

2011

## The Occupation — Place, Balance, and Proximity

Timothy Zick

*William & Mary Law School*, tzick@wm.edu

---

### Repository Citation

Zick, Timothy, "The Occupation — Place, Balance, and Proximity" (2011). *Popular Media*. 167.  
[https://scholarship.law.wm.edu/popular\\_media/167](https://scholarship.law.wm.edu/popular_media/167)

Copyright c 2011 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.  
[https://scholarship.law.wm.edu/popular\\_media](https://scholarship.law.wm.edu/popular_media)

- Concurring Opinions - <http://www.concurringopinions.com> -

## The Occupation — Place, Balance, and Proximity

Posted By [Timothy Zick](#) On October 17, 2011 @ 11:09 pm In [Current Events, First Amendment](#) | [2 Comments](#)

Today is the one-month anniversary of the Occupy Wall Street demonstration. It is fair to say that the media, a decent portion of the American public, and many people abroad are now paying attention. There is still, of course, no guarantee of long-term success or longevity. However, to sustain something like the occupation for more than a few days, much less several weeks, is nothing short of remarkable.

Mayor Bloomberg has publicly stated that he wants to protect protesters' speech and assembly rights. But he recently [suggested](#) <sup>[1]</sup> that "the Constitution does not protect tents . . . It protects speech and assembly." That's right. But the tents in Zuccotti Park are not on public property. Whether they knew it or not, the protesters may have chosen their contested place very wisely – the private owners of Zuccotti Park have been slower to move against the protesters than the City might likely would have been. In at least one locality, officials reportedly closed a public park in response to an "occupation" protest. Judging from the police response to the occupiers, and from other limits imposed by the Bloomberg Administration on public assemblies and demonstrations, it seems clear that the City would have intervened if it owned Zuccotti Park. Unless and until the trespass laws are enforced against the protesters, the City is not likely to seek to remove them. It's property law, not the First Amendment, that has thus far determined whether the protesters have a right to be in Zuccotti Park.

Hizzoner made another interesting statement about the occupation recently. He expressed concern that the occupation had adversely affected other citizens' "right to be silent." Elaborating, Mayor Bloomberg said: "We can't have a place where only one point of view is allowed. There are places where I think it's appropriate to express yourself, and there are other places that are appropriate to set up Tent City. They don't necessarily have to be one and the same." How exactly is this public demonstration affecting those who want to remain silent? Are the 1% somehow being silenced by the nature and scope of the occupation? Are those who disagree with the protesters unable to mount a counter-protest? A recent poll indicates that 72% of NYC voters support the occupation so long as it remains peaceful. Are the viewpoints of the other 28% not being heard?

If the Mayor is suggesting *displacement* of the occupation, he's missing the point of proximity. The occupiers are making powerful symbolic use of a location near Wall Street. They are contesting place to reclaim something they feel has been taken from them. Relocating the occupation would not "balance" viewpoints. Rather, it would deprive the occupiers of the principal means of conveying their message.

---

Article printed from Concurring Opinions: <http://www.concurringopinions.com>

URL to article: <http://www.concurringopinions.com/archives/2011/10/the-occupation-place-balance-and-proximity.html>

URLs in this post:

[1] suggested: <http://www.nytimes.com/2011/10/18/nyregion/bloomberg-says-tent-city-at-wall-street-protest-exceeds-free-speech.html?hp>

Copyright © 2010 Concurring Opinions. All rights reserved.