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Law, Space, and the Geographies of Power

NICHOLAS K. BLOMLEY

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Law... is too important to be left to the lawyers.
—Lawrence Friedman (1986)

Geography is too important to be left to geographers.
—David Harvey (1984)
Preface

A map of the world’s laws? Has there ever been such a map?
—John Wigram (1929)

This is a book about the geographies of law, a topic that has historically been both poorly documented and inadequately theorized. Not only have geographers and legal theorists shied away from an encounter, but there seem powerful barriers—institutional and theoretical—to such a meeting. This academic silence must end, if only because these barriers are continually being effaced in the everyday world. Legal geographies, I shall argue, bear directly and powerfully upon social and political life.

I suppose that I first became aware of both the academic absence and the everyday presence of these “legal geographies” when I began my graduate research in Bristol. As a novitate geographer, I was steered to an inquiry into the Shops Act (1950), an arcane piece of legislation regulating retail opening hours in England and Wales. It is quite unusual for a geographer to look at the law; the expectation was, I suppose, that I would do a fairly standard piece of “policy analysis” (did the law do what it was “supposed” to do; what “rational” reforms could be suggested?). Frankly, it wasn’t long before this had become a rather boring task, and I turned to other questions, such as the local enforcement and legislative history of the Act. Things very quickly became a lot more interesting and, I discovered, a lot more geographical. However, they also became a lot harder. Human geography had not trained me for such a journey. As a result, I was forced to intrude into foreign fields, discovering the literature on legal
interpretation and on law and the state, for example. Given the lack of a legal-geographic literature, it felt then, as it does now, that I was writing against the grain. Only a few geographers had written about law in a thoughtful manner; hardly any lawyers had consciously concerned themselves with the geographies of social and political life.

As I neared the completion of my Ph.D., the law intruded into my life in a more direct way. I became embroiled in a legal struggle with a previous landlord over thenonpayment of local government taxes, or rates, as they were then called. In retrospect, it was a tedious and rather petty affair. At the time, however, it was very unnerving, partly because it involved what was, for me, large sums of money. Faced with a rates demand, the landlord had apparently passed the bill on to the old tenants, claiming that we had verbally contracted to pay. Although we had no such recollection, the law held that, in the absence of a written agreement, the tenant was indeed liable, and the machinery of debt collection and state enforcement swung into ponderous but efficient action. Everyone was very polite, even apologetic, but it was made very clear that our “chattels” would be seized, or worse, if we did not come through. We paid up, eventually. It was not a big legal event, as these events go, but then this is how most of us encounter the law, in its day-to-day, low key, unreported workings. The legal apparatus can, of course, be a lot more aggressive, even violent. Nevertheless, the sense of being “under” the law was an unsettling one for me. Law, I was beginning to realize, was at “every bloody level,” as E. P. Thompson put it; it did not remain, neatly inscribed, in the pages of my thesis, or in circulation in the upper reaches of legal theory. Law had been made present in an immediate way. However, it was a strange presence. Although always there, it was somehow always absent. It was never to be found in the enforcement officers I encountered, but was always being deflected to another location (“I’m sorry we have to do this, but it’s the law...”).

The pages of my thesis, however, were to burst their institutional confines when I took up a tenure track position at Simon Fraser University. To my alarm and surprise, my writings were branded as dangerously radical, supposedly akin to the work of the critical legal scholars who were facing the wrath of the academy across the United States (notably, indeed, in the Boston area). The idea that legal interpretation was a political act was, for example, cast as dangerously nihilist. The tenure track position melted from under my feet to be replaced, after much fighting, with a temporary job. At the time, I had, ironically, only just become interested in critical legal studies. The incoherent rage that it incited in the halls of power convinced me that it demanded closer attention: obviously, the critics were doing something right! Fortunately, a tenure track position at Simon Fraser University allowed me the luxury of doing exactly that. Again, however, law had played a very direct role in my life. Now, however, it was legal theory that was affecting “real life.” The two were becoming harder to separate, I was learning.

This book is not just about law, or the link between legal theory and “real life.” It is also about the geographies of law. In that sense, this book could have been about many things. It could, for example, have been a study of “Occidental” legal culture. Indeed, I do focus on the common-law traditions of Canada, the United States, and Britain. Attempting such a cultural study and the “imaginary geographies” upon which the law of the West relies would be a fascinating task, especially in light of recent postcolonial writing. This book could also, I suppose, have been a legal geography of the city. I do, in fact, discuss law and the city at several points. I could also have written a treatment of the gendered spaces of the law, not only in terms of the link between public and private spaces and patriarchy, but in relation to the triumphal masculinity embodied in the rational, totalizing geographies of the legal order.

This book is all these things. However, I would prefer to impose another structure on the material. It is the legalities of work and the economy that provide the important substantive focus around which I have organized much of my discussion. More specifically, I am concerned with the legal treatment of place and mobility as they relate to work. I really only discovered this focus in retrospect, half-way through writing the book. I am ashamed to say that I had not been consciously working to any grand plan. Yet, on reflection, such a focus is not too surprising. Like many young academics, my recent life has centered on the struggle to find a job and a place in which to settle. As it is, I have been catapulted across the Atlantic, and thrown from job to temporary job, ricocheting from Los Angeles to Boston, before being hurled across another national border, coming to a momentary halt in Vancouver. This forced mobility has been, of course, exciting, especially after growing up in one place: a small, rather sleepy hamlet deep in the English countryside. I have been exposed to different people, places and ideas. However, sometimes it has also been unsettling, frightening, and lonely. It was, as a friend in the same boat put it, as if I was waiting for my life to begin. Living the regional economists dream— as a placeless, unattached, hypermobile, individuated worker— can be deeply alienating. Place-bound ties and roots became, of necessity, contingent and ephemeral. My “local knowledge” was, at best, partial and superficial.

In many ways, the pinball regime that I had placed myself in was
both a legal and a spatial one. Labor contracts, immigration law, and
countless short-term tenancy agreements were my stock in trade; the
continuous process of leaving, moving, and arriving was my expectation.
I was living, I now realize, a legal geography. Again, however, law and
space were somehow always absent. The bizarre world of the academic
labour market, built on movement and the regime of the labor contract,
was simply "the way of it." We who were thrown into the marketplace
complained about it, of course, and sometimes bitterly. But it was just the
way things were. Its legal geographies seemed to pose obstacles to be
negotiated, rather than political contingencies to be contested. If law and
space are important, then, their meaning is encoded and their politics
opaque. I hope to grapple with such silences here.

If I am present in this book, however, I am not there alone. Many
other people are here with me, people who have helped me and argued
with me, people who have accompanied me on my various journeys, real
and intellectual. I owe many of those people a debt of gratitude. This book
would not have been written without the support, friendship, and con-
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to take anything for granted, and then supported me when I did so. This
book is dedicated to them.

This book, then, presents an exploration and a tentative map of the
intriguing and politically significant territory between law and geography.
Such a project, I shall suggest, is important both to lawyers and to geog-
raphers. Both have a lot to learn from each other and a lot to teach each
other. In that sense, I am trying to convince critical geographers of the
political and geographic significance of law, while also trying to persuade
leftist legal scholars of the critical power of the "geographic imagination."

First, I claim that concealed within legal thought and legal practice
are a number of representations—or "geographies"—of the spaces of
political, social, and economic life. In much the same way that law relies
in various ways on claims concerning history, so it both defines and draws
upon a complex range of geographies and spatial understandings. While
struggling to make sense of the complexity and ambiguity of social life,
legal agents—whether judges, legal theorists, administrative officers, or
ordinary people—represent and evaluate space in various ways. When we
start looking, we discover that such representations are abundant and
varied. These juridical representations touch all aspects of legal life:
propriety, contractual relations, crime, intergovernmental law, and so on. The
construction of such spaces can be seen, for example, when legal actors
designate boundaries between "public" and "private" spaces, make deci-
sions concerning the local autonomy of governmental units, or consider
questions of spatial equality. Such legal spaces are also relied upon implic-
itly on many other occasions. Legal interpretation, for example, with its
encoded claims concerning the "utopic" location of the individual legal
subject and the assumed divide between universal and particularized legal
knowledge implies, in this sense, a claim concerning the acontextuality of
legal interpretation. The assertion of legal closure constitutes not only a
rejection of the historicity of social life but also of its spatiality. So diverse
are these legal geographies, in fact, that I am forced to close on two: the
legal mapping of personal mobility and local legal life. This turns out to
be a fortunate choice, however: "place" and "movement" are both legally
dispositively consequential, and discursively related.

Second, to understand how this is so requires us to recognize the
degree to which such legal spaces are embedded in broader social and
political claims. The legal representation of space must be seen as con-
stituted by—and, in turn, constitutive of—complex, normatively charged
and often competing visions of social and political life under law. I shall
argue that we can best begin to make sense of these social and spatial
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Second, to understand how this is so requires us to recognize the degree to which such legal spaces are embedded in broader social and political claims. The legal representation of space must be seen as constituted by—and, in turn, constitutive of—complex, normatively charged and often competing visions of social and political life under law. I shall argue that we can best begin to make sense of these social and spatial
visions through a consideration of liberalism. The legal geographies of place and mobility, for example, are explicable only with reference to these structures. However, as I shall suggest below, they can also escape—even, perhaps, destabilize—the Panoptic architecture of liberalism.

Third, I will try to argue that like the definition given to space in other spheres of political life, such legal geographies are of profound importance. Space, like law, is not an empty or objective category, but has a direct bearing on the way power is deployed within social life.

I will argue that the geographies of law are not passive backdrops in the legal process, or of random import, but, in combination with their implied claims concerning social life, can be powerful, even oppressive. This can occur in a straightforward fashion: legal restrictions on the mobility of pickets, for example, constitute a very direct form of this "spatial politics." However, it can also occur in more ideologically structured forms. One useful claim of recent legal theory, for example, is that of the "constitutive" quality of the legal mentality. Legal categories and distinctions, it is argued, not only draw upon but serve to form consciousness, such that everyday language becomes imbued with the vocabulary of rights, property, and legality. To that extent, the "geographies" of law may serve a similar constitutive function, both shaping—and constraining—the social imaginary and popular readings of the potential geographies of social life.

The critical dilemma, in both cases, centers on the way in which such geographies are frequently presented as objective and "political."

Consequently, my hope is that a critical legal geography can not only document the relation between law, space, and power, and also can begin to challenge the orthodox linkage. I shall suggest, for example, that a critical geographic imagination is useful in opening certain legal claims to critical scrutiny, including the assumed divide between law and social and political life that undergirds the soi-disant objectivity of law. The very spatiality of legal knowledge, I shall suggest, is potentially subversive of imperial claims to legal objectivity, totality, and stability. The orthodox legal representation of space, in other words, is only one pliable map of the spaces of social life. The legal understandings of local communities, for example, can reveal themselves as very different from the formalized legalities of the judiciary. More significantly, such "local legal communities"—law, it must be remembered, does not live only in judges—can not only differ, but conflict with the orthodox account. Such conflicts, however, are even more pervasive. "Space," like "law," is capable of carrying diverse meanings, especially when conceived in relation to social and political life. Social thinkers have long struggled with the ambiva-
I could draw an aggressive, flag-waving map that would contest old borders only to draw new ones. The "spatializing" of legal theory, for example—which I do want to see—could become a patently silly attempt to cast geography as a privileged arbiter of the truth. The reverse could also apply: even critical legal inquiry—supposedly an ally of critical scholarship in other fields—has been charged with selective incursions and border raids. For this exchange to be useful, then, it must be an encounter, not a "discovery." Scholars in both fields, I hope, can benefit from this conversation, filling important spaces in their critical armory.

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