, while that home has been unlawfully entered, is a "home invasion." Contrary to this, the deliberate killing of a person, in the law and in common understanding, is termed either murder or manslaughter, not home invasion. In Schnauer's statement a slip is made whereby the space of the home and the crime against the victim are neatly collapsed into one; a murder in the home is a "home invasion"; the house and the body "invaded" become one.

At the time of the legislation being enacted, this conflation of body and home was most clearly articulated by a victim of a so-called home invasion crime. In a letter to *The New Zealand Herald* the writer protests the headline given to the report describing the sentencing of the man who had broken into her home and had raped her. The headline read. "Home invader had no mercy" and, in response to this headline, the victim wrote:

> [...] I take exception to the implication that the worst of his crimes was to invade my home. Many of his actions that night caused me considerably more distress than the fact that he broke into my home. His most outrageous crimes were against my person, not against my home. (Duffey 1999: A21)

With direct reference to this letter the then editor of *The New Zealand Listener* further critiqued the lexical invention "home invasion," and the collapse of home and body implied in by it. He said:

> Any suggestion that the location of the act might somehow distinguish between the utterly vile and the not-quite-so-utterly-vile-but-still-really-vile is not only redundant, but also comes dangerously close to equating real estate with flesh and blood. (MacDonald 1999: 5)

This problematic interlacing of house with body was put simply to Parliament, at the second reading of the Bill, by opposition MP. Diane Yates when she said, “surely a rape is a rape no matter where it happens” (House of Representatives 1999a, March 2: 15178). The same might be said in response to Schnauer’s comment, that is, surely a murder is a murder, wherever it happens, and that a murder is not, as “everybody knows” a home invasion. While the event Schnauer describes could of course be both a murder and a home invasion crime what Duffey’s letter (quoted earlier) points to is the disturbing way in which the term “home invasion” conceals the crime against the person. As Duffey’s letter demonstrates, in the term “home invasion” the location or *place*[25] of the crime displaces the body of the victim.

In this version of home, as a container for bodies, the dialectic of interiority and exteriority must be maintained. Christine McCarthy navigates this opposition of the (female) victim, located interior to the “safe haven” of the house, in contrast to the intruder located “out there,” in an unsafe zone. Examining processes of wartime gun emplacement camouflage in New Zealand, by the means of a simulated domestic structure, McCarthy makes a relation to the Crimes (Home Invasion) Act. She identifies both the Home Invasion Act and the act of wartime camouflage as requiring an important figuring the domestic space. She says of the Crimes (Home Invasion) Act:

> The distinction between inside and outside, both as physical spaces and as spaces that geographically identify inside (victim) and outside (intruder), is, hence, critical to the act. This geospatial identification presumes danger only comes from the outside. It defines criminality as appropriately located outside the home and perpetrates the notion that the domestic interior is, and can persist as, safe and is unthreatening to the outside, as violence is located as unidirectional from exterior to interior. (McCarthy 2002: 324; original parentheses)

Just as McCarthy describes, those promoting the Bill continually construed the home as a binary proposition, the inner as safe and the outer as providing the threat of invasion. Fox also points to the ambivalent reading of home as “haven” in that the implicit binary order then is one where “the outside world is a place to be feared” (Fox 2002: 594).

Treadwell further articulates this anxiety surrounding the maintenance of the inner/outer binary, through the ordering mechanism of the boundary of the house. However she points to the fact that any boundary, while keeping danger "outside," also keeps the contained within, and she draws attention to this dual nature of the maintenance of the boundary between inside and outside in relation to the home. Treadwell says:

> To domesticate is to tame, make safe, make productive, and is achieved by bounding, binding and containing. [...] To that end external surfaces of the domestic interior are maintained and maintain their order (paint peels, mould grows and metals tarnish—boundaries may break down). Maintain the property to *keep the contained within*. Ensure the integrity of the surface, underline the inadmissibility of rupture. (Treadwell 2005: 289; italics added, original parentheses)

The debate on the Crimes (Home Invasion) Amendment Bill demonstrates a desire to maintain this prevalent construction of home as a place of the private interior, an inherently safe (and readily identifiable) container for the enclosure, protection and control of women and children, free from the prevailing threat of violence that comes from "public space," outside the home. Any other construction of home, that might embrace notions of home as pertaining to social or temporal conditions, or as containing a wider group of inhabitants, variety of programs, and activities, or as being derived from a different cultural context, could not be privileged as "home" under the terms of this Bill.

Returning to de Certeau—The *Proper* House, the *Practiced* Home

It was claimed the Crimes (Home Invasion) Amendment Bill would "draw a line around the home" (House of Representatives 1999b, June 29: 17759). However, once the concept of "home" was opened up for debate it became apparent that this task of delineation, perhaps well intentioned and seemingly simple,[26] was in fact enormously difficult. Dovey says, "a *house* is an object, a part of the environment, *home* is best conceived of as a kind of relationship between people and their environment" (Dovey 1985: 34; italics added). In this legislation home was collapsed

into the object of the house and this relational meaning of home escaped articulation. At the final reading of the Bill this was made explicit: “what is now clear in respect of the definition of the home is that it refers to the *house* itself and not the outbuildings or surrounding land”[27] (House of Representatives 1999b, June 29: 17760; italics added).

This collapse of home into house aligns with de Certeau’s discourse on space and place. The house, located by legal title, and contractually acquired, is a *place*. de Certeau says that in places, “each (element) is situated in its own ‘proper’ and distinct location, a location it defines” (de Certeau 1984: 117). This version of the home, as house/place, is a container, with the “proper” alignment of interior and exterior, that allows for the positioning of family, a scene of propriety, for the maintenance of “good moral order.” It is a location where relationships should be kept “in line,” where women and children are “safe” from threats located “outside.” Despite evidence to the contrary suggesting that the home cannot be *assumed* as providing these aspects of propriety, and can in fact be highly disordered (physically and socially), it is this conservative image of the home as *house*, as a clearly defined *place* of bounded interiority, that the Parliament preserved in this legislation.

In contrast then, the home, as understood as more than merely the house, as a set of relations, is *spatial.* This version of home is enacted and occupied; as with de Certeau’s space, it operates in relation to time and movement, it is an *effect* of these. In Dovey’s terms, home is a set of relations and in Douglas’s a “tangle of conventions and totally incommensurable rights and duties” (Douglas 1991: 302), where time rather than space is the index (Douglas 1991: 305). The European Convention on Human Rights acknowledges this when home, as identified under Article 8, is regarded as construed by “continuous and specific links,” by actions and movements rather than boundaries and locations. de Certeau says that space “occurs as the effect produced by the operations that orient it, situate it, temporalize it” (de Certeau 1984: 117). The same could be said of this more expansive concept of home, it too is produced by a set of operations or relations, and these operations give the home its orientation, situation, and duration.

Central to de Certeau's theory are the terms *strategy* and *tactic.* For de Certeau strategy is proprietorial,[28] it "assumes a place that can be circumscribed as proper *[proper]* and thus serves as the basis for generating relations with an exterior distinct from it" (de Certeau 1984: xix; original italics). The strategic is the model for political, economic, and scientific rationality (de Certeau 1984: xix). In contrast, the tactical does not rely on place but it is located in space–time. Tactics can be mobilized "on the wing," they are a mutable practice, where situations can be seized and taken advantage of, where "heterogeneous and mobile data" can be used to make decisions and take actions (de Certeau 1984: xix).

The tactical expression is not counter or opposite to the strategic, instead it is continually enfolded into to it, and emerges from it, a relation described by Highmore in the term *non-oppositional binary* (Highmore 2002: 154). Tactics are not counter-strategy, they are "within" but "other," they "escaped it without leaving it" (de Certeau 1984: xiii). Thus place is aligned with strategy and the proper, and space with the actions, events, and tactical movements that emerge through the practicing of everyday life.

It is the act of dwelling then in a *place/house* that makes it *spatial,* a home. Regarding de Certeau's positioning of the strategic/tactical relation, acts of dwelling are tactical, and they emerge not in opposition to the place (of the house), they are not counter to the strategic placement of the house (institutionally as a legal entity), but they, literally, emerge from within it. Just as de Certeau describes tactics unfolding from within the strategic field, space unfolds from place, and home unfolds from the house. This continuous "unfolding" is perhaps another reason why home, in this sense, is difficult to measure, to "pin down," to "keep in line." Dovey points to this difficulty:

> Although we might study the *house* as a discreet variable, *home* is not an empirical variable whose meaning we might define in advance of careful measurement and explanation. As a consequence, understanding in this area is plagued with a lack of verifiability that many will find frustrating. (Dovey 1985: 34; original italics)

A home then emerges not through setting up in opposition to a house, but by enfolding the spatial practices of everyday life from within it.[29]

To divert briefly, the opposition to home then is not house but is the hotel. The hotel is quite clearly a *place*, in a de Certian sense. Douglas says of the hotel, "the idea of the hotel is the standard 'Other,' where every comfort has to be paid for, the mercenary, cold, luxurious counterpart against which the home is being measured" (Douglas 1991: 300). The hotel is proscribed and regulated by technologies of management. Residence in a hotel is contractual (the tariff is given in exchange for amenity and service), placed in time (time to "check out") and standardized in arrangement (single/double/twin-share). A hotel is clearly not a home, and this is where some of the debate on the Crimes (Home Invasion) Bill came unstuck. Some people reside in *places,* and not *spaces.* In this analysis of place and space it can be argued that both nursing homes and hospitals are places rather than spaces. Both these types of facilities function in the same way as the hotel, inhabitation is arranged by contract, in exchange for certain provisions of both amenity and service. Both these types of facilities are placed in terms of time, the time of residence is terminated by regaining health (or expiring) or by lack of funds. A difficulty of the Bill then, was that in seeking to provide a means of justice for those assaulted in their homes as the result of an "invasion" the Bill could conceive of the home as limited, as a *place/house* but it could not extend this concept of home to situations where a person was quite clearly living, in a de Certian sense, in a place rather than a space.[30]

When deliberating on the idea of home it is, in some ways, not surprising that the legislature could only maintain the idea of *house as place*, rather than the mobilized concept of *home as space*. The reasons why the home as a legal concept is weak have been discussed earlier in this text. While it is true that the law prefers the rational and objective over the intangible and unquantifiable, the reasons why the Parliament in this instance, had difficulty in accommodating a concept of home broader than that of the house may reside in the fact that the law and the Parliament are both, in de Certeau's terms, *strategic places*. That is, they are the institution and they provide the strategic role of holding things in the "proper" place, of maintaining

order, “propriety.” The Parliament is the place in which proper relations (external to it) are conceived and constituted. The institution then cannot beget the *spatial home*, only the *proper house*. The home must emerge through the tactical implementation of everyday practices.

Sixsmith, summarizing a study where empirical methods were applied to tease out phenomenological understandings of the home said that,

> It is important when trying to understand the meaning of home to consider the different forms a home can take, whether they be essentially physical or social in nature. A restricted view of house or physical structure as home may obscure as much as it discloses. (Sixsmith 1986: 285)

Although we might intuitively understand the de Certian spatial nature of the home, under the “restricted view” of the New Zealand legislature it became obscured.

Conclusion

The Crimes (Home Invasion) Amendment Bill, timed as it was within the election cycle, has been read as a cynical attempt to gain the law and order vote. The debate engaged the New Zealand Parliament in an attempt to identify, define, and articulate a concept of home in order to privilege the special nature of home in terms of criminal justice penalties.

The debate on the Bill saw the confrontation of the objective position required by the law with the less easily defined aspects of home. The sentimental adage, “there is no place like home” may in fact be true, affirmed by the fact that the home, as a (de Certian) *spatial* proposition, proved so difficult for the legislature to define. Regardless of the privileging of the special, unique, and complex nature of “home” that the Crimes (Home Invasion) Bill sought to achieve, in the end “home” became collapsed into “the house.” The institution of the Parliament could only harbor, to use de Certeau’s terms, the proper *place* of the house; it could not accommodate the *spatial* qualities of the home.

Notes

1. 1“In January, a New Zealand Herald DigiPol survey showed almost three out of four people were worried about being attacked in their homes” (Laxon 1999: A3).
2. Prior to becoming the law, in the form of an Act, the proposed legislation takes the form of a Bill. Here after in this text it will be referred to as the “Bill,” as it is the debate that this article focuses on.
3. Legislation from other jurisdictions regarding home invasion includes the New South Wales Home Invasion (Occupants Protection) Act No.109, enacted in 1998 and repealed in 2002, and additions in 1994 to the Michigan Penal Code (1931). Canada does not include “home invasion” in its criminal code but does recognize it as an aggravating factor in sentencing.
4. de Certeau’s notion of place would seem to align with the architectural theorist Catherine Ingraham’s position that architecture, activated through linearity, is essentially about propriety, about keeping things in place, maintaining the proper relations and order between things. Ingraham sees this activity of propriety as operating philosophically, metaphorically and formally. She says, “what architecture traditionally does for philosophy and culture (and for itself) is to attempt to keep things in line, to keep things proper to themselves” (Ingraham 1998: 44).
5. The National-New Zealand First coalition government lost the election in November of that year, ending three consecutive terms with The National Party as the government. The Crimes (Home Invasion) Amendment Act was repealed by the preceding Labour government and replaced by a general provision in the Sentencing Act (2002). Under section 9 (1) b. “Aggravating and mitigating factors” it reads, “that the offence involved unlawful entry into, or unlawful presence in, a dwelling place.”
6. The issue of revoked license was further clarified in the Act. If a person enters a dwellinghouse under an express or implied license, that license must be regarded as having been revoked if the person commits an offence that renders the person who could revoke that license unable to ask the other person to leave. Amendment 3 to section 17 “Penalties for Certain Offences Involving Home Invasion,” Crimes (Home Invasion) Amendment Act 1999.
7. At the introduction of the Bill for the second reading on March 2, 1999, Phil Goff, an opposition MP said, “I very much welcome the new-found concern of the National Government at the impact of crime on ordinary New Zealanders. I try hard not to be cynical about the fact that this legislation has been introduced on the eve of an

election, and the widespread commentary that this is...mere election puffery" (House of Representatives 1999a, March 2: 15162).

8. In the debate for the second reading opposition MP Goff said, quoting a Ministry of Justice report to the select committee, "While it is reasonable to assume that the very existence of the criminal justice system has some deterrent value, there is little evidence to support the view that increasing the level of sentences will deter the individual or would-be offenders in general" (House of Representatives 1999a, March 2: 15162).

9. Tim Wilson, in his 1998 article titled *An Invasion at My Table*, traces the use of the term "home invasion" in New Zealand. He recalls it being used in a discussion with a police officer a year earlier, and notes its use in an address at a security conference by the then Assistant Commissioner of the Northern Police Region, also in mid-1998. Wilson's investigation on the emergence of the crime, and of the term, locate it as originating from Singapore and Australia in the 1960s, or Toronto in the 1970s. He also cites its use in a 1995 FBI enforcement bulletin. At the time of Wilson's article "home invasion" crimes, while reported as such in the New Zealand media, were not recorded as differentiated from aggravated burglary or assault in police statistics. Introducing the Bill for its second reading the then Minister of Justice Tony Ryall, also pointed to the newness of the term. He said, "Home invasion is a new name for an old crime" (House of Representatives 1999a, March 2: 1560). It is also interesting to note that despite the fact that the Crimes (Home Invasion) Amendment Act was repealed in 2002, the term "home invasion" continues to be used in media reports in New Zealand on violent crimes that have involved the breaking and entering of a home.

10. For a full analysis of the home in a legal context see Fox (2007).

11. This list of legal contexts that recognize the special nature of home is from Fox (2002: 582–3). The instances cited are drawn from the UK legal system. Fox's analysis of the home in law is rigorous and very useful; it does, however, examine the home in law from a UK perspective. I hope that a New Zealand legal scholar will undertake the same research from a New Zealand perspective, but this is well beyond the scope of this article and expertise of this author.

12. Fox's research is primarily in relation to creditor/occupier disputes.

13. Fox locates this alignment of home with house and property, in the UK context, as stemming from policies that would allow the home to be more readily construed as capital, such as the 1925 legislation and the Land Registration Act, 2002 (Fox 2007: 307).

14. Fox notes that, “when legal policy has allowed some degree of protection for a *home*-type interest, the ‘special status’ conferred on the property has typically been derived form its function as a *family* home” (Fox 2007: 309).

15. Significant sources for Fox’s argument in this text (Fox 2002) are drawn from Benjamin, Dovey, Sixsmith, Altman and Werner, and Rapoport.

16. The anthropologist Mary Douglas contests this primacy of the physical house, in turn allowing for the other attributes of home to emerge. Douglas argues that the overriding form of home is temporal rather than spatial. “If we had to choose an index of solidarity from the time-space structures of homes, the strongest indicator would not be the stoutness of the enclosing walls but the complexity of coordination” (Douglas 1991: 305–6).

17. In this “drawing” of “a line” around the home Ryall evokes the legislation as being that of an architectural maneuver. As Ingraham says of the line in architecture, “linearity—which is burdensome because it has the weight of the inescapable while appearing to be light (merely technical)—is about many things, among them the relation of architecture to property, which directly addresses the political and economic domain of architecture,” and “the relation of architecture to propriety, which is about ‘keeping things in line’” (Ingraham 1998: xi).

18. In New Zealand colloquial usage a *deck* is an uncovered porch attached to a house.

19. *Bach* is a term used in New Zealand to describe a holiday house; usually a vernacular construction from cheap or surplus materials sited in an isolated, coastal or rural environment.

20. The *marae* is both a formal and spatial arrangement as well as a corresponding set of social and cultural practices, or *tikanga*. For a full and thorough architectural description of the marae, see Austin (1976).

21. Further strength could be given to the argument that the *marae* constitutes home in a legal sense by bringing to bear the definition given in Article 8 of the European Convention on Human Rights (as has already been discussed), whereby a home is

constituted through “the existence of continuous and sufficient links with a specific place.”

22. Queen Street is the main street in the Auckland central business district.

23. The obvious substantial nature of the castle evoked in the phrase “a man’s home is his castle,” would seem in stark contrast with the claim that the promotion of the idea of the home in law is to promote “something ethereal, floating in the air, unconnected to bricks and mortar and land” (Harrow v Qazi, 2003, UKLH 42, House of Lords, cited in Fox 2005: 38).

24. At the time of the Bill the center right ACT Party had eight seats in Parliament, but was outside the National-New Zealand first coalition government. Until the most recent election (in 2008) the ACT Party had focused its policies on taxation and crime.

25. Keeping in mind de Certeau’s version of place here, as order, “the proper.”

26. Again drawing attention to Ingraham’s architectural reading of the line; appearing “light,” “merely technical,” it is actually burdensome, as its role is that of “keeping things in line” (Ingraham 1998: xi).

27. While the Bill was clear that the definition of “home” was that of the house building only, Ryall suggested that the courts would start to operate a type of zoning in relation to crimes committed near the house, in the garden, outbuildings, etc. Ryall said the courts would begin to, “regard that proximity (to the house) as an aggravating factor” (House of Representatives 1999b, June 29: 17760; parentheses added). There is not evidence that this occurred.

28. de Certeau see strategies as *proprietorial* and Highmore links this to a host of other terms de Certeau makes use of: “place, property, propriety, own, owning, ownership, and crucially, proper (*propre*—‘clean,’ ‘correct,’ ‘one’s own’)” (Highmore 2002: 157; original italics and parentheses).

29. A useful example here is described by Anne Romines. In her analysis of the practices of frontier families, drawn from Laura Ingalls Wilder’s “Little House” books, (set in the great plains of the USA 1870s–1880s), Romines identifies the move whereby a building (a new log cabin, a neighbor’s barn, for example), turns from basic shelter into “home.” This move entails the action of positioning a specific object in the house (in this case the object is a china shepherdess statue) and it is this

action, and the stories that are recounted of the object, that deems the dwelling a "family home" (Romines 1997: 184).

30. In the third reading of the Bill it was shown that a rest home would be covered by the legislation but a hospital would not be.

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