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THE GUILFORD PRESS
New York London

Law, Space, and the Geographies of Power

NICHOLAS K. BLOMLEY
of legal studies and the silence of geography, is not hopeless. As we have seen, despite an apparent divide and mutual ignorance, both critical geographic and critical legal enquiry share a surprising number of political and theoretical features. With that in mind, perhaps we can draw on both a critical geographic imagination and a theoretically informed legal sensibility in the hope that, in combination, they can provide one useful route forward. At the very least, the critical histories of law can offer a model for a spatially informed legal critique, given their sensitivity to legal heterogeneity and the representational strategies of legal discourse. Similarly, the critical geographies of law can direct attention to the power/space nexus, absent from the legal account.

II

PLACES, MOVEMENTS, AND THE GEOGRAPHY OF WORK
Introduction

I have argued that the potential exists for exciting and productive exchange between critical scholars in both law and geography. However, we have yet to see what a critical legal geography might look like in detail. It is to this task that I now turn. Rather than constructing one extended case study, I intend to make a number of different forays. These explorations occur in diverse places (the United Kingdom, Canada, and the United States) and at different historical periods. The range of subjects covered (from the history of the English common law to the Canadian Charter of Rights and Freedoms, for example, and from eighteenth-century American political discourse to the policing of the 1984–1985 British miners’ strike) is, to say the least, broad. In part, this is deliberate. I am keen to pursue a historical as well as a geographic analysis, as well as attempting to pursue the geographies of law in a number of settings. This does, of course, raise some special problems. For example, while I think one strength of my analysis is its international scope, there is an ever present danger of uncritically mapping theory and examples particular to one area of the world upon another. We must be alert to this potential problem, recognizing the specificity of Canadian liberalism, for example, or the specific form of the British state apparatus. Similarly, it is tempting to leap from past legal cultures to the present, and vice versa. This, of course, would raise many of the problems that I noted in Chapter 1. Either way, certain commonalities cannot be denied. Despite their differences, Canada, Britain, and the United States are all, first and foremost, capitalist societies that rely to varying degrees on the common law tradition. Similarly, my choice of historical examples, such as the common law writings of Edward Coke, is a function of my belief in their contemporary relevance. They are not only specific to their time, but must be seen as
moments in a common law project that continues today. As a result, I choose not to dwell on such differences.

The examples I choose, however, have other similarities than their position within the "common law project." All center, as we shall see, on legal struggles concerning economic ordering and the geography of work; notably upon such issues as worker safety, labor migration, property, and labor disputes. Although, as noted, they are of autobiographical importance, all are also useful to my analysis given their relevance to questions of power, of law, and of space. It cannot be doubted, first, that the terrain of work and the economy is powerfully political. A vital political—or, more accurately, a series of politics—is at issue. Power relations can be at once visible and naked—as, for example, in the policing of labor strikes—and also subterranean and encoded. Such forms of normalizing power are visible, for example, in the frequent representation of work as individualized and "private." Second, work and the economy are also a useful point of entry for my analysis by virtue of their "legalization." Indeed, it is hard to think about the politics of work without recognizing the constitutive effect of legal codes and norms, such that, for some authors the very existence of a capitalist economy presupposes a legal liberalism. This will force me to confront some important legal structures that bear upon work—the most important of which is the assumed divide between the public and the private sector. Finally, the economy and work are also profoundly geographical. It is impossible to disentangle property, strikes, worker safety regulation or migration from the spaces and the places within which they occur. When we begin to start moving between the politics, legalities, and geographies of work, things become even more intriguing. In all my examples, geographies can be identified within legal discourse, geographies that are politically consequential. In all cases, however, alternative and potentially oppositional geographies can also be gleaned. In broad terms, all these examples seek to illustrate something of the politics of law and space, understood both in the sense in which space is constructed and represented in liberal legal discourse, and in terms of the potential for oppositional and critical insights drawn from the geographic imagination. While Chapters 3 and 5 stress the former, Chapters 4 and 6 attempt to read against such formative legal geographies.

Another way to think of these chapters is through their shared attention to the legal characterization of place and movement. While Chapters 3 and 4 are concerned with the former, Chapter 5 is especially concerned with movement. Chapter 6 is more ambitious, and tries to combine both. I have been forced to focus only on two legal geographies, given the wide diversity of possibilities. However, my choice of place and movement, it turns out, is a fortunate one. Not only do both place and movement figure in legal discourse, but both appear as significant legal "problems." For example, the legal significance of place is frequently thought to have been effaced, given the "antigography" of law. Yet when one turns to "local legal cultures" (and, on occasion, "formal" law itself), the normative appeal and institutional significance of place resurfaces. So it is with mobility: while liberalism tries to cast movement in highly disciplined and individualized forms, alternative legal characterizations of movement can be found, alternatives that are both materially and discursively threatening to the powerful. Further, the legal geographies of place and movement do not stand alone, but connect in ways that are both mutually supportive and unsettling. There is a politically significant link, for example, between the hostility to place and the celebration of disciplined labor migration.

Chapter 3, then, continues on the trajectory set in the first two chapters. Given my desire to spatialize, not supplant the historical imagination, I attempt a historical geography of the law, choosing an especially formative place and time: the England of the late sixteenth and early seventeenth centuries. Further, in my wish to move between geography and law, rather than mapping unctually from one onto the other, I explore the shared relevance of this moment for the institutionalization of both disciplines. To law, the significance of this period rests with the jurist Edward Coke. His massive and influential systematization and defense of the common law prepared the ground for a modern legal science. As with law, so with geography: at the same time that Coke was beginning his legal career, the cartographer Christopher Saxton was putting the finishing touches to his influential atlas of England and Wales. Again, this can be seen as a moment of special significance in the formation of a modern geography. While these two men and these two moments are usually treated in isolation, I will try to suggest that both must be seen as deeply implicated in a transition that is of importance both to their own period and to contemporary legal and economic relations. Both, I shall argue, were engaged in a representational project in which space, place, and law begin to be cast in an increasingly modern and "liberal" fashion. In this, they represent telling examples of the orthodox liberal rendering of the geographies of law, as well as exemplify some of the material and ideological consequences of such "legal maps." I pursue this through an analysis of the definition of certain legal geographies in which both played a part—that of property and the corporate town.

Chapter 4 continues to explore the legal characterizations of place and local legal life with special reference to contemporary disputes con-
cerning discretion and local autonomy. Exploring the field of American worker safety law, I note that one consequence of a process of local disembedding, outlined in Chapter 3, has been a pervasive judicial suspicion of the vagaries and contestability of place. The discretion of local legal agencies and the autonomy of local governmental units, consequently, are viewed with considerable apprehension. A closer reading, however, reveals a more pervasive ambivalence within legal discourse concerning place. The result is important: I identify a simultaneous quest for a "utopic" administrative regime, in which local autonomy is viewed with suspicion, and a principled commitment to the potential and value of local legal life. Such a divide, coursing through the last two centuries of American political discourse, reveals itself both within the courts and through the daily praxis of an agency such as the Occupational Safety and Health Administration. The resultant vacillation, while implicitly challenging any claim to "legal closure," has political import. The recent erosion of a regime of federally administered worker safety regulation, for example, has been legitimated in large part by recourse to the resonant language of decentralization and localism.

In Chapter 5, I begin to focus my exploration of the legal landscape upon the question of personal mobility. Through an analysis of the policing of the 1984-1985 miners' strike in Britain, I outline the strategic importance of movement to both strikers and the state. Of special significance, I shall suggest, was the deployment of police roadblocks in the county of Nottinghamshire, designed to prevent secondary picketing. As we shall see, the material control of movement cannot be divorced from the legal representation of mobility. I shall claim that the strike, in part, succeeded precisely on the union's failure to recognize the vital importance of these two geographies. Anti-strike forces were able to construct a powerful argument concerning mobility, employment, and individual rights that was used to legitimate police actions and to criminalize the picket.

Chapter 6 brings both place and mobility together in a discussion of the legal interpretation of section six—the "mobility" clause—of the 1982 Canadian Charter of Rights and Freedoms. I contrast the judicial treatment of mobility with that provided by a specific place—the town of Kimberley, British Columbia. Facing economic dislocation, the people of Kimberley express a striking attachment to place and a hostility to a form of "forced mobility." The contrast, then, becomes that between a judicial celebration of frictionless space and unencumbered individual mobility and a local account of place and community. These two "mobilities," I shall suggest, exist in an uneasy relation one to the other. Although apparently far removed, the "local" reading of place and mobility can be used both to make sense of, and to contest, the closure of the legal map. Ironically, however, it is the judicial account that is more directly consequential for the small town, given its implication in a wider set of arguments concerning space, place, and economic order.

In a brief concluding chapter, I come back to the map. This time, however, it is a real one. I use it to underscore my conviction that a critical legal geography is not only intellectually significant but politically imperative, given the critical linkage between law, space and power. I resist the temptation to prepare a programmatic outline for such a critical legal geography. The examples I choose and the arguments I make should be seen as signposts in a continuing exploration, rather than the point of arrival. I could have chosen other places, other times and other legal geographies. I do not doubt that other maps—the legal geographies of patriarchy, for example, or racism—would be equally suggestive and significant. Wishing to open, rather than close, possibilities, I hope not for one, but a multiplicity of such geographies.
Legal Territories and the “Golden Metewand” of the Law

Let us suppose ourselves on a hilltop from which are simultaneously visible a medieval township and a Renaissance city. The former is a little forest of spires and towers: does it not represent in plastic form the principle of feudalism? Perhaps the spire of the cathedral, being higher and more tapering, dominates the other spires, but that makes little difference. In like manner the sovereignty of the empire in feudal times dominated the others. But what the life of feudal times stood for in juridical outline was plurality and profusion in plurality—and that was what the township stood for in architectural outline.

But the Middle Ages are over. The kings have subjugated the seigneurs. At the same time, in the same spirit and for the same reasons, cupola replaces spire. A cupola crowning a great building seems as though it were its soul. It gathers up all the structural lines of the building, draws them together and makes them meet at a single point. It subsumes the entire life of the city and crowns it.

—EUGENIO D’ORSI, quoted in DE JOUVENEL (1957, pp. 173-174)

I suggest that we think of liberalism as a certain way of drawing the map of the social and political world. The old prepolitical map showed a largely undifferentiated land mass, with rivers and mountains, cities and towns, but no borders... Society was conceived as an organic and integrated whole... Confronting this world, liberal theorists preached and practiced the art of separation. They drew lines, marked off different realms, and created the sociopolitical map with which we are all familiar... Liberalism is a world of walls, and each one creates a new liberty.

—Michael Walzer (1988, p. 314)

An academical expounder of the laws... should consider his course as a general map of the law, marking out the shape of the
As indicated, the legality at the center all of the examples I will be exploring in the next four chapters is that of the common law of England, and its variants in the United States and English speaking Canada. Where, then, does common law come from? What are its boundaries? Why do its practitioners feel the need to insist on its closure from "external" forces? What are its histories? What of its geographies?

It says something about the critical power of the historical imagination that I am going to begin to try and make sense of these questions by attempting a legal history of the common law. However, rather than offer an exhaustive historical survey, I want to devote this chapter to an exploration of a crucial legal transition: the systematization and rationalization of the common law that occurred in the early sixteenth century under the English jurist Edward Coke. I do so less for an interest in the specifics of the period—which is fascinating in its own right—than the relevance of this transformation to contemporary legal forms. My analysis, then, serves several purposes. First, it serves as a contextual background to an understanding of many contemporary legal concepts—such as property and other forms of legal-economic ordering—that I will be exploring in later chapters. Second, it provides for an exploration of a concept that I have already noted, legal closure. It is during this period, I will argue, that claims of the analytic separability of law and legal knowledge first begin to become concretized. Third, however, an historical survey throws into question many of the teleological claims that underpin closure, notably that which Thompson (1975) refers to as the "greatest of all legal fictions, that being the claim that the law itself evolves, from case to case, by its own impartial logic, true only to its own integrity, unswayed by expedient concerns" (p. 300). Legal histories, it seems, are social and political histories, imbued with contingency and struggle.

Fairly familiar ground, so far. However, I will also be insisting that legal histories are also legal geographies. A close reading of this historical moment reveals the profound significance of a range of interlocking geographic representations and structures, many of which I will also be returning to in later chapters. These include the intersection between an evolving liberalism and its representations of space, evidenced in the legal geographies of place, spatial difference, and citizenship. Moreover, just as

Edward Coke

Few figures loom as large within the common law pantheon as that of Edward Coke (1552-1634) (see Figure 3.1). There can be little doubt that Coke’s legal writings offer the paradigmatic statement of the English common law.1 Influential in his day, he was to become an even more potent symbol within the common law traditions of England, the United States, and Canada.2 As a jurist and politician, he played a central role in the political struggles and court maneuvers of his day (Bowen, 1957; Woolrych, 1826/1972). As a legal scholar, however, he is best remem-
For his champions, Coke's significance rests with his role in "re-moulding the medieval common law in such a way that it was made fit to bear rule in the modern English state" (Holdsworth, 1938, p. 346). The early seventeenth century saw growing pressure for legal reform, given a concern at the length of litigation and the cumbersome nature of legal procedure (Shapiro, 1975). Because no systematic legal treatises had been produced since the fifteenth century, critics complained that the ambiguities of law permitted excessive discretion, corruption, and, above all, insecurity of property. Consequently, there was every reason for clarification and codification of the law, to define and systematize its adaptation to the needs of the new business society, to weed out the obsolete, to define relations between Church, prerogative, and common-law courts" (Hill, 1963, p. 229). Such challenges were not only internal: there was growing support, centered on Francis Bacon, for the adoption of a legal code based not on the common law but on the Roman or Justinian model, influential in Europe.

Coke's response was audacious: not only did he collect and collate legal decisions, he went on to craft a systematic and extended rationalization from which the common law emerged as structured, unified, and rational. Coke's systematization of the common law rested on two strategic moves: it appealed to reason and the privileged authority of the judge, and it constructed a powerful historical geography of the common law.

Coke sought, first and foremost, to impose a structure on English common law. The common law, to Coke, was a seamless and determinate web of principles that framed social life. Rather than claiming to author such a structure, however, he claimed to recover a presupposing unity. For too long, he complained, this intrinsic integrity had been concealed by "absurd and strange opinions" and "allowances" (1826a, p. xvii). Coke's structured conception of law is evident in the rich metaphors with which he describes it. In the fourth of his Institutes, for

In this, he was representative of his times. Shapiro (1983) notes that seventeenth century English intellectual endeavors in religion, history, natural science, literature, and law were characterized by "a common set of assumptions about the nature of truth, the methods for attaining it, and the degree of probability or certainty that might be attributed to it" (p. 3). Considerable overlap existed between the worlds of law and science, including the simultaneous drive for the "systematic arrangement and presentation of existing knowledge, including scientifically organized categories" (p. 3).

At various times he likened law courts to clocks, prone to break down if even the smallest component failed; he thought of legal jurisdiction in terms of a network of streams that must retain their channels; he saw a court as an unbreakable and symmetrical circle; and he saw the legal system as a human body, in which every component had to play its part (White, 1979, p. 51).
example, he likens the common law to a "high and honourable building," and urges all "wise hearted and expert builders ... to amend both the method or uniformity, and the structure it self, wherein they shall finde either want of windows, or sufficient light, or other deficiency in the architecture whatsoever" (1797, p. 364).

But to be a system, this "high and honourable building" required a foundation. Coke found such a basis in his concept of "perfect reason".

What was demanded ... if English law was to exist as a unified system was a technique of binding precedents. Somehow, someone had to find a technique that could be used to survey the vast array of judicial "examples" that had been accumulating since early medieval times and that would enable the courts to select those that could serve as broad precedents. Coke provided it. His definition of law as "perfect reason" became the standard against which the facts of law were measured. It was the core of his theory of precedent, and he used it to forge an aggressive, internally consistent common law. (Lewis, 1968, p. 336)

Reason was construed very carefully, however. Coke accords a special privilege not to "natural reason" (the rationality of the ordinary citizen), but to what he termed "artificial reason", the prerogative of the judicial elect:

Reason is the life of the law, nay, the common law itself is nothing else but reason; which is to be understood of as an artificial perfection gotten by slow study ... and not of every man's natural reason. ... And therefore if all the reason that is dispersed into so many several heads were united into one, yet could he not make such a law as the law of England is; because by many successions of ages, it hath been ... refined and refined by an infinite number of grave and learned men, and by long experience grown to such a perfection, for the government of this realm, as the old rule may be justified verifi'd out of it, Neminem aperit esse spectantorem legis: no man (out of his own private reason) ought to be wiser than the law, which is the perfection of reason. (1836, p. 1)\(^6\)

For Coke, in other words, the judge must be seen as a uniquely privileged interpreter of the common law. While "the knowledge of the law is like a deep well out of which every man draweth according to the depth of his understanding" (1836, p. 2), it is only the judiciary who, well versed in logic and imbued with "legal knowledge" are able to plumb the depths. It is only "by reasoning and debating of grave learned men," he insists, that "the darkness of ignorance is expelled, and by the light of legal reason the right is discerned" (1836, p. 3).

However, his systematization rested on another move. Allied with Coke's concept of artificial reason is another claim, implied by his reference to the "infinite number of grave and learned men." To justify the power and intrinsic reasonableness of English common law, Coke appeals to history. A contemporary judicial decision, he claimed, "doth not give or make a new law, but declares the old: ... by a judgement, the law is newly revealed, that of long time hath been covered" (quoted in Hill, 1963, pp. 254–255). Indeed, the very antique continuity of the law—its existence "time out of mind"—was its central validation. "If the ancient laws of this noble island had not excelled all others," he claims, "it could not be but some of the several conquerors and governors thereof ... would ... have altered or changed the same" (1826b, pp. vii–viii).

Again and again, Coke insists on the essential continuity of English common law history. The common law was not imposed by the Normans, he claims, but predates them, rooted in a primeval world of pure Englishness: "Time out of mind before the Conquest there had been Sheriffs.... Likewise by all that time there were trials by the oath of twelve men.... by like time there had been writs of assize and other original writs returnable to the King's Courts ... [all of which] do manifestly prove that the common law of England had been time out of mind before the Conquest, and was not altered or changed by the Conqueror" (1826b, pp. xi–xii).

The effect, of course, is to subordinate other sources of legal knowledge to a long-lived and rational common law. Not only does this constitute a direct challenge to rival sources of legal authority such as the civil law, but, in combination with his concept of "perfect reason," signifies a direct assault on the judicial authority of the monarch.\(^7\) From a medieval conception of the crown as "creative and dominant" vis-à-vis the law (Giere, 1900/1958, p. 74), law is assumed to exist "above and behind" the sovereign. Such a claim, of course, took on a special saliency in the constitutional conflicts of the day, especially on the occasions when he challenged the ancient judicial authority of the crown and the prerogative courts.\(^8\)

\(^6\)Christopher Hill provides a useful discussion of the ambiguous and contested meanings given the concept of rationality during the seventeenth century (1991, pp. 103–123). New concepts of reason, challenging the hierarchical and cosmological models of the past, were advanced in arenas other than law, including science, theology, and economics.

\(^7\)See for example, volume 2 of Coke's Reports (Coke, 1826a).

\(^8\)A famous interview with James I is reported by Coke himself: "The King said that he thought the law was founded upon reason, and that he had reason as well as the judges. To which it was answered by me, that true it was that God had endowed His Majesty with excellent science and great endowments of nature, but causes are not to be decided by
Coke's legal histories have been well documented. Less acknowledged, however, are his geographies. Goodrich (1990, p. 256) is unusual in recognizing that the common law occupies not only a "memory" but a "territory." Coke's territory, in this sense, is both a nationalized and an administrative one. First, he assumes an inviolable and connotational link between the imagined communities of the common law and the English nation. Coke's writings can be read as an extended eulogy to the "English legal tradition," insular both in origin and form, that prefigures those such as Dicey (1885/1965) and Blackstone (1765/1838, Vol. I, p. 9) who were to celebrate the rule of law and the genius of the English constitution. Coke, it should be remembered, was preoccupied not only with defending the common law against popular criticism or nonlegal scholars, but against the suspect and Romish influences of civil law jurisprudence (Goodrich, 1990). Unflattering comparisons with despotic European powers—an old English reflex—thus figure prominently in his account.

If the beauty of other countries be faded and wasted with bloody wars, thank God for the admirable peace wherein this realm has long flourished under the due administration of [common] laws: if thou countest of the tyranny at other nations, wherein powerful will and pleasure stands for law and reason . . . ; praise God for the Justice of thy gracious sovereign . . . . If in other kingdoms the laws only seem to govern, but the judges had rather misconstrue law . . . than displease the king's humour . . . bless God for Queen Elizabeth, whose continual charge to her justices . . . is, that for no commandment under the great or privy seal, writs or letters, common right be disturbed or delayed. (1820s, pp. vi-vii)

By this historical—geographical account, common law—the "law of the land"—is meaningless without reference to England, the sceptered isle. However, as Goodrich and Hachamovitch (1991) note, Coke's England is not a place of change and struggle, but one of continuity and stability. In his obsession with the legal langue durè and the stability of individual property, the English are made to "live in an institutional temporality of repetition, of the immemorial coming round again, recurring eternally" (Goodrich & Hachamovitch, 1991, pp. 165–166). Further,

natural reason, but by the artificial reason and judgement of law. With which the King was greatly offended" (quoted in Ives, 1968, p. 125). In this, Coke evidences what Wadson defines as a distinctly liberal attitude to political and social justification, that being "an impatience with tradition, mystery, awe and superstition as the basis of order, and . . . a determination to make authority answer at the tribunal of reason and convince us that it is entitled to respect" (1987, p. 134).

Legal Territories and the "Golden Mean" of the Law.

his England celebrates an individualized passivity, and, in so doing, asserts "the wish of the gardening nation to turn away from the polis . . . to avert their gaze from the political and tend simply to their backyard, their tiny piece of national identity, their emblem and [h]earth" (p. 166). As with the writings of some of the legal-regional writers noted above, the effect is to render law even more "natural." Law and land are locked together for all time, divorced from the contingencies and politicized vagaries of social life. This suturing of nation, land, and common law, I think, remains as a powerful ideological force in contemporary English life.

However, Coke's systematization relies upon a second geographic claim that has similar contemporary echoes. While rooting the common law in the spaces (and times) of "Englishness," he disseems the interpretation of that law from the multiple local sites in which law acquires meaning. As well as being ancient, the common law is described as unitary and centralized. The common law is that law common to all Englishmen, wherever they live. To Helgerson (1992, p. 71), there is a connection here: Coke's common law has a "double face." Not only does it turn outwards to European civil law in order to "declare its defining difference," it also turns "inward to find out and eliminate those practices and those institutions that failed to reflect back its own unitary image." Of special importance were those localized legal practices that were an affront to Coke's unitary legal map. As we shall see, the early seventeenth century judicial map was still a fragmented and complex one, characterized by multiple jurisdictions, operating at several spatial scales. The consequence was a plethora of courts, "national, regional and local courts, ecclesiastical and secular courts, courts occasional and permanent, courts dispensing English common law, Roman civil law, canon law and a bewildering variety of local customary law, courts of considerable antiquity and courts newly erected or asserted, courts swamped with business and courts moribund for lack of suitors" (Prest, 1987, p. 65). Given this diversity, the common law was only one among several rival sources of legal knowledge. As well as opposing the foreign influences of Roman law, in other

9 Only became aware of Richard Helgerson's remarkable Forms of Nationhood after completion of this chapter, although my account does profit from his 1986 paper on seventeenth century cartography and choreography. Helgerson juxtaposes Coke and Saxton, as I do. Although both accounts were developed separately, I think they complement each other. However, there are several differences: while he is more concerned with the nascent nationalism of both, my concern is with their common treatment of space. While I offer a more focused comparison of the two, Helgerson ambitiously incorporates other contemporary discourses—including drama, poetry, theology, and exploration.

10 Coke himself identified sixteen different types of law, only one of which could be categorized as common law.
words, Coke defined another threat: those unsettling local legal voices at the supposed heart of English law. This was an ambiguous move, of course: the local customs that he effaced and, if you will, deemed alien, were those that supposedly provided the "communal" underpinnings to the common law.

For Coke, however, the essential unity of the common law had to be preserved. Local legal knowledge was thus acceptable only if it could find room in his "high and honourable building." It is this that drives his frantic winnowing of local legal customs.11 While recognizing localized legal practice, he distinguishes it from the universal principles of the common law: "In special cases, a custom may be alleged within a hamlet, a town, a burgh, a city, a manor, an honour, a hundred, and a county: but a custom cannot be alleged generally within the kingdom of England, for that is the common law" (1836, pp. 30-31). The "construction and determination" of local customs can only occur from within the legal enterprise, a task that "do belong to the judges of the realm" (1836, p. 8).

To Coke, then, the common law is not a variegated and diverse system of localized practices, but a disembodied superstructure. Both substantively and interpretively, the common law is to override the specificities of local legal life. This resistance to the local reproduces Coke's conceptual divide between the substance and the unwritten "spirit" of the common law. To the extent that the essence of the law is always understood as disembodied rather than formed in material and historical conditions, it follows that the law can be interpreted only at the highest level of spatial abstraction. Legal knowledge, by definition, must be true to the law alone. Similarly, if the law is indeed a unity, then the specificity and diversity of localized legal practice is by definition suspect. Not only do Coke's legal treatises represent English legal history as stable and continuous, they actually proclaim a unitary voice, which enables

all the Judges and Justices in all the several parts of the realm ... with one mouth in all men's cases, [to] pronounce one and the same sentence ... [For as in nature,

11In his treatise The Complete Cophthaler, Coke considers how to decide on the validity of a specific local custom—that is, to decide whether or not a local legal practice can be "mapped" into the common law system. He prescribes six "rules" and three "manifests" including tests of reasonableness and certainty, by which this winnowing can proceed. The watchword appears to be one of constraint and caution. He insists, for example, that "a custom never extendeth to a thing newly created" (1764a, p. 65). I am reminded of the characterization of judges as "people of violence... Confronting the uncertain growth of a hundred legal traditions, they assert that this one is law and destroy or try to destroy the rest" (Cover, 1983, p. 53).

we see the infinite distinction of things proceeds from some unity, as many flowers from one root, many rivers from one fountain, many arteries in the body of man from one heart, many veins from one liver, and many sinews from the brain: so without question Lex et ina est una divina, and this admirable unity and consent in such diversity of things proceeds only from God, the Fountain and Founder of all good laws and constitutions (Coke, 1826c, p. iv, my emphasis).

This suspicion of local legal discretion, as we shall see, is also linked to Coke's political vision, prefiguring liberal conceptions of the individual and the state. The legal subject, on this account, must be seen either with reference to "his" own individuality, or as a citizen of a national state. Intermediate agencies, including the local legal apparatus, have value only to the extent that they conform to the individual–state dualism.

The common law, of course, has not always operated as a centralized unitary authority, "fully, flatly, and evenly operative over each square centimetre of a legally demarcated territory," as seems implied by Coke's claims. His account effaces an "older imagining, where states were defined by centres, borders were porous and indistinct, and sovereignties faded imperceptibly into one another" (Anderson, 1983, p. 26). Prior to the Norman Conquest, the geography of the traditional judicial system was a profoundly decentralised and pluralistic one (Baker, 1971; Cant, 1962). Most judicial activity seems to have occurred at the hundred-moot, which appears to have had considerable jurisdiction within its area. The shire-moot, headed by the shire-reeve, or sheriff, was, apart from the King's court, the largest governmental assembly of the kingdom. Pre-Norman Conquest rulers were apparently content (or obliged) to leave the shire and hundred courts as the main locus of justice. Indeed, Maitland (1908/1963) notes that a steady stream of pre-Norman royal decrees ordain that no case can be brought before the king before passing the hundred and the shire.

These jurisdictions were supplemented by other multiple and overlapping "legal spaces" that appear foreign to the modern sovereign state. Many of these were in the form of nonstate or "private" jurisdictions such as the ecclesiastical courts, that claimed jurisdiction over cases involving church finances and property, marriage and family relations, and certain types of crime. Apart from the ecclesiastical legal system, the franchise system, in which the Crown granted the lucrative right to hold court in certain areas, was also of considerable importance. At an extreme, certain powerful nobles were granted "full regalian rights" in certain
Manorial courts were also widespread, with each manor apparently operating according to its own customs and procedures (Baker, 1971; Berman, 1983; Maitland, 1908/1963). Overall, then, the premodern judicial map was decentralized, pluralistic, and often extrastatal. The metaphor with which this chapter opened—the “forest of spires and towers”—seems apposite. For Maitland, “the courts of justice . . . were local courts. . . . Resort to any central tribunal . . . seems to have been rare, and this localization of justice must have engendered a variety of local laws. Law was transmitted by oral tradition, and the men of one shire would know nothing or care nothing for the tradition of another shire” (1908/1963, p. 4).13 However, the common law itself was necessarily built up, decision by decision, on the basis of certain such local customs. As a generalized common law relied upon a formerly decentralized institutional structure, so it selectively appropriated local legal custom in the construction of a unitary Legal Knowledge.

The centralized and seamless legal system wishfully implied by Coke is hard to identify. However, Coke not only misrepresents the premodern legal map but underplays the fundamental inversion upon which the common law was crafted. The emergence of a national system of common law (common to all) was itself premised on the selective and forcible cooption of a decentralized (“communal”) legal mosaic in which sovereignty was indistinct and multilocal, rather than an inexorable process of legal rationalization. To some extent, those institutions—such as the local “tithings”—embodied the relative centralization of Anglo-Saxon state practices. However, later reformers such as Henry II managed to use the existing structure as a basis for an even more thoroughgoing centralization of legal authority. In the process, the function of many local institutions—such as the shire court—began to change from an element within a localized and relatively autonomous set of legal institutions and practices to a component within a national system. They became, for the first time, component parts of the “local state,” charged with the “bottom-up” task of collecting spatial information on crime and disorder, and the “top-down” task of administering central law. Their “horizontal” character essentially disappeared, given their new location within a “vertical” system of spatial surveillance and administration. This process entailed many

12The Counties Palatine of Chester, Lancaster, and Durham are examples. Certain abbeys (and some secular jurisdictions) also obtained such rights on a smaller scale, such as the Four Crosses of the Abbey of St. Edmondsbury, or the Twelve Hides of the Abbey of Glastonbury. A whole series of lesser franchises are noted by Baker (1971), such as the right to punish for theft, affray, housebreaking, or breach of the peace.

13See also Berman (1963, p. 88).
stern ordering of central authority and the localized conception, which stressed the maintenance of ordered relationships between the members of the village community. Order, at the local level was "less a positive condition of disciplined social harmony than a negative absence of disruptive conflict locally" (1980, p. 24). The resultant tension, and the consequent attempt to secure the hegemony of a nonlocal vision of social order through increased central legislation, pontification, and coordination was, he argues, expressed most immediately within the lower levels of the legal apparatus. Coke's unification, and his attention to the unity of the legal system, can be seen in this context as a moment in a broader political struggle over the appropriate locus of order and legal regulation.

Coke's common law systematization, then, is not a dispassionate or "technical" modernization. Not only must we see it in terms of an interjurisdictional struggle between rival legal structures (civil, monarchical, common, manorial, and others), but we also must recognize that it also plays a central ideological and instrumental part in a renegotiation of the geography of legal relations. Moreover, this must not be viewed simply as an institutional transition in the state; it also signals a shift in the spatiality of legal knowledge. With what Berman (1983) terms the "disembedding" of law from the locality, the legal world increasingly is presented as unitary and centralized, rather than as fragmented and localized. Legal knowledge becomes less the domain of locally constituted agents, who understand the world of rights and obligations in and through the locality, than the closely guarded turf of a centralized legal profession. Law becomes increasingly "territorial" rather than predominately local. Local legal knowledge is repositioned as a "custom," to be assessed according to unitary principles. Such shifts, moreover, are associated with the beginnings of crucial changes in the spaces of social, economic, and political life, entailing a modernist displacement of the locus of social identity.

If Coke's historical geographies were contingent, they were also contested. While Coke's appeal to the essential birth-rights and liberties of the free Englishman struck a chord with the propertyed, others challenged his claims. Coke saw the common law as predating the Norman Conquest, challenging royalist absolutist theories of possession through conquest. As Hill (1958) notes, "a defence of Anglo-Saxon liberties was also a defence of property against the state" (p. 66). However, others insisted the call of nationalism and lost rights into a very different historical geography. Evoking folk memories of localized justice, the common law was now cast as an alien imposition, hostile to the very freedoms it purported to embody, rather than the only defense of the freeborn Englishman. "England is a Prison," Gerald Winstanley cried, "and the Lawyers are the Jailer." The common law of "Westminster Hall came in

by the will of a Tyrant, namely, William the Conqueror," according to one Leveller (Ives, 1968, p. 127). As Hill notes (1958, pp. 50-122), such narratives—especially those of the "Norman Yoke"—have long been a potent rallying cry for radical English social movements. One problem with the common law, it was argued, was the very inaccessibility and acontextuality—its remove from the commons—advocated by Coke. To radicals, consequentially, the law must be wrested "from the custody of a clique of mandarins and thrown open to the comprehension (and therefore control) of the 'meanest English commoner.' The Reformation had cast down priests from their seats of power: legal reform was to cast down lawyers. Then the English commoner could enter peacefully into their inheritance" (Hill, 1958, p. 81). Hence the argument that the central courts should disappear, and decentralized and contextualized local courts introduced in their place, modeled on the Anglo-Saxon moot (Shapiro, 1975, p. 280). Every man, one Leveller noted, should have "Justice administered at his own door; as in the days of King Edward and King Alfred" (quoted in Scheik, 1948, p. 67).

It was Coke's arguments, of course, that were institutionalized. One of the foremost idealists and apologists for the common law, Coke is thus an important agent in the formation of a deep structure and a symbolic vocabulary "in whose shadow we still live" (Goodrich & Hachamovitch, 1991, p. 161; Allott, 1992). In his day, an appeal to transcendent concepts of rationality and antiquity, and his definition of law as a seamless and closed system, served as a powerful weapon against the overwhelming power of the king. However, its long-term associations have been more conservative. If the common law is, indeed, a complex interlocking edifice, rooted in reason, nation and history, then it is fixed and unalterable. "The wisdom of the judges and sages of the law," he claims, "have always superseded new and subtle inventions in derogation of the common law. And therefore the judges say . . . we will not change the law, which always hath been used" (1836, p. 16). At the same time, Coke's broad repertoire of interpretive principles also promises considerable creative discretion to the courts. The result, Hill suggests (1963, p. 252), is an open textured and discretionary form of interpretation that still can claim privileged access to the fundamental truths of the common law. In the legal edifice that Coke constructs, then, closes its doors to the vagaries of social contingency and political practice. At the gates, barring the way, is a privileged legal elite. Coke's "empire of truth" (Goodrich, 1990)—one of legal community and essentialized national rootedness,
coupled with the awesome logic and rationality of an all-seeing judiciary—locks the law in a closed loop of legal knowledge. This opens an unbridgeable space between the ossified History and Geography of law and the politicized and diverse spaces and times of social life. As well as an act of integration that appeals to a mythic Englishness, it is a subsumption that is simultaneously an act of destruction. Local legal knowledge is subsumed within a unitary and systematic monolith. The diversity and materiality of social life and legal understanding is consumed by a unitary and abstract system in which legal practice and legal doctrine exist in a self-validating circularity, independent of “external” conditions.  

The remappings of those such as Coke have a profound contemporary relevance within Britain and beyond, allowing us to imagine the law as an imposing and awesome presence that is, simultaneously, an absence. While of profound human importance, it appears to be beyond human control. Rooted in a past beyond history, and in an “utopic” site beyond geography, the common law is, nevertheless, coeval with “our” history and contemporaneous with “our” nation. English common law thus carries an important double meaning. On the one hand, law appears universal, or common to all. Law is a total and unitary presence, divorced from the social diversity and spatial contingencies of social life. It is guarded, divided, and mapped by a judicial coterie granted exclusive audience and privileged access. On the other hand, the common law is presented as somehow communal, rooted in the life worlds of the English (or Canadian, or American) experience. The common law is presented both as a constitutive part of the national condition—by virtue both of its historical and geographic continuity and “communality”—yet as somehow divorced from the contingencies of social life—given its antiquity and centralized, unitary status. It is this simultaneous sense of universality and rootedness that gives the common law a flexibility that has been exploited to great effect by later ideologists, both in Britain and in other common law countries.  

THE POLITICS OF MAPPING

Although apparently a very different discipline, cartography is, like jurisprudence, far from an objective, merely technical enterprise. To use Weber’s comments on modern legal thought’s “growing logical substantiation,” here predigested by Coke, are useful to the extent that they entail “the substitution for a dependence on externally tangible formal characteristics of an increasingly logical interpretation of meaning in relation to the legal norms themselves as well as in relation to legal transactions” (1931/1964a, p. 368).

Harley, maps “are never value-free images. . . . Both in the selectivity of their content and in their signs and styles of representation maps are ways of conceiving, articulating and structuring the human world” (1988, p. 278; cf. Haggan, 1989). This process can be both instrumental, given the link between spatial information and power, and ideological, with the map serving as a symbolic statement of power and dominion (Schein, 1993). Just as the late sixteenth and early seventeenth centuries mark an important jurisdical transition, so they signal a cartographic watershed. Whereas medieval Europe saw only “odd pockets of map-making [and] the occasional individual who drew maps,” and a society that “simply did not think in cartographic terms when confronted with the need to record or communicate topographical information, whether it concerned half a field or half a continent” (Harvey, 1980, pp. 155–56), the sixteenth century saw a flowering of European cartography, evidenced most famously by the atlases of Mercator and Ortelius. This cartographic sea change—one that marks a profound change in social scale, from the world of the local community to the national and international spaces of mercantile capitalism and the nation-state—is linked to technical changes (such as developments in cartography), but is also bound up in exploration, changes in property, and the evolution of the state. 

In 1579, a year after Edward Coke was called to the bar, Christopher Saxton’s (1542?–1610?) remarkable collection of county maps of England and Wales was published. As with Coke’s Institutes and Reports, his atlas has been hailed as groundbreaking. For Helgerson (1986, p. 51), it was “one of the most significant of the many extraordinarily significant books to come from English presses in the last quarter of the sixteenth century.” Although maps of England had been produced before, never before had England and Wales—or for that matter any country—been seen in such detail or with such accuracy. Here in a single volume were thirty-five maps, a general map followed by thirty-four maps of individual counties or groups of counties, representing the little world of Elizabeth’s kingdom. The book’s effect was enormous. For over two hundred years—until the Ordnance Survey of 1794—nearly every printed map of England and Wales derived from Saxton. (Helgerson, 1986, p. 51)

As I cautioned concerning Coke’s treatises, we must not see Saxton’s atlas as an isolated event. Indeed, the turn of the century saw a flurry of maps, such as William Camden’s Britannia (1586), John Speed’s Theater of the Empire of Great Britain (1611), Michael Drayton’s Poly-Olbion (1612), and
John Norden’s Speculum Britanniae (ca. 1598), as well as the production of a number of county chorographies, such as Richard Carew’s Survey of Cornwall (1602) and William Lambard’s A Penambulation of Kent (1576).

These maps and chorographies are much more than objective representations of English space. It becomes immediately clear that the atlases, at least, can be seen as continuing an earlier trend, that of the centralization of national power at the expense of local, feudal authority. It is well known, for example, that the survey and the publication of Saxton’s maps had the full backing of the Crown. Indeed, the idea of collecting and publishing maps of the kingdom appears to have been suggested by the Queen’s printer in the 1570s (Tyacke & Huddy, 1980), as the link between mapmaking and the imperatives of statehood became increasingly clear. Robert Beale, Clerk of Queen Elizabeth’s Privy Council, noted that “a Secretarie must likewise have . . . a booke of the Mappes of England and if anie other plats or mapps come to his handes, let them be kept safelie” (quoted in Harvey, 1980, p. 156). Morgan (1979) also suggests that the threat of invasion, and a concern with “an increasingly detailed regulation of multifarious aspects of provincial society, from the supervision of religion to the control of the export of grain and the encouragement of local industries” (p. 136) were important motives for the official sponsorship of mapping in the sixteenth century. It is no accident that the county—increasingly an administrative and judicial division—was the standard unit of the sixteenth century atlas. It is also noteworthy that one of the first-known scale maps produced in England was a 1545 map of Dover, drawn for military purposes following French attacks in the area.

It is not surprising, then, that Saxton’s collection exudes the language of central power and royal sovereignty. The frontispiece of his first edition, for example, presents a figure of Elizabeth I, waited upon by figures representing cosmography and geography, and contains verses celebrating the reign of the Virgin Queen, while every map is embellished with the royal coat of arms. The message, Helgerson notes, could not be more explicit: “These maps proclaim royal sovereignty over the kingdom as a whole and over each of its provinces. As we turn the pages, we are invited to remember that Cornwall is the queen’s, Hampshire is the queen’s, Dorset the queen’s, and so on county by county” (1986, p. 54). In producing a spatial representation of the kingdom, royal power is, for the first time, able to take full ideological possession of a clearly defined territory.

As well as expressing the power of central authority, the atlas again reminds us of the state’s intensified regulation of local legal life. Administrative concerns, including the better regulation of the legal system, appear as one important motive for the construction of this early “Geographic Information System.” Morgan (1979) notes, for example, a growing concern at attaining an efficient spatial distribution of justices of the peace:

From the viewpoint of administrative efficiency within the localities this became increasingly important between 1558 and 1640, as both the volume of legislation requiring action by J.P.’s multiplied and as the divisional system and out-of-sessions procedure multiplied. It was now increasingly necessary to ensure that there was at least one or two active J.P.’s within each locality. Clearly, this end could best be achieved if those responsible at the centre had some notion of the place of residence and relative location of the justices within a county. (1979, p. 138)

It would also appear that the administrative and legal structures of the state were brought to bear in the collection of such spatial data. In his survey of Wales in June 1576, for example, Saxton was given an open letter addressed to local J.P.’s, mayors, and others, instructing them to be “aiding and assisting unto him to see him conducted unto any towre Castle highe place or hill to view that countrey, and that he may be accompanied w[ith] iij or iij honest men such as do best know the cuntrey . . . and that at his dep[art]ure from any towne or place that he hath taken the view of the said towne do set forth a horseman that can spoke both welsh and englishe to safe conduct him to the next market towne” (quoted in Evans & Lawrence, 1979, p. 147).

To that extent, of course, the atlas both expresses and facilitates the formation and centralization of a centralized legal system. The effect, as Diamond puts it, is that of “the royal jurisdiction extend[ing] itself over the whole realm, gradually levelling a maze of local jurisdictions and spreading one coherent system of national law” (1971, p. 103). The atlas, then, contributes to the ever-deepening “judicialization” of social relations, as a utopic common law begins to penetrate ever deeper into the localized life world. Saxton’s atlas, as a compendium of spatial information and a statement of central sovereignty is, in this sense, the cartographic corollary of Coke’s legal treatises.

If the administrative and ideological concerns of the centralized state were the only significance of the maps and chorographies of Saxton and his contemporaries, they would in themselves be important. However, as with Coke, they have a more complex significance. Indeed, if we accept the arguments of Helgerson (1986, 1992) and Morgan (1979, 1980), it would seem that the maps and chorographies, although initially products of dynastic power, were ultimately subversive of royalist claims. Far from
signaling the hegemony of dynastic authority, they must be seen, like Coke’s works, as moments within an intellectual and political shift that was beginning to celebrate what might be seen as liberal conceptions of political and social life. Two themes, according to Helgerson, structure the spatial representations of Saxton and others: nationalism and individualism. Each comes into being in opposition to royal absolutism, which threatens both.

The nationalism of the maps and chorographies of this period, while visible in Saxton (Helgerson, 1986, p. 56), is best evidenced by Michael Drayton’s remarkable Poly-Olbius (1612), which provides stylized regional maps of England and Wales, coupled with prose and poetry. As soon as we open Poly-Olbius, royalty disappears; now it is “land” and “nation” that serves as the mythic suture. Drayton’s gendered frontispiece inverts Saxton’s image by replacing the Queen with an allegorical picture of Albion, ensconced in a triumphal arch, and wrapped in a map of her “realm.” Dynastic claims are quite literally marginalized; around the figure of the land herself are placed previous claimants to the realm. The figures of Caesar, Hengist, Aeneas, and William are seen simultaneously as suitors and despisers of the feminine land. However, while the four monarchs “warily eye one another or their intended prey, [Albion] gazes serenely out, a confident source of identity and continuity” (Helgerson, 1986, p. 64) (see Figure 3.2).

The county chorographies, Helgerson claims, are not simply antiquarian ramblings, or evocations of a golden age, but can also be made to carry an implicit political message, despite the avowed royalist tendencies of many of their authors. In emphasizing nation, as opposed to history and the chronicle, the chorographers present a distinct image of England. As with Coke’s legal narrative, it is not one that celebrates dynasty, which appears brief and contingent, but instead the stability and continuity of England. Loyalty to England no longer presupposes loyalty to the Crown; rather it signifies “loyalty to the land; to its counties, cities, towns, villages,

16 From [the] maps all dynastic insignia are banished. Instead of elaborate coats of arms, we find, as Drayton puts it, “every mountain, forest, river, and valley, expressing in their sundry postures their loves, delights and natural situations.” The map ... here crown alive ... Drayton’s Britain is “peopled” by its natural and man-made landmarks. Its streams are nymphs; its hills, shepherds; its differing regions, rival choirs. Its only crowns are worn by towns and natural sites” (Helgerson, 1980, pp. 59-60).

17 At length, the Roman, by long sure / Gain’d her (most Part) from th’ancient race of Brute. / D’erow’t from Him, the Saxon sable Horse, / In store by sterner Hengist, won her; but, through force / Garding the Norman Leopards th’ad in Gules. / She chang’d her Love to Him, whose Line yet rules” (Drayton, 1613, i). Interestingly, the frontispiece to the first edition of Speed’s atlas is similar.

18 In the seventeenth century the automatic association of “king and country” begins to break down, as Helgerson (1986, p. 72) notes: “[T]he formula occurs more and more often without mention of the word monarch. Service to the country alone—with all the ambiguous meaning the word country had then—kingdom, nation, county, locality, country,

FIGURE 3.2. Title page of Poly-Olbius by Michael Drayton (1613). Reproduced by permission of The Huntington Library, San Marino, California (RB 59142).
under royal disapproval. However, lest it be said that such representations evoke the radical England of the Levellers, it should be noted that one specific feature of local particularity was emphasized, both by the cartographers and the chorographers. It was the interests of local propertied elites that were most in evidence. Thus, "more and more, chorographies become books where country gentry can find their manors, monuments and pedigrees copiously set forth." This, however, was politically controversial: "King James might argue that in some ultimate sense all the

side—was displacing service to king and country, just as the latter had displaced service to God and his church or service to one's large lord. . . . The emergence of the country as a single, if variously significant, term for the focal point of allegiance parallels the emergence of the description, survey or chorography" (cf. Everett, 1968).

land was the king's. The seventeenth century successors of Lambarde and Camden showed to whom it really belonged" (Helgerson, 1986, p. 73). 19

The links with the geographies of Coke should be clear. Both representations recover a naturalized and continuous linkage between nation and property. An objectified "land" emerges as a unifying, benign, and ever-present force. As the landed gentleman could find succor in the Reports of Coke, so he could be comforted and reassured by the maps and chorographies of his day.

As with Coke, however, such representations straddle an ambiguous divide. The geographies of Saxton or Lambarde could be seen nostalgically to evoke the localized feudal polity of early England. An appeal to the timeless nature of "the land" in both its feudal and nationalist sense could be read simply as a Whiggish denial of the centralizing forces of modernity. However, I would argue that the geographies of Saxton and his contemporaries are distinctly modern in at least two ways. First, they are deeply implicated in one economic trend—the fluid alienation of real property—that was central to emergent capitalist social relations. This is a point to which I will return. Second, their geographies speak powerfully of the subjectivity of the modern individual: dispassionate, removed, and autonomous. In both cases they embody a transition—albeit ambivalent—from the rooted places of feudalism to the abstracted spaces of modernity. In this, the similarities with Coke reoccur.

The cartographer's claim to the interpretive authority of the individual expert is evident in a number of ways. Helgerson (1992) convincingly tracks the cartographer's transition from artisanal to artistic status, noting the manner in which Saxton and other mapmakers increasingly claim individual creative status as they emerge from behind the feudal hierarchies of patronage and preferment. But the "discovery of self" evidenced by the atlases—one that was going on throughout Elizabethan culture—is also apparent in another, even more important way. Unlike the fluid, localized maps of the medieval world, the maps of Saxton, Speed, and Norden are presented from above and without. The fixed, perspectival viewpoint of the surveyed map is "coldly geometrical, elevated and distant." While the Renaissance conception of space is as "infinite, homogeneous and isotropic," premodern geographies were far

19 According to both Helgerson and Morgan, these were politically consequential claims. Although the maps of English and Welsh counties were initially a response to central imperatives, for Morgan (1979, p. 154), they came to "crystallize" and provide a "locus and emblem" for "county" sentiments. Helgerson puts it more directly, arguing that the maps "opened up a conceptual gap between the land and its ruler, a gap that would eventually open battlefields" (1986, p. 56).
more "easy and hedonistic" (Edgerton, 1975, p. 161). We need only compare Saxton's for example, with the Hereford map of 1280, or the Gough map of ca. 1335. Edgerton (1975, p. 21; see also Jammer, 1969) notes the profound differences between modern and premodern artistic representations of space in terms of the "nonwindow" character of medieval painting:

Unlike the Renaissance painter depicting his scene in perspective, the medieval artist viewed his world quite subjectively. He saw each element in his composition separately and independently, and thus paid little attention to anything in the way of a systematic spatial relationship between objects. He was absorbed within the visual world he was representing rather than, as with the perspective painter, standing without it, observing from a single, removed viewpoint. It was only later...that people were taught to think of painting as the mason builds his arch: from the outside looking in, as if the picture were a window between the painter and the subject he would depict.

While this could be dismissed as merely a technical difference, I think that it also marks a deeper transition. The cartographer's abstract and external representation of space implies several assumptions. The first is an encoded statement of individual authority. The world, for the first time, is seen from the perspective of the all-seeing mapper. As David Harvey (1989) notes, "perspectivism conceives of the world from the standpoint of the 'seeing eye' of the individual. It emphasizes the science of optics and the ability of the individual to represent what he or she sees as in some sense 'truthful'" (p. 245). The claim, of course, is that of exactitude and spatial authority. It is not surprising, then, that the royal grant of arms to Saxton in 1579 celebrates his "perfect Geographical discirpcion" (cited in Tyacke & Huddy, 1980, p. 35). The surveyor Ralph Agas, a contemporary of John Norden, also asserts that "[n]o man may arrogote to himselfe the name and title of a perfect and absolute Surveyor of Castles, Manners, Lands and Tennements, unless he is able in true forme, measure, quantitie, and proportion, to platt the same in their particulars ad infinitum" (quoted in Harvey, 1980, p. 167).

While claiming individual authority, the map also abstracts from the world it represents. The heterogeneity of local practice and the diversity of forms of representation are effaced, and rendered in abstract and symbolic form. In combination, the effect is an ever increasing reification of space. Space is no longer mapped from within the places from which it is understood, but (apparently) from without. The sensuous and tactile nature of premodern mapping (indeed, the notable lack of interest in mapping per se) gives way to a rational and purportedly truthful presentation of space. Space no longer appears to have a subjective quality, but increasingly appears as an objective and pregivn surface, awaiting only the theodolite of the individual mapper to spring into life. As opposed to a re-presentation of space, the maps of modernity claim to offer its presentation. This objectification is a move, I think, of signal importance, entailing a modernist conception of space as something to be measured, contained, divided, manipulated, and—crucially—alienated. It is no accident that later Enlightenment thinkers frequently turned to the spatial survey to advance their goals, whether it be Jefferson's homesteading grid, designed to foster an individualistic, property owning democracy, or Turgot's postrevolutionary map of France, structured to advance private property and the circulation of goods. Kain and Baigent (1992) note the growing importance of large-scale maps in terms of the centralization of state power. From the sixteenth century onward, cadastral mapping becomes an increasingly important concern of the state apparatus in its endeavors at colonial settlement, land taxation, and instruments of rational taxation.

The representations of the spaces of England given by late sixteenth and early seventeenth century cartographers and geographers are, like Coke's claims, politically ambivalent. They are expressive both of royal and central authority and power, including the power of the centralized legal apparatus, and of the "land," property, and the individual. Moreover, in calling upon exact measurement and the principles of the spatial grid, they also begin to claim to speak with authority. Space itself begins to emerge as an objectified and asocial entity to which the cartographer has special access.

THE SPACES OF POSSESSION

Although one must not overstate the commonalities, the encoded geographies of both Coke and Saxton and his peers can, I have argued, be claimed that geography's intellectual task was to "survey the whole in its just proportion," rather than to deal with a part of the whole. Edgerton (1975) notes that Ptolemaic concepts of longitude and latitude were in fact "made concrete" as early as the 1420s, when a territorial dispute between Milan and Florence was resolved by the construction of a longitudinal line as a boundary between the city-states, maybe "the first instance in history in which an imaginary mathematical line... was recognised as a political-territorial limit" (1975, pp. 114-115).
profitably compared. Both Saxon and Coke are engaged in what Gregory (1994) would term an *enframing*, in which the world is set before the autonomous and detached self. Both Coke and Saxon presuppose precisely this divide, whereby a privileged and detached viewer (judge or cartographer) arranges an ordered projection of an objective and external structure (law or space) that then becomes available for contemplative and rational inspection. Alternative representations—such as the legalities of local life—are suspect precisely because of their location "within" the frame.

The historical geographies of Coke and Saxon are of importance beyond their shared detachment, however. We can best see their material significance when we turn to their intersection, specifically in terms of their mutually implicated representation of two changing economic spaces of the day: real property and the corporate city. Both spaces are given fundamentally different inflections within premodern and modern discourse. Put simply, while the premodern imagination regards both the city and property as particularized, localized, and embedded, Saxon and Coke help facilitate the emergence of a very different vision of such legal spaces.

I have already suggested that the foundations upon which Coke's constructs his "high and honourable building" are far from conservative, but are "modern" in many senses. The "reason" that underpinned the common law, in other words, was not an empty category. Even James I noted in exasperation that "reason was so variable according to several humours that it were hard to know where to fix it.... Reason is too large" (quoted in Hill, 1963, p. 254). However, Coke's reason was not so much large as socially focused. "His own critique of law," White (1979, p. 82) argues, "reflected the concerns of substantial landholders and merchants. ... Coke generally equated the 'grievances of the commonwealth' with abuses that were 'obnoxious to country gentlemen.'" As a result, his jurisprudence is firmly anchored upon several interlocking claims. Most importantly, these include a concern with the common law protection of property rights (witness his concepts of 'quietness of possession' and the principle of *meum et tuum*), and the rights of the private citizen against the predations of the collective (that is, the Crown). In this sense, Coke can be understood as a seventeenth century prefiguration of the attempt to stake out a distinctly "private" realm, freed from the encroaching power of the sovereign "public" state (Horwitz, 1982).

Coke's attention to property rights and economic liberalism has been well documented (Hill, 1963; Wagner, 1935, 1937; White, 1979). Not only do the bulk of the decisions collected by Coke in his legal surveys refer to property, but he eulogizes the common law as itself a means by which the alienation, the normative worth, and the very existence of property can be sustained. "The common law," he intones, "is the best and most common birth-right that the subject hath, for the safeguard and defence, not only of his goods, lands, and revenues, but of his wife, children, his body, fame and life also" (1836, p. 8).

In trying to exemplify the certainty and security to property afforded by a systematized common law, Coke borrows from the lexicon of the geographer. Individual obligations and rights, he argues, should "be measured by the golden and straight mete-wand of the law, and not the uncertain and crooked cord of discretion" (quoted in Ives, 1968, p. 125). This is a metaphor that Coke uses repeatedly, evoking the certainties provided by the new cartography; on another instant, he likens law to a "golden metwond whereby all men's causes are justly and evenly measured" (quoted in Holdsworth, 1934, p. 338).20

The link between the metwond and the common law, however, is of more than comparative significance. It is often noted that mapmakers such as Christopher Saxton were, first and foremost, estate surveyors and, as such, that their modern geographies were directly implicated in the alienation and possession of land. Himself the owner of lands in Suffolk, London, and North Yorkshire, Saxton is known to have surveyed the estates of others in Lincolnshire, Rutland, Kent, Suffolk, Essex, Cambridge-shire, Lancashire, Shropshire, and Lancashire.21 In this, he was not alone. The county cartographers John Norden and Philip Symonson were, among others, employed in what was fast becoming a growth industry.

Estate maps, in the form of accurate, large-scale surveys of specific plots of land, did not appear until the 1570s. Indeed, the modern profession of surveying did not exist within England until the sixteenth century (Harvey, 1987). Prior to this date, if maps were drawn at all to define property or to settle disputes, they were usually schematic. Indeed,

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20The "metwond" or "metestick" refers to a fixed standard of spatial measurement. "Mete" is the Old English term for boundary, or boundary stone. The legal phrase, "metes and bounds," refers to the spatial boundaries of a parcel of property. Parenthetically, we find the reverse of Coke's spatial reference in 1640, as "country" opposition grew. The judges of assize were urged by one contemporary to report local delinquents in their task as "the great surveyors of the kingdom" (Roos, 1968, p. 41).

21At least twenty-five surviving estate maps and fourteen written surveys can be attributed to Saxton, according to Evans and Lawrence (1979, pp. 74-121). On the ideological links between estate surveying and the national cartographies of Saxon et al., see Helgerson (1993).
normally only a written description, or "terrier," of the estate was given (see Figure 3.4).

Medieval methods of land measurement were fluid and approximate (Dodgshon, 1980; Jones, 1979; Taylor, 1947; Yates, 1960). Darby (1933) notes that "apart from the general unreliability, estimates frequently included a large measure of chance; rights were sometimes marked by the cast of a hammer, the boundary between the shires of Cambridge and Huntingdon ran in some of the meres 'as far as a man might reach with his barge-pole to the shore'; the day's journey and the morning's ploughing were other convenient units" (p. 530). Measurement units such as the selion, perch, and acre were often peculiar to a local area. The surveys of the Cambridgeshire manors of the Bishop of Ely in 1251, for example, revealed six different standards for the perch, ranging from 15½ to 18 feet (Jones, 1979). Moreover, standards also can be found that appear uniquely local, such as the perch of 15 feet 5 inches of North Leigh, Hampshire.

FIGURE 3.4. Map of Wotton-Underwood and Ludgershall, Buckinghamshire, circa 1570, by an anonymous cartographer. The map was prepared following disputes over Wotton-Lawnd, the common land between the two villages. Reproduced by permission of the Huntington Library, San Marino, California (ST Map 69).

Legal Territories and the "Golden Mean" of the Law

This is despite the existence of a statutory perch of 16½ feet that dates from the ninth century. It seems that local buildings, such as the church, often had the local standard sculpted on them. It is not surprising, then, that when land began to change hands more freely, struggles ensued over precisely which standards were to be used to measure land.

Such localized variation and imprecision, of course, appears incomprehensible only in modern terms, from the perspective of a society that freely alienates land, and settles property disputes outside the community. As with localized variations in time, the attachment of measurement to place was unproblematic when disputes were settled locally, when there was local agreement as to the standard, and when the alienation of land was unusual. However, changes in property relations and shifting attitudes on the part of landowners toward their lands made such imprecision increasingly problematic. Advances in land survey techniques, including techniques of triangulation, the development of surveying instruments such as the cross staff and theodolite, the growing availability of geometrical and arithmetical techniques, and a wealth of surveying treatises, allowed late sixteenth century surveyors, such as Saxton, to produce accurate cadastral maps. Further, legal disputes over property increasingly relied upon accurate surveys (Darby, 1933). Several of Saxton's surveys were made in connection with legal disputes (cf. Evans & Lawrence, 1979, pp. 102–108).

22 Land could also be measured as a "task-time" unit. An acre, for example, was generally accepted as that area that could be ploughed in a day by one team. Taylor (1947) notes, however, that this led to variations according to the time of year, latitude, and the heaviness of the soil. Land could also be measured according to such measures as units of seed, or in terms of function (for example, as affording pasture to a certain number of swine). The boundaries of administrative units were similarly fluid. Cam (1962, p. 60) reminds us that we "must not visualize a royal map-maker parcelling out shires into neat districts, much as the French Constituent Assembly planned the departments in 1790" (p. 60). To have defined the boundaries of the hundreds, according to one nineteenth-century observer, "would have been like writing on the sand" (Hoare, quoted in Cam, 1962, p. 14).

23 This change, much of which began in the sixteenth century, reflected a number of factors, including a desire to make agricultural improvements and to enclose common land, the quest for more profitable forms of land management in a period of high inflation, the wholesale transfers of land following the confiscation of church lands, and the growing proportion of land leased or rented by the acre (Taylor, 1947). Dobb (1947/1989) also notes the increase in speculative investment in land by city merchants, as well as the growth of rich yeoman farmers in this period (Lyman, 1947; Tawney, 1912/1961, pp. 177–230).

24 To Taylor, the accurate estate map had both contemplative and functional charms: "The superiority of the accurate estate plan over the simple survey... was immediately obvious. As it hung on his chamber wall (and it was deliberately adorned to this purpose) it enabled the landowner to consider his land as a whole, and to weigh the advantages of some fresh
disposition of the fields, or of some intended sale or purchase. Its value, too, where there was some legal dispute was early appreciated (1847, p. 131). On the link between maps and the emergent aesthetic of the cultivated elite, see also Morgan (1980). It is not surprising, then, that the number of local maps that survive increase from around ten, for each half-century between 1350 and 1500, to two hundred as early as the period 1500–1550 (Harvey, 1987).

FIGURE 3.5. Estate map of the manor of Wedderburn, West Yorkshire, prepared in 1594 by Christopher Saxton. Reproduced by permission of the British Library (B.L. Add Ms 63751 A).

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Land survey techniques, as a form of spatial representation, appear closely bound up with a changing conception of property. As the legal definition of real property became increasingly defined, so the spaces of possession were mapped with increased exactitude. Increasingly, property was no longer a relation between superiors and mesne lords, but a thing, to be rationally measured, commodified, and possessed, both legally and conceptually. It is not surprising, then, that many tenants and freeholders did not welcome the surveyor. The link between accurate spatial measure and the process of commodification is nicely (if unwittingly) presented in a surveying treatise of the late sixteenth century, which seeks to present the various subdivisions of the acre in terms of a useful mnemonic, that of currency divisions:

As a mark of English money containeth two Noble which containe [160] pence ... So an acre containeth [160] Perches, half an acre four-score Perches, and the quarter of an acre or roode, [40] Perches. And in every Markes is [40] grotes, and in every Grote [four pence] so there is in every Acre [40] daye worke, and in every daye worke foure Perches. Thus by rate of money, perches and daie worke are easly reduced into acres: or in this manner also every [ten shillings] is three quarters of an Acre, and every pounde in money is one acre and a half. (Leigh, 1577/1971, pp. 91–92)

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Taylor cites one commentator of 1583, noting that “the common people are in great fear when survey is to be made of their land” (1947, p. 131). Although the conjectures that this has to do with a superstitious fear of the man who could “measure at a distance,” one wonders whether it does not also reflect more immediate anxieties. We should remember that enclosure had been continuing since the sixteenth century. Such changes, of course, went hand in hand with the survey. John Norden’s Surveyor’s Dialogue of 1618 includes an imaginary discussion between a farmer and surveyor. The former is suspicious, calling surveying “evil and unprofitable” (p. 1), noting that “oftentimes you [the surveyor] are the cause that men loose their land; and sometimes they are abridge of such liberties as they have long held in manors . . . And above all, you looke into the value of mens Lands, whereby the Lords of manors doe racke their Tenants to a higher rent and rate then ever before; and therefore not onely I, but many Poore Tenants else have good cause to speake out against the profession” (p. 3). In response to the assertion that “we poore Countrysmen do not thinke it gooede to have our lands plote out” (p. 15), the surveyor responds by claiming that “a Plot rightly drawn by true informacion, describeth so the looly image of a manor, and every branch and member of the same, as the Lord sitting in his chayre, may see what he hath, where, and how it lyeth, and in whose use and occupation every particular is” (p. 5). In this, the map can prevent the “infinite concealments and . . . intrusions and incrochments” that have been made “to the prejudice of the Lords” (p. 15). However, perhaps fearing that such “incrochments” may be carried out not by the commoner but by the lord, several of the surveying treaties condemn “racking” and depredation. Norden, ironically, advocates that the relation between lord and tenants be one of a “mutual concurrence of love and obedience in the one, and of aide and protection in the other (p. viii) while simultaneously facilitating a shift in those very relations.
The central role of the cartographers such as Saxton and lawyers such as Coke in the changing conception of property is of interest in its own right. However, their implication in shifting property relations ties back to my earlier comments concerning their total and centralized vision of the geographies of social and political life. The legal and spatial conception of property as a spatially and legally definable, and hence alienable and portable, entity (rather than a relation) is, in many senses, one that is hostile to localized social life. In this, however, both Coke and Saxton again reflect a process that, although accentuated in their time, dates back at least as far as Henry II's reforms.27

Land, of course, was central to feudal social relations. However, the feudal conception of real property was of a distinct form, such that landholding was seen in the context of a complex system of rights and obligations, quasi-military in nature. Theoretically, no person in the feudal hierarchy, save the king, had land that was not held of someone else—either from the Crown or from some medium (mesne) lord. In every case, the tenant owed some service to the lord. For the higher nobles—the tenants-in-chief—these were often of the form of military service; for the villeins at the other end of the chain of obligations, labor was often required. Along with the obligations and responsibilities that attached themselves to property went the concept of nonexclusivity: land could be held “in common,” or used by different persons at different times. Tenure defined one’s “place,” both in terms of the great pyramid of feudal society, and in terms of a localized nexus of obligations and duties.28

27The common law is “law of the land” not only by virtue of its unitary form. In its original form, common law dealt largely with issues of property and the rights and obligations of land. Indeed, Berman (1983, p. 456) sees the extension of royal jurisdiction over local property relations as signaling the beginnings of centralized English common law. Of importance is the doctrine of novel disseisin, enacted in 1166. In simple terms, this doctrine served to protect a tenant against a forcible ouster by his lord. An action was made available for the recovery not only of land, but also of chattels and certain rights. Such a legal shift involved a change in the concept of possession and the emergence of the concept of seisin. Seisin “was more than factual occupation or control; it was a right to occupy and control, a right to “hold” land, chattels or incorporeal rights” (Berman, 1983, p. 455). Of similar importance are changes in inheritance law and the establishment of the common law principle of primogeniture.

28A useful local account of the cohesive and interdependent association between the family, landholding, and village life is given in Ran’s (1981) discussion of the manor of Hales (later Halesowen) during the thirteenth and fourteenth centuries, in which it is noted that “the medieval village community was far more important than any other local organization in later periods, because in no other period of English history were so many disputes concerning property and rights, as well as inter-personal conflicts, resolved locally by the villagers themselves through the mechanism of the manorial courts” (p. 15). For a useful corrective to the tendency to essentialize or romanticize the “local community” or to regard it as either static or spatially circumscribed, see Wrightson (1982).

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This, of course, is a long way from a modern conception of property: “The institution of property in the sense it came to have in bourgeois law posits a person (persona) and a thing (res), joined by the legal norm called property or ownership. Human society is dissolved into isolated individuals, and the world of goods split up into discrete items. One can no longer speak of a duty to use property or behave towards others in a certain way” (Tighe & Levy, 1977, p. 197). Both Coke and Saxton, then, are deeply implicated in trends that are economic, political, and geographic. We move, essentially, from a conception of property as a place-bound relation between at least two people—a lord and a tenant—to an abstract conception of persona and res; seemingly unmediated by social and spatial context (Milsom, 1981, p. 122).

URBAN SPACES AND THE CITIZEN

The remapping and “disembedding” of the spaces of economic life went on in spheres other than rural property. One other important legal controversy of the seventeenth century—one in which Coke was deeply implicated—centered on the “legal spaces” of the corporate city.

The English economy of the early seventeenth century was dominated by trade, particularly the trade in wool and cloth. However, access to this, and to many other economic sectors, was hedged in by a plethora of trading privileges, monopolies, and patents. The export of manufactured cloth, for example, was effectively the monopoly of the all-powerful Merchant Adventurers. Success in the mercantile world, consequently, was often a function of geographic location. Certain corporate towns, such as London, had acquired a privileged legal-economic status by virtue of their charters or because of the existence of locally based merchant companies. Provincial towns looked to such centers with envy. As one embittered commentator noted in the 1620s, “The Trade thus limited to a small number of a Company, residing for the most part at London, is a general prejudice to the whole Kingdom, which though it have made London rich, it hath made all the Ports and other parts of the Kingdom poor” (quoted in Supple, 1968, p. 136).

Such localized urban privileges were of considerable antiquity. The free cities of medieval Europe had been carved out, often forcefully, from the territories of secular or ecclesiastical authorities. Urban charters
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while challenging "monopolies on the making, selling, importing, or exporting of various commodities; the corruption of the customs farmers; [and] . . . the harassment of the Cinque Ports by the Merchant Adventurers" (White, 1979, p. 90). Some of his most aggressive condemnations on obstacles to trade were raised in 1621, during Commons debates over a bill for free trade in Welsh cloth, which would allow all merchants to buy and export cloth from anywhere in Wales. This ended the effective monopoly of the Shrewsbury Drapers, who had obtained the right to transport Welsh cloth to London. On the bill's third reading, two burgers from Shrewsbury argued that the bill would, inter alia, overturn the charter of Shrewsbury and the customs of corporate towns by enabling Welsh producers to sell their cloth in any town. In his rejoinder Coke took on not only these objections, but as White (1979) reports it, the very status of the corporate town itself:

If the town was to suffer from the bill, he maintained, it was only because it enjoyed monopolistic privileges. He declared that monopolies that restrained trades were "to be taken away," not only when they benefited individuals, but when they benefited towns, for monopolies were "to be detested" and the "common good" was "to be preferred before any particular town". From this attack on private and corporate monopolies, Coke moved on to the general subject of free trade. After outlining the maxim that freedom of trade was the life of trade and trade was the life of England, he observed that "where the merchant may trade most freely and gain most, there will he trade most." In conclusion, he maintained that both the ancient wisdom of Parliament and the ancient wisdom of the law supported his views. (pp. 112-113)

I do not wish to comment on Coke's somewhat cavalier use of historical precedent, which has been discussed elsewhere. Suffice it to say that Coke, in striking down the "monopolistic" privileges of the city, advances certain economic principles that are elevated to the status of

Mendehall (1953) provides a useful account of the background to the 1621 Bill, noting the historically evolving position of Shrewsbury in the space economy, and the jealous battles fought between Shrewsbury and other market towns (see also Dodd, 1929).

Wagner (1935) comments on Coke's historical selection, noting that Coke relies upon article 30 of Magna Carta, which grants certain liberties to merchants. Wagner argues, however, that "the merchants referred to are presumably foreign merchants, and the tenor . . . interestingly, Mendehall (1953) also sees the Cestian language of the Shrewsbury Drapers, who argue that trade privileges were granted by the Privy Council "upon grace and mature deliberation and references to divers honourable personalies and grave judges" (p. 112).
common law maxims. First, Coke holds that all English citizens—not just urban “citizens”—had certain rights to “free trade” that included the liberty to dispose of their labor, land, and skills as they saw fit, and to engage in agricultural, industrial or commercial activity. In this, “Coke’s... assumption that men have a right to do what they will with their own persons and skills,” an assumption that “represents the thread of continuity running through all his decisions,” is forcibly expressed (Hill, 1963, pp. 226–237). Such a right, although not inalienable, could only be modified by due process. Second, as well as noting certain individual rights, he also claimed that there existed a “general right of every subject to engage in a particular trade” (White, 1979, p. 136). On occasion, these two rights could conflict. As in the case of Shrewsbury, it was the rights of individual citizens that were to outweigh the particularized right of a local collective body.

For this claim to hold, the geography of citizenship must shift. Its locus can no longer be the localized world of the civitas, but must become simultaneously unitary (shared by all free Englishmen, wherever they are) and fragmented (inscribed within the bodies of the individual citizen). The legal universe becomes at once totalizing and individualizing. Absent, of course, is the localized group. The local subject, situated within the spaces of feudalism, reemerges as an individualized citizen within a national system of law. This constitutes a radical departure from the premodern conception, in which the very idea of the individual as the locus of legal status is absent. Far more important was the kinship bond, and its associated concepts of mutual support and the blood feud, as well as the overlapping networks of manor, church, city, feudal bond, and so on. Medieval political thought began its analysis not from the individual, but from the whole, which was often treated organically. The individual was seen as a member of the collective, inseparably embedded in the complex hierarchies of rank, status, and estate. Between the “highest Universality... and the absolute Unity of the individual man, we find a series of intermediating units... Medieval theory endeavored to establish a definite scheme, descriptive of this articulation” (Gierke, 1900/1958, p. 21). The city was seen as just such an intermediary unit: “The... civitas that the ancients had defined was discovered by medieval Philosophy in a medieval town, and by virtue of the ideal of the organic structure of the whole Human Race, the community of this... civitas was subordinated to a regnum and to the imperium, that is, to higher and wider communities in which it found its completion and its limitation” (Gierke, 1900/1958, p. 96). However, modern political thought, with its concept of the abso-

34This is not to say that there is a necessary convergence of the two (although, cf. Corrigan & Sayer, 1985). Indeed, one can find contemporaneous accounts that deploy a similar spatial rationality, yet depart in their account of social ordering. Thomas More’s Utopia, printed in 1516, constructs a rational, centralized gridlike system of spatial ordering to structure a society in which private property is absent, for example.
particularized sociolegal privileges, characterized here by the urban guild, was achieved by the development of formally generalized legal rights—such as that of free contract. Yet he implies that urban law could, in one sense, be seen as prefiguring such generality by virtue of its hostility to the bonds of feudalism. Thus, the dissolution of feudal bonds that occurred once an individual was admitted to the city—the principle that "City air makes free"—is noted by Weber as the most revolutionary of the innovations of the medieval city (1966b, p. 1239). Although such individualization still does not represent the modern principle of "general compulsory membership for all inhabiting a given territory" but rather implies "a status right of the members of the sworn fellowship of burghers," it does suggest "the extinction of the old personality principle of law" (p. 1254).

CONCLUSION

This chapter has identified an important historical moment that illustrates certain features of the curious relation that law and legal practice have had to the geography of social life. Many of the themes raised here—liberalism, property relations, the representation of space, local and central legal practice, citizenship—will be discussed at greater length in later sections. I will argue that such concepts are of crucial importance to social life, and have a direct bearing on social justice and the politics of space.

Although the maps of Saxton would appear far removed from the works of Coke, my argument has sought to suggest that, in fact, the geographies—implicit and explicit—of the two men are in fact strikingly similar. Both appear formalistic, and promised on a form of double closure. Both space and law—or more immediately their conjoint expression as nation, city, and property—emerge as objectified components in a total system of regulation and control. Both also mark out a powerful claim to privileged authority. Coke's legal treatises, in this sense, are analogous to Saxton's maps. They can be thought of as a juridical atlas in which any datum of legal knowledge can be exactly located according to a complex system of rational coordinates, and then surveyed as a component part of a larger unified totality. Similarly, the chorographies and maps of the day—like Coke's treatises—speak both of continuity, land, property, and of a formalized rationality and the individual.

This closure, I have suggested, is related to a form of disembodiment in which legal and spatial knowledge is increasingly removed from the localized settings of social and economic life. As the measurement of space becomes fixed and invariant, so legal knowledge became measured by the unitary "metewand" of artificial reason. As the city lost its status as a local nexus of economic and political identity, so property became a bounded object rather than a contextual relation. As mapping and spatial definition becomes the domain of geographic experts, so law becomes known exclusively by the judicial elect. As law becomes an ahistorical and placeless "object," so space becomes an objectified and prepolitical set of data to be fixed within a unitary perspectival grid.

While seventeenth century jurisprudence and cartography may seem, at first glance, rather arcane, I hope I have shown that the geographies of Coke and Saxton, and the larger changes that they embody, deserve our attention. The transitions that they signify are changes that—despite their historical remove—remain of contemporary importance. They signal not only institutional or technical changes, but also a deeper shift in the depiction of space and law and their mutual intersection that remains, deeply inscribed, in the legal maps of today (Corrigan & Sayer 1985, pp. 186–187). At base, it is people such as Coke and Saxton who allow us to talk of "space" and "law" at all, as distinct categories, removed from the texture of social and political practice. But we can take this further; a critical attention to the law, space, and power nexus of seventeenth-century England allows us not only to identify the emergent power of these spatial-legal maps, but also provides us with the means to contest their essentialized form. Not only can we find alternative accounts of law, space, and social life, but we can also track the contingencies, fractures, and conflicts by which these historical geographies came to be.

One important area around which this struggle centers is over the locus of legal life. We have seen, for example, how alternative cartographies or models of the common law gave greater priority to the localized and contextual geographies of social life, rather than to the "golden metewands" of early modern common law and cartography. The tension does not stop there, however: the abstract cartographies of Coke and Saxton themselves resist an abstract universalism. Despite their totalizing impulses, there is an extent to which Coke's surveys are also particularized, given his celebration of the specificity of the English legal genius. This is a long way from the pure rationality of the Roman civil law (which Coke was, in part, resisting). Similarly, while offering a unified model of national space, the cartographers and, especially, the county chorographers can also provide a highly particularized accounting of local ownership and dynasty. This ambivalence, I would claim, is with us today. It is to the legal geographies of this tension that I now wish to turn.

I am grateful to Richard Helgerson for this suggestion.
A “Cabal of the Few”? Place, Federalism, and Worker Safety

THE DISAPPEARANCE OF SPACE

Mark Kelman (1987) begins his survey of critical legal studies with a striking claim. Legal-liberal thought and practice, despite its confident claims to integrity and rationality, is riddled with conflicting commitments to mutually incoherent positions, such as that between formalized rule making and application versus the recourse to discretionary, contextual standards, or that between a characterization of values and desires as objective and universal versus a commitment to a belief in values as fundamentally subjective and personal, and hence unknowable. As Kelman painstakingly demonstrates, such contradictory and irreconcilable impulses swirl and eddy throughout legal practice. Even those legal decisions that appear uncontroversial are, of necessity, premised on the artful, yet conditional, suppression of the contradictory term. Legal liberalism is not structured and harmonious, he claims, but beset by “irreducible, irremediable, irresolvable conflict” (p. 3). We have heard similar arguments before, of course. At the start of this book, I noted that the essential historicity of legal practice constitutes an affront to legal closure. As Gordon (1984) argues, not only does law rely on certain problematic historical narratives, but the historical grounding of law constitutes a challenge to the purported rationality, normative worth, and efficacy upon which closure depends. In combination, both Kelman and Gordon seem to make a broadly similar point. To the extent that law is “in the world,” confronting the dilemmas of social life and history, it becomes unstable.

However, there is one aspect of “being in the world” that seems, at first glance, superfluous to legal decision making. Not only is the spatiality of social life widely ignored within legal theory, as I have noted, but a pervasive argument suggests that the trajectory of modern legal development has been such as to make space irrelevant. As inscribed in what can be called, in toto, the centralization narrative, the geography of legal evolution has been one of a continued disembodiment of legal practice and legal knowledge from the locality, and a centralization of legal authority, in step with the formation of national state structures. Different authors, of course, identify different impulses. For Weber, the process was rooted in the dynamics of modernity and the expulsion of premodern sources of authority. For some Marxists, the transition is embedded in the centralizing geographies of capital accumulation. For certain legal historians, the process is more human in scale, signifying a fracturing of the legal life world. In all cases, however, the consequences are essentially similar. An increasingly unitary legal system begins to moderate and ultimately excise legal differences between places. Legal interpretation becomes less the function of place-bound interpreters, and more the prerogative of legal professionals who work assiduously to expunge the ties of context and community. The appeal of place gives way to the apsychical language of order, equality and the homogeneous rule of law.1

1Such a modernist treatment of place and law can also be seen as part of a more generalized claim concerning the disappearance of difference. The emergence of global transport and communications systems and the ascendency of transnational corporations and extra-national agencies, such as the European Community, the “placelessness” of the modern urban landscape, and the “uniformity” of such urbanism, have been seen as contributing to the emergence of national and, increasingly, international homogeneity. One wonders at the moral justification provided by the United States in support of its recent military and policing incursions—such as the invasion of Panama, the kidnapping of Mexican nationals on Mexican soil, or even the Gulf War—in these terms. Wistful hopes concerning a unitary “new world order,” premised on Western political and moral beliefs overseas, similarly assume (or cynically evoke) a negation of difference.
Many scholars have characterized the historical geography of the American legal system, in particular, as premised on precisely this expulsion of space and place. This process can be said to have three threads. While doctrinal and institutional shifts are generally characterized as an assault on the formal local autonomy of governments at the state or substate level, interpretative changes are seen as responsible for a disembiding of interpretative authority from the locale. Let me quickly treat each in turn.

American legal doctrine, it is frequently said, has evolved so as to take an increasingly skeptical and ultimately hostile view concerning local and state governments. One of the best known examples of this argument is Gerald Frug’s 1980 essay on the “city as a legal concept.” His complaint is simple: developments in legal doctrine have meant that the American city is no longer the creative and “vital organizing unit in social life” of the past, but has become an empty, bureaucratic shell. “Our highly urbanized country,” he claims, “has chosen to have powerless cities” (p. 1059). The early American cities, however, were jealously corporate (or quasi-corporate) bodies, enjoying considerable autonomy and agency. As the eighteenth century wore on such collective agencies were seen as increasingly anomalous. With the generalized liberal critique of all collective structures, liberalism began to carve out two discrete spheres—one containing the increasingly autonomous individual, the other consolidating collective authority in the body of the nation-state. The problem with the city, as we saw in the last chapter, was that it fell between both poles. Although constituted by individuals, it also appeared as an instrument of state power. This dilemma was finessed, Frug claims, by the creation of two categories of “corporations,” one public, the other private. Whereas previously the city was regarded as a corporation that could hold certain rights and wield power, these two functions were now divided. The city, as a public corporation, came to be regarded as an entity to be identified with the power wielding state. The private corporation (the firm), conversely, became a rights holder, subject to the predations of public corporations such as the city. The effect was to force a distinction between city power—regarded as a suspect form of coercive power—and corporate power—characterized as the rights of a protected agency (or “legal person”) exercised in the name of liberty. To Frug, such a claim sounded the death-knell. Once the rights that a private corporation enjoyed, such as those of association, were removed, “there was nothing left that seemed to demand protection” (p. 1108). Indeed, as a public corporation, the city became automatically suspect in a way that no private corporation was. As John Dillon argued in 1872, the maintenance of the division between public and private spheres, as expressed within the city, should be the central concern of the liberal state. Without it, private liberties were at risk from local interference and domination. It was necessary that cities enjoy only those powers expressly granted them by state legislatures. Hendrik Hartog (1983) summarizes the contemporary legal characterization of the municipal corporation that derives from Dillon’s famous Rule:

American courts do not usually regard a municipal corporation as the embodiment of a local political community. To the contrary, a municipal corporation is said to be a public corporation created by a state legislature solely for the purposes of providing subordinate administration. In legal theory, cities, towns, counties and villages exist only because they serve as useful agencies of state power. No local government has any natural or inherent rights or constitutional authority. A municipal corporation is whatever the state legislature says it is, and it does whatever the state legislature says it can do. (p. 2)

The consequence of this doctrinal shift was a redefinition of the city. Frug notes the shift in interpretation of the city “from an association promoted by a powerful sense of community and an identification with the defense of property, to a unit that threatens both the members of the community and their property” (p. 1119). For Frug, the continued effect is not only to limit the efficacy of urban policy, but to negate an essential political freedom, that of individual democratic participation in the basic social decisions that affect one’s life.

Gordon Clark (1981) has been even more damning. Not only has American local autonomy been dramatically eroded, as Frug argues, but “space as a social and political construct has become virtually irrelevant” (p. 1190). Structured by the fundamental individualism of American legal and constitutional discourse, and a preoccupation with the spatial integration of the national economy, American courts have so construed mobility rights, judicial review, the “commerce clause,” the Fourteenth Amendment, and the autonomy of local government over the last two centuries as to systematically centralize power, deny or negate spatial diversity and enforce geographic homogeneity.

Legal centralization must be sought not only in doctrinal shifts; it can also be characterized as a function of historical changes in the locus of legal interpretation itself. By this account, as local and customary law gave way to formalized law, so the legal significance of place has diminished. Legal interpretation becomes less a function of community and local circumstance than a response to the constraints of formally placeless legal
norms. In a study of legal change in early Connecticut, for example, Goodwin (1981) documents the ascendency of the formalized legal system over an older community-based system of law, as evidenced by the shift from community-based arbitration to formal judicial disposition through the courts. The consequence was the demise of an epoch in which "communities of people tied together in multilayered relations could, in effect, create their own law through flexible means of keeping accounts, liberal use of juries and pleadings, arbitration and the like. . . . Law took on a new role. . . . A role that had to be larger than individual communities, if communities, however defined, were to coexist in society. . . . Law afterwards partook more of states than of communities" (p. 168).

Such doctrinal and interpretative shifts must also be set alongside remappings of the institutional structure of the American legal apparatus. Here again the evidence is that of the increasing central control of local legal life. Although this process is as old as the American state, it seems to have received a new impetus during Reconstruction, with the dramatic jurisdictional expansion of the federal courts. In a sweeping shift of power that left "the nation supreme over the states," the Supreme Court began to "command the obedience of men formally strangers to its writ" (Wieck, 1978, p. 237). It is the last sixty years, however, that have seen the most profound institutional change. Assisted by shifts in constitutional doctrine, the federal government began to displace the states as the locus for most policy decisions and regulatory authority. With the development of the welfare state, federal agencies began to play an increasingly direct role in the regulation of local social and economic life. The experience of capitalist crisis during the Great Depression led to dramatic shifts in the public/private boundary and the creation of a growing number of administrative agencies—a device that had been used only cautiously in the past. From the 1930s onward, key sectors, both public and private, came under federal control. The Great Society programs of the 1960s also ushered in many new federal agencies, such as the Environmental Protection Agency and the Occupational Safety and Health Administration. The power of such agencies, and their relation to state and local governments, emerged as especially controversial (Carter, 1987) for, as Heller (1986, p. 263) notes, "a complex idea of intergovernmental relations is only necessary where there exists a complex and ongoing role for the public sector." The

2Similarly, Langan's (1987) discussion of colliding legal values in nineteenth century Mexican California traces the conflict between the localized, community-based, civil law tradition, which relied heavily on nonadversarial conciliation, and the ascendency of a more formalized Anglo-American common law system.

THE DILEMMAS OF SPACE AND PLACE

Such is the clan and vigor of the centralization narrative, that it is hard to fault. Indeed, I relied upon a very similar account in my previous chapter. The legal mapping of Coke, I argued, combined a profound individualism, a defensive legalism, and a dogmatic rationalism, transforming localized legal citizenship into an evanescing "Englishness" from which the common law drew ideological succor. Although historically important, it might be supposed, then, that the decentralized, large-scale legal map has all but disappeared.

Although the centralization narrative is persuasive, it can be overstated. In this chapter I will argue that the "expulsion of geography" is far from complete. Rather than an irrelevancy, the geography of social life constitutes a particularly vexatious dilemma for the liberal state, one especially pronounced during regulatory interventions under that regime. To make my argument, however, requires that I identify the significance of both space and place. I use space in the present discussion to make an ontological claim. As I argued in Chapter 2, there is a spirituality to social life. If nothing else, this suggests a radical particularity and diversity to material life and social consciousness. People and things, put crudely, differ—not only historically, but also spatially. An attention to place, meanwhile, focuses analytic attention on the human "boundedness" of social life. Social relations are frequently understood by human agents with reference to specific places, the boundaries of which are usually collectively defined. These places are, of course, overlapping, telescoping out from the intimate spaces of family life to the neighborhood, city, region, or nation to which an individual feels association. I will focus on

The connections between doctrinal, interpretative, and institutional shifts are, sadly, far too complex to identify here. Andrew Fraser (1984), for example, notes the interesting connection between the decline of the autonomous "island communities" of eighteenth-century America and the concurrent rise of the formalistic case-study model of legal education. Postmodern sutures and stabilizes, he suggests, gave way to modernist indeterminacy, as capitalist industrialization and the legal reconsideration of local power undercut and made increasingly interdependent the local communities that had traditionally provided meaning and foundation to social life. The legal profession, consequently, had to acquire "a general understanding of social causation, one which extended beyond the specific circumstances of a given time and place" (p. 26). Hence the power of the newly ascendant social sciences, which combined with the increasingly professionalized legal academy to create a modern "science of the law."
what might be termed "jurisdictional places," or those sites that claim certain legal powers, such as an incorporated city. Place is, of course, a slippery concept, but can perhaps be usefully disaggregated into a number of elements (Agnew, 1987). The concept of location refers to the relative position of any place in relation to other places. Locale, conversely, treats the place from "within," as a specific site in which social relations are bounded and locally constituted, while the sense of place relates to the experiential and representational map constructed of a specific place by its occupants. Given the comments of those such as Pred (1984), the historical becoming of place—the process by which local social action ensures the reproduction of a place through time—must also be added as an important consideration.

In what senses, then, do space and place bear on legal relations, and particularly on legal regulation? My point is simple: to the extent that regulation places law "in the world," it must contend with the dense geographies of social life, confronting both the complex spatiality and the "place-boundedness" of society. We can begin to make sense of the resultant intricacies when we consider two topics, local autonomy and agency discretion, that are usually discussed separately. Local autonomy, which can be treated as resolved (as in the centralization narrative), as an issue explicable only through the categories of liberalism (as with Frug's exposition), or as a purely technical question (as within much of the "intergovernmental relations" literature) can also be usefully treated as a question of place. The question is straightforward: if it is granted that people live out their lives and experience law in particular locales, should legal initiation and interpretation be rooted in those places, or should it be the prerogative of institutions that are somehow divorced from any specific place, given a quite reasonable fear of inefficiency, local corruption, or injustice? If we seek some combination of the two—the dilemma of federalism—exactly where should the line be drawn? These opposing legal maps are, of course, morally charged; appeals to rationality and the rule of law become counterposed with a celebration of civic virtue and participatory democracy. Agency discretion, similarly, is not usually treated as a question of local power. However, legal interpretation, remembering my discussion in Chapter 2, must not be seen simply as a matter of relating legal commands to a historically contingent social reality; it also requires a structuring of law to geographic diversity. In this sense, agencies within the legal apparatus can be shown to exercise a surprising degree of "interstitial" or "horizontal" power in the day to day policing of planning, crime, or pollution, all of which necessitates a wide range of informal and discretionary decision making. How, then, is discretion to be treated: is inevitable (given the above), beneficial (as a means of "tailoring justice"), or as suspect (given the risk of bias and injustice)?

One indication of the persistence of such dilemmas is the continued ambiguity—even, perhaps, an indeterminacy—concerning the desired conjunction of place, space and law. The resultant cleavages make themselves felt in doctrinal, interpretative, and institutional contexts—crosscutting and moderating the unilinearity of the centralization narrative. One important way in which this tension is made manifest is through competing conceptions of place. Returning to my earlier taxonomy, autonomy and discretion are frequently appraised by casting place in functional terms. Here the essential issue is the effect of locally specific legal actions upon other places. In this light, local legal initiatives and interpretations are frequently regarded with suspicion. While excess legal autonomy is seen as engendering irregular departures from national norms, so unstructured local discretion is argued to do injustice to those in other jurisdictions. This treatment of place, of course, with its implicit negation of difference, is that which underlies much of the centralization of regulatory authority of the modern state. However, an alternative, and a surprisingly pervasive, characterization of place can also be discerned, in which legal action is cast in the terms of its relation to the interior social and political life of a place. Here, legal autonomy and legal discretion are characterized in terms of their necessary situation within a locale, and are understood in terms of a locally specific sense of place. The very becoming of place, indeed, is seen as inseparable from local legality. Rather than situating a place within the larger jurisdictional map, the tendency here is to view law as intrinsically—and usually beneficially—localized (Brown, 1993).

The continued tension between such representations is of real importance, and plays a central role in what might be called the "politics of place." Different characterizations of place and law figure importantly, for example, in conflicts over the geographies of abortion regulation, pornography, free speech, and gun control in the United States. The discursive infolding of such struggles, and their outcomes, have material consequences that demand our attention. Consequently, the neglect of the relations between space, place, and legality leads to a constricted conception of the politics of law.

My argument must, perhaps, be exploratory. For the present, I will focus on the treatment of local autonomy and agency discretion within the American federal system.6 Beginning with a general historical over-
view of federal discourse, I will turn to an examination of recent tensions and struggles concerning US occupational safety and health law regulation. In both cases I shall claim that the persistent political appeal of place and the regulatory dilemmas of legal interventions in a spatially heterogeneous environment ensure that the politics of space and place cannot be easily dismissed.

"TO LIQUIDATE THE MEANING OF ALL THE PARTS": SPACE, PLACE, AND THE FEDERAL PROJECT

In his survey of political and legal thought, for example, Frug (1980) freely admits to a "breathtaking dash through an enormous and densely crowded area" that allows "only a brief glance at certain landmarks along the way" (p. 1080). I suspect that such is the impatience with which he, and many others, wishes to reach his centralist destination that he fails to properly recognize the fault lines in that discursive landscape. Since the very birth of the American state, a wide-ranging and pervasive ambivalence concerning the geography of state intervention has been in evidence. A more leisurely reading of American legal and political discourse and its treatment of local legal power reveals a lengthy engagement with the dilemmas of law, space, and place. Although much of this treatment is critical, it is also possible to excavate a sustained and principled counterargument that favors local legal life. Moreover, it is also clear that although the resultant ambiguity concerning local power is liberal, to the extent that it agonizes over the pitfalls and potential of intermediate bodies, it is also geographic, in its attention to the relation between scale and liberalism, and the dilemmas of geographic diversity. In all cases, competing representations of place—as location or as locale—are frequently in the air.

This tension surfaces at a number of discursive moments. A close reading of the earliest American constitutional debates reveals not only a liberal suspicion of local autonomy but also an impassioned defense of the potential—indeed, of the inevitability—of local action. Further, political thinkers of the nineteenth century, despite the developing centralization of the state, continued to celebrate the potentialities of place. In the face of challenges, contemporary intellectual arguments continue the "narrative of decentralization." Although there are obvious differences between all these arguments, an important common thread unites them all. In their common insistence on the geographic heterogeneity and boundedness of social life, and their shared commitment to the normative worth of decentralized legal action, they stand in direct opposition to the centralization narrative.

FACTIONALISM, FREEDOM, AND THE AMERICAN POLITY

The selective reading of American political discourse given by those such as Frug (1980) is in one sense excusable, given the pervasiveness of an orthodox historiography concerned only to map the process by which the United States became, as Appleby (1992) puts it, the "territorial embodiment of liberal truths" (pp. 2-3). This selective liberal history, she writes, entailed a shedding or repositioning of those illiberal elements that jarred with the triumphal sweep of progress, reason, and individual rights: "Its overly determined rendering of events scaled the imagination against alternative accounts of the transformation of the modern world" she adds, until it "coalesced into a mutually supporting set of concepts and fantasies" (p. 10). This presentist account, in which prescient men (Madison, Jefferson, Washington, Emerson) played constitutive roles in the continued unfolding of an elect liberal nation, is still a powerful myth, of course. However, some historians have begun to rewrite the narrative by reexamining the discursive struggles of the American polity at its nascent moment. Thinkers such as Poocock (1975) have revealed that revolutionary discourse drew not only from the emergent repertoire of liberalism but atavistically evoked the traditions of classical republicanism. Here emphasis was placed not on the a priori status of the individual, but on the textures of collective life and the values of citizen participation. Under-scoring all was the principle of civic virtue, that is, of a rational belief in the capacity and willingness of individual citizens to subordinate their own interests to the good of the commonwealth (MacIntyre, 1981). The working out of the consequent tension between republican and liberal commitments, I suspect, continues to the present day. Although the republican impulse has frequently been submerged or selectively appropriated, much contemporary political and legal thought continues to draw from this well. This tension, however, is much more than a contest of
fostered injustice and the abuse of power, arguing that the country had become tainted with a "factious spirit," the very source of the "mortal disease" of popular governments elsewhere. Given their limited scope and proximity to civil society, local democracies have always been "spectacles of turbulence and contention" and the enemies of "personal security or the rights of property" (Madison, Hamilton, & Jay, 1788/1987, p. 126). Moreover, parochialism and local factionalism were also seen as deleterious to national commerce and the space economy. Hamilton complains of the "interfering and unseemly regulations of some States," that, if not restrained, will be "multiplied and extended till they became not less serious sources of animosity and discord than injurious impediments to the intercourse between the different parts of the Confederacy" (pp. 177-178).

The Federalists could not conceive of a polity founded upon what Hamilton, the most candid centralist of all, termed "an infinity of little, jealous, clashing, tumultuous commonwealths, the wretched nurseries of unceasing discord" (p. 120). To Madison, such a structure constituted "an inversion of the fundamental principles of all government; it would have seen the authority of the whole society everywhere subordinate to the authority of the parts; it would have seen a monster, in which the head was under the direction of the members" (p. 291). There was a clear relationship for the Federalists between geographic scale and the propensity for factionalism: the smaller the "compass" of government, the greater the likelihood that one faction would obtain a majority. As the scale of government was widened to encompass a broader range of parties and interests, however, it became harder for any "men of factious tempers, of local prejudices or of sinister designs" to form "a cabal of the few." "Wicked project[s]" such as the "equal division of property," Madison argued, are "less likely to pervade the whole body of the Union than a particular member of it" (p. 126).

It was for these reasons that local law must be obedient to national law, the "supreme law of the land." The Supremacy Clause of the new Constitution was central to the Federalist project. Places were to be located within a unitary grid of national control, subject to a higher court that had "no local attachments" (p. 447). Hamilton argued, emphatic upper case, that the "SUPREME TRIBUNAL" would circumvent the inevitable confusion that "would unavoidably result from the contradictory deci-
sions of a number of independent judicatures," given that there are "endless diversities in the opinions of men" (p. 182).

The Madisonian argument is a powerful one that continues to underpin the political and legal structures of American federalism. And it is one that treats place, first and foremost, as a location. Place, to the Federalists, is a problem. The dilemma that taxed them—that of containing these multiple, fractious local communities within a unified state—was a relational one.

The Antifederalists, meanwhile, relied on a very different understanding of geographic scale and diversity. Localized political life was now recast as virtuous and ontologically necessary. A truly republican government, they argued, could only operate over a small area with a homogeneous population in which representatives were personally known to the electors. Drawing from Montesquieu, they insisted that it was the very spatial diversity of American social life and legal experience that negated centralized republican authority. How could the sheer diversity of American opinion, experience, and situation be adequately encompassed by a federal system, let alone provide the basis for a moral republic, premised on the necessary homogeneity of belief? Men were different in different places, the Antifederalists insisted. Geographic difference no longer necessitated centralized authority; it constituted the very undoing of unity. As one northerner argued, "The inhabitants of warmer climates are more dissolute in their manners, and less industrious than in colder countries. A degree of severity is, therefore, necessary with one which would cramp the spirit of the other... It is impossible for one code of laws to suit Georgia and Massachusetts" (quoted in Kramnick, 1987, p. 58). Law must, of necessity, be localized. "To promote the happiness of the people it is necessary that there should be local laws" argued "Agrippa," "and it is necessary that those laws should be made by the representatives of those who are immediately subject to the want of them." The very idea of a republic containing "six millions of white inhabitants all reduced to the same standards of morals, of habits, and of laws," was an absurdity (quoted in Kenyon, 1966, p. 134). Moreover, the sheer geographic extent of the proposed Federalist republic meant that the center of government was too far removed from the population. A federal capital, containing Madison's "enlightened representatives," "superior to local prejudices," was recast by the Antifederalist Gilbert Livingston as encouraging senators to "forget their dependence, lose their sympathy, and contract selfish habits. Factions are apt to be formed... The senators will associate only with men of their own class, and thus become strangers to the condition of the common people" (quoted in Kenyon, 1966, p. 391).

This debate did not end with the victory of the Federalists in 1787. During the nineteenth century, a period of growing federal power, principled defenders of place reentered the fray, of whom the most notable was Alexis de Tocqueville. Writing in the 1830s, he characterized the genius and vibrancy of American governance as resting not upon its unity but upon its profoundly decentralized nature. The obedience of the male citizen was secured not through coercion, he claimed, but through the vibrancy of a dispersed political structure, sustained by a local "town spirit." Citizen and locale were locked in a mutually nourishing relation, in other words, that shaped, through their relation, the becoming of place: "The native of New England is attached to his township because it is independent and free... He takes part in every occurrence in the place; he practises the art of government in the small sphere within his reach... He acquires a sense of order, comprehends the balance of powers, and collects clear practical notions on the nature of his duties and the extent of his rights" (1956, p. 61).

The independence and authority—the highly developed sense of place—of the decentralized polity, de Tocqueville argued, provides for affection; curtails undue political ambition; provides a political education; ensures peace, comfort, and contentment; and serves as a restraint upon despotism. The decentralization of power, moreover, implies a dispersal of power. Although power exists, "its representative is nowhere to be seen" (p. 63). Again, there seems a clear linkage in de Tocqueville's
account between spatial scale and "town spirit," given the township's natural position at "the centre of the ordinary relations of life," "so near the domestic hearth and the family circle" (p. 60). Freedom, he insisted, is "in truth the natural state of small communities" (p. 81). It is localized political life, he argued, that represents the very summation and purest expression of American democracy: "The American attaches himself to his little community for the same reason that the mountaineer clings to his hills, because the characteristic features of his country are there more distinctly marked; it has a more striking physiognomy" (p. 61). The distinctive feature of the American political system, de Tocqueville claimed, is that its federal structure allows for the harmonization of local participation with national government. As Krouse (1983) notes, de Tocqueville drew from Montesquieu's model of "confederal" governance, to argue that the American regime: "owes its survival to the federal device; it owes its continued republicanism, however, not to its extended territorial scope, or its centralization of political decision, but rather to the incompleteness of that centralization—that is, to the survival of the localautonomies that Madison (in 1787) had sought to diminish. . . . The Madisonian levittation has as its necessary foundation a Jeffersonian infrastructure of ward and township republics" (pp. 69-70).

Despite (or because of?) the increased institutional, doctrinal, and interpretative centralization of legal power, the debate concerning the relative merits of decentralized power remains potent today. A steady stream of arguments—drawn from diverse and often conflicting political positions—have been made in defense of local legal power. As Frug (1988) himself notes, the controversies over extension of slavery to the territories in the 1850s, the Civil War, home rule amendments and the debate over Progressivism in the early twentieth century, and the enactment of civil rights legislation in the 1960s all speak eloquently of a persistent attachment both to states' rights (Kamm, 1988, pp. 157-188) and to city power (Howe, 1905).

Intellectually, the continued celebration, defense or recovery of local life and political action can be seen in many spheres, including social thought and academic practice (Dahl, 1967; Enrkin, 1991), American leftist anarchism (Bookchin, 1986; Loomis, 1981), planning (Jacobs, 1961), and contemporary political theory (Berger, 1976), as well as in legal studies (Hutchinson & Green, 1989). On the left, the leftist impetus has reached a new intensity of late, given a surge of communitarian arguments and the revival of certain "republican" traditions (Bauman, 1989; Fraser, 1984; Sandel, 1987). Such claims not only echo Antifederalist sentiments, but also evoke the politics of the Greek polis and the Renaissance city-state (Long, 1987). Central to this Aristotelian tradition is the assumed link between scale and political life. Localized politics is seen as a prerequisite for citizen participation and full democracy given the possibility for the exchange of information and ideas. Small social units, moreover, are said to encourage not only local knowledge but also local identification and civic-mindedness. Similarly, the decentralized polity is seen as fostering the sense among citizens that their contribution will make a difference; at the national or regional level, the individual may feel that his or her voice is lost among millions of others. In his argument for "strong democracy," Barber (1984) argues for an association between "ongoing, proximate self-legislation" and geographic scale (pp. 245-251). This "strong democratic talk" presumes a "new architecture of civic and public space." In their treatment of American progressive movements, Evans and Boyte (1986) also celebrate the positive and formative role of "free spaces"—commonly based settings, such as churches, clubs, reform groups, and labor unions—"where people experience a schooling in citizenship and learn a vision of the common good in the course of struggling for change" (p. 18). The vitality of such free spaces is a function of their intimacy, localization, and familiarity, and it also reflects the degree to which activists can draw upon, and in so doing renew, a rich American ideological heritage and associated localized participatory traditions.11

Critical legal thought, ironically, has become interested of late in similar claims, drawing upon the republican tradition that underwrites it.

11Like communitarianism, certain urban economic analyses of local power also proceed from the assumption that centralized authority inverts the moral landscape. Again, it is the free play of local autonomy that best accords with valued principles. The "pure theory" of Charles Tiebout (1956) provides the seminal statement of this position. Unlike centralization and delivery, the advantage of the local provision of services, Tiebout claims, is that a wide range of possibilities will exist from which the "consumer-voter" can choose in making a local rational decision. This basic model has led like-minded contemporaries to lead decentralized governance, given its assumed responsiveness, innovativeness in service delivery, accountability, and fiscal efficiency (Bennett, 1990).

These two literatures exist in an uneasy relation one to the other. Ideologically opposed, both treat place differently. While communitarianism views place from within, the economic analysis treats place in locational terms. Yet both perspectives could be seen as complementary; indeed, authors from one perspective are not averse to borrowing from the other in their mutual advocacy for local autonomy (see Riffault, 1990b, pp. 403-465). Both also express an optimism concerning the benefits to human satisfaction that flow from decentralized life, and both are sanguine as to the rationality of local governments. For an informed discussion of the similarities and tensions between the two, and their mutual relation to de Tocqueville, see Clark (1985, pp. 199-171).
KILLING WORKERS

Tensions concerning space, place, and law are not confined to discursive struggles. They also receive expression in the day-to-day actions of the American state apparatus. Health and safety regulation offers just one such example of these ambivalences, evidenced both now and in the early history of the field. Prior to the federal Occupational Safety and Health Act (OSH Act) of 1970, worker health and safety policy in the United States rested upon individualized voluntary arrangements between workers and employers. During most of the nineteenth century the "fellow-servant" doctrine, with its concept of the assumption of risk and contributory negligence, was in place. Increasingly, judicial exemptions to the rule were allowed, such that the end of the century saw "a bewildering multiplicity of decisions, sub-rules, and sub-sub-rules" (Friedman & Laldinsky, 1978, p. 270). In the face of rising labor unrest, the states began to establish publicly run workers' compensation boards which established no-fault insurance programs and engaged in some direct regulation of workplace safety. However, by the middle years of this century, such state programs came under increasing fire as weak, inefficient, underfunded, and geographically uneven. While the state programs of California, Illinois, Michigan, New York, Massachusetts, and Pennsylvania were relatively rigorous, for example, mountain and southern states spent the least per worker on safety and health (Noble, 1986, p. 57). The passage of the OSH Act in 1970, with its promise "to assure as far as possible every working man and woman in the Nation safe and healthful working conditions," signaled not only a regulatory change, but also a political-geographic transformation. Congress could have preserved the better state programs, as it had done in the Federal Coal Mine Health and Safety Act of 1969 (Gombar, White, & Sapper, 1989). However, it decided to nullify all state plans, and to reinstate local workplace regulatory powers only after what Fix (1984, p. 161) describes as one of the "most complex and rigidly prescribed" of federal reviews. The four part review by which state programs were judged as acceptable required that the states adopt rules that are "at least as effective" as those of the federal agency. As of 1992, twenty-four such state and territory plans were in effect.

DISCRETIONAL DILEMMAS AND THE SPATIALITY OF REGULATION

The dilemmas of geography emerge with special force when we turn to an examination of the complex hierarchies and procedures through which the OSH Act is implemented by the Occupational Safety and Health Administration (OSHA) "on the ground." To appreciate the way in which space and place figure in OSHA requires a brief excursion into the burgeoning literature on regulatory agencies. One central, if unsurprising, finding of this literature is that intra-agency enforcement practices vary significantly across space (Blomley, 1987, 1989a; Hedge, Menzel, & Williams, 1988; Shover, Lynswiler, Groce, & Groce, 1984). A commonly noted distinction is that between a "legalistic" and a more "conciliatory" or "advisory" posture. One explanation for such differences likens regulatory officers to "public-spirited carpenters": "The laws they enforce provide the blueprint that shapes their mission and defines the
tools they can use. Working with these constraints, the regulatory carpenters adapt the plans to the raw materials with which they work" (Kagan, 1989, p. 94). To the extent that the "raw materials" vary, we can expect spatial variations in enforcement. Such diversity need not present any real problem for regulation in a liberal state. If there is a problem, it becomes that of a technical mismatch between the regulated environment and the regulatory response. However, there is a more troubling explanation to variations in enforcement practices that has less to do with the "crafting" of law to contingent variations and the negotiation of the assumed "gap" between "law in books," and "law in action" than with the dilemmas of local legal action itself. As some have noted, "Regulatory bureaucracies . . . are tied, in ways yet to be determined, to the characteristics of the 'communities' . . . in which they operate" (Shover, et al., 1984, p. 122, my emphasis). The officer, it seems, might no longer be the disinterested carpenter in a locality; he or she might become a locality. We would expect these concerns to be all the more important for those whom Lipsky (1980) terms "street level bureaucrats." Such agents, by virtue of their location within a local milieu and their routinized contacts with local people, can develop a particular "enforcement culture" that embodies the dialectic between the institutionalized practices of a state agency and a complex set of local cultural, social, and economic structures and forces lying beyond the institutional confines of the state itself (Sharpe & Newton, 1984). This interplay generates a very specific enforcement ethos, such that interpretations of law are judged "correct" with reference not to law in the abstract, but in relation to the imperatives, beliefs, and normative struggles within a locality.14

Such an eventuality presents a quiet, yet profound dilemma for the liberal state whose legitimacy depends on rationality, the rule of law, and a "government of laws, not men." The liberal regime generally seeks, Kelman (1987, p. 15) notes, "to constrain decision makers to judge particular cases mechanically by applying simple rules to a limited number of readily ascertainable facts." In this, regulation seeks to conform to the ideal of impartiality, a "view from nowhere," premised on the expulsion

14In her study of environmental health officers in Britain, Hunter (1989) argues for the vital importance of "geographic proximity" as a determinant of enforcement activity, claiming that those officers more closely integrated into the locality within which they work will tend toward a less legalistic, advice-giving function, on the assumption that the "positive effects of legal action may be outweighed by its negative effects—both in terms of their working relationships and their social interactions with the regulated and their families" (p. 169). Those working in larger cities, however, are characterized as more legalistic, given the limited personal knowledge of those they regulate.

of subjectivity and feeling. To Iris Marion Young (1990, p. 100), the impartial subject is detached, abstracting from the contingencies of any situation; dispassionate, removed from the moral commitments and concerns that she or he may have concerning a particular situation; and a universal reasoner, able to identify "essence, [that is,] a single formula that classifies concrete particulars as inside or outside a category" (p. 98). To Young, the ideal of impartiality operates, of necessity, in contradistinction to difference, defined both as the flux of concrete, particular events and as the web of differentiation within which meaning is necessarily made. Underlying the ideal of impartiality is an imperial and relentless impulse—the logic of identity—that seeks to reduce difference to unity. The process by which difference is denied or repressed, however, engenders a curious irony:

By seeking to reduce the differently similar to the same, the logic of identity turns the merely different into the absolutely other. It inevitably generates dichotomy instead of unity, because the move to bring particulars under a universal category creates a distinction between inside and outside. . . . Not satisfied . . . to admit defeat in the face of difference, the logic of identity shoves difference into dichotomous hierarchical oppositions: essence/accident, good/bad, normal/deviant. (p. 99)

The effect of such conceptual categorizations, she suggests, is the creation of threatening oppositions. On the "inside" can be found the "unified, the self-identical"; beyond lies the "chaotic, uniformed, transforming, that always threatens to cross the border and break up the unity of the good" (p. 99). One way in which this divide is maintained, Young argues, is by the construction of a border between a public domain and a particularized private realm of "needs and desires." Modern political practice identifies the ideal of impartiality with the public realm of the state, which attains its generality "by the exclusion of particularity, desire, feeling, and those aspects of life associated with the body" (p. 107). It is for precisely this reason that liberal theory ejects women and people of color from the public realm. Disenfranchised by reason of their putative physicality, sensuality, and irrationality, only the white man, "rational, restrained, and chaste" (p. 110), can enter into possession of the public domain.

The anxiety concerning agency discretion reproduces, in spatialized form, this tense divide between the public domain of impartiality and the private world of desire and particularity. The ideal of impartiality, defined by Tribe (1978) as the model of "governmental regularity and reliability," defines itself in direct contrast to the arbitrary irregularities of place—the
very nexus of particularized needs and desires. If enforcement agencies become of, rather than in, a place, the conceptual divide between public and private becomes debased. In deriding small town legal culture, it is striking that Robert Wood (1959), for example, uses the sensual language of "fraternity" and "intimacy," arguing that local law frequently acquires a worrying physicality:

The most significant feature of small town politics is the frequency with which legal and procedural requirements are overlooked or ignored. They are almost always to be adjudged according to the "common sense, down-to-earth judgements" of the participants, to take account of unique conditions and provincial peculiarities. . . . The smaller the town, the more justice is a matter of personal opinion in the community itself, rarely formalized, rarely examined, rarely permanently established, depending on the sentiment of the moment. Is it little wonder that the local justice of the peace is the laughing-stock of the legal profession? Even if he knows his duties, how can he possibly administer justice in an atmosphere of overwhelming intimacy? (pp. 278, 280)

The anxious policing of the public/private boundary receives its most graphic expression in the metaphor of "agency capture." Here the concern is that local agencies, by virtue of their excess discretion and "intimate" local situation, will become "cooped" by the very factions, such as local business interests, that they seek to regulate (Thompson & Sicchitano, 1986). Put another way, "capture" occurs when the dangerous forces of particularized self-interest "cross the border" to annex the public domain. The very geography of such agencies—their dangerous proximity to such forces—is their undoing. Consequently, central authorities have long struggled to confine and check "excess" agency discretion (Bryner, 1987; Davis, 1969; Note, 1989a). In the worker safety field, "the law has been deliberately structured to prevent capture, to program inspectors to apply regulation strictly, to pressure enforcement officials to apply formal penalties to violations, and to adopt a more legalistic and deterrence oriented stance vis-à-vis regulated enterprises" (Bardach & Kagan, 1982, p. 57).

The official actions of OSHA suggest just such a commitment to the utopic enforcement of worker safety law. Overall, OSHA takes "a dim view of lower level discretion. It [sees] discretion less as a vehicle for fostering sensitive responses to unique local conditions than as a path to the capture of a regulatory agency by business interests" (Thompson & Sicchitano, 1986, p. 183). The agency is remarkable with the assiduity with which it monitors and disciplines its local offices. This extends to such matters as the centralized specification of standards and the designa-

tion of work sites for OSHA inspection and enforcement procedure. Individual officers are located within a complex and centralized grid of control in which power runs from the national headquarters in Washington down through the ten regional offices, the states, and the eighty-five area offices (see Figure 4.1). Until the 1980s federal regulations called for visits by OSHA officials to state agencies at least every six months, occasional audits of state records, and evaluations of state offices on the ground by OSHA officials. Federal "spot checks" of previously inspected work places were also required (Thompson & Sicchitano, 1986, pp. 178-179). In the last few years a computerized enforcement data collection system has been created to allow regional and central offices to better monitor the actions of locally based officers in the area offices on a weekly basis.

The OSHA Field Operations Manual (U.S. Department of Labor, 1979), issued to the Compliance Safety and Health Officers (CSHOs) in the field, provides detailed injunctions on general inspection procedures. Painstakingly exhaustive instructions and guidelines are also provided in the Code of Federal Regulations (1987), which runs to a stufling 1,000 pages in length. For example:

Guardrails not less than 2 by 4 inches or the equivalent and not less than 36 inches or more than 42 inches high with a mid-rail, when required, of 1- by 4-inch lumber or equivalent and toeboards, shall be installed at all open sides on all scaffolds more than 10 feet above the ground or floor. Toe boards shall be a minimum of 4 inches in height. (p. 123)

Containers which have 2-Acetylaminofluorene contents . . . shall have label statements . . . Lettering on signs and instructions . . . shall be a minimum letter height of 2 inches. Labels on containers required under this section shall not be less than 1/2 the size of the largest lettering on the package, and not less than 8 point type on the package. (p. 773)

Enough said. The effect is not only to limit any personal variations in enforcement standards between CSHOs, but to negate local variations in legal culture and political practice. These regulations are held to be constant throughout all regions under OSHA plans, regardless of differences in building practices, labor market conditions, previous enforcement practices, and the like. This is not to say that OSHA does not countenance some local variability in standards. However, caution is always the keynote (cf. Mintz, 1984, p. 659).

Under federal guidelines, local initiatives, such as a decision to target specific workplaces for inspection, are not to be tolerated. Formally, at
least, CSHOs are obliged to cite every contravention that they see in the course of their inspection. OSHA is similarly cautious in its specification of enforcement priorities. Area offices are prevented from conducting random enforcements and obliged to assign resources to various ranked categories of industries, headed by work sites that fall into the category of "imminent danger" under section 13(a) of the Act. Last in the list of priorities are inspections according to "regionally defined" criteria. Even here, however, discretion is narrowly limited. Work sites are subdivided by industrial group and targeted on the basis of accident experience and the number of employees exposed (conducted in compliance with the Field Performance Evaluation Manual). Even then, inspections generally occur only in response to an "acceptable" complaint (from a worker or worker representative).

This formalized enforcement model, premised on the utopic "rule from nowhere," is advanced with great insistence. Despite its apparent self-assuredness, its assertiveness verges on the compulsive, suggesting an underlying uncertainty concerning the borders of its domain. But another way, the model is constructed in opposition to the dangers of discretion dangers, as I have cast them, that reflect much more than an institutional anxiety concerning the effective discharge of a statutory mandate.

As we shall see in a moment, such a concern is well founded, given the evident place-bound constancy of OSHA enforcement. Conflating the problem, however, is a pervasive claim that suggests that discretionary enforcement need not be unprincipled and arbitrary. Indeed, it can be argued that the very spatiality of social life renders discretion not only ontologically inescapable, but just. Such a "jurisprudence of informal standards, of highly general policy commands, permitting ad hoc situation-sensitive decisions" (Kelman, 1987, p. 15) stresses the manner in which discretion can serve to provide a human (and humane) face to law, delivering justice in response to varied human circumstances (Morris, 1982). The problem with the ideal of impartiality, according to this account, rests precisely with that which it considers its strength. In its detachment, dispassion, and universality, it expels desire, reduces experience to a unity, and negates the particularity of situation. The reasoning subject, conforming to this logic, "treats all situations according to the same moral rules . . . . The more the rules can be reduced to a single rule or principle, the more this impartiality will be guaranteed" (Young, 1990, p. 100). This, to many, is hopelessly unrealistic. "In everyday moral life," Young claims, "there are only situated contexts of action, with all their particularities of history, affiliation, and preconceived value" (pp. 102-103). Those particularities are, of course, profoundly geographic. The
spatial diversity of social experience and of material conditions are such as to make utopic regulation not only implausible but possibly unjust (if justice is characterized in terms of just conduct, rather than in terms of conformity to formal codes). Such a claim has a long pedigree. de Tocqueville (1835/1956) followed Montesquieu in arguing that centralized administration, by its nature, was unable to "embrace all the details of the life of a great nation" (p. 66). Consequently, centralized administration served only to engender uniformity and a "drowsy regularity" (p. 67). This may foster a local indifference, "where the natives consider themselves as a kind of settlers, indifferent to the fate of the spot which they inhabit" (p. 68). When the civic virtue of the centralized state reaches this atrophied condition, it will contain only subjects, not citizens. In the context of worker safety, Bacon (1980) identified a similar problem. Formalized enforcement, he argued, can be patently unjust when mechanically applied, given the inevitable heterogeneity of the regulatory environment:

Workplaces differ—sometimes only slightly and sometimes drastically. Some workplaces are large; some are small. Some produce cars; others produce deposits and withdrawals. Some are inherently dangerous; some inherently safe. . . . Each firm has a different production function, cost function, production technology, market position, and ability (or willingness) to respond to government regulation. In effect, each firm has a different health and safety problem. (pp. 5–6)

Space and place receive a very different treatment by this account, of course. Spatial heterogeneity is no longer a dilemma to be transcended: it becomes a necessary component of social life, to be incorporated into enforcement practice. The local situation of an agency need not compromise the rule of law; now its very proximity to those who are regulated may provide the basis for true justice.

Indeed, despite what Bacon (1980) terms the "command and control" imperatives of the national agency, the degree to which the informal practice of OSHA field officers reveals the pervasiveness of discretionary enforcement is striking. And such powers are clearly structured by—and, in turn, structure—the particular local settings within which they are deployed. In their survey of OSHA enforcement activity at the state level, for example, Scholz and Wei (1986) claim that officers do not simply translate "central political decisions into organizationally efficient routines," insistent on the "creative" role of local agencies in the task of "adapting central policies to fit varied and changing local conditions" (p.

1264). The responsiveness of the agency, especially state-run agencies, to both geographic variations in political conditions (such as the relative intensity of local labour lobbying) and to differences in the "task environment" (such as the local unemployment rate) all emerge as significant. Another study, by Thompson and Schicchitano (1986), reveals the persistence of significant interstate differences in "enforcement vigor," despite the high degree to which OSHA has sought to circumvent agency discretion. Considerable regional variability emerges, for example, between Tennessee's and Oregon's annual assessed penalties/100,000 workers of $4,800 and $41,627, respectively, with a significant majority of states falling below federal standards. Variations in the relative number of enforcement officers are also striking (see Figure 4.2).

My own research, although less systematic, suggests that field officers are indeed sensitive to the specificities of place and the complexities of discretion at both the state and the substate level. One regional officer, for example, identified significant variations between area offices in enforcement activism and in the perceived seriousness of offenses. Some areas, it seems, were especially preoccupied with worker safety in the building industry, given variations in the economic environments within which officers operated and differences in "office psychology" and "tradition." These "office cultures" were not necessarily fixed; the growth in the construction industry in Boston, for example, had required the importation of officers from outside the area, many of whom had different perspectives. As with other cases (Blomley, 1987, 1989a), officers also appeared to retain a degree of "local pride" and were resentful of central "interference" (cf. Thompson & Schicchitano, 1986, p. 179). 14

In other words, when the internal workings of the agency are examined, a significant cleavage emerges, centering on the tension between formalized rule making and local discretion. 17 In large part, these conflicting modalities rest upon opposing geographies. Spatial heterogeneity and place-bound enforcement emerge as obstacles to efficient and

15Interview with Ron Ratney, September 22, 1988.
16Interview with David May, acting director of East Massachusetts Area Office, January 17, 1989.
17Kelman's (1987, pp. 16–63) discussion of the indeterminate worth of rules and statements is useful here. While formalized rules can be deemed bad because they are underinclusive, overinclusive, or both, and enable a person to "walk the line," using the rule to their own advantage, the recourse to discretionary standards can lead to arbitrary and prejudiced enforcement and provide no clear and predictable guidelines to help people govern their own behavior.
just enforcement and as inevitable, even beneficial. While OSHA expresses an institutional suspicion of "excess" discretion and espouses the need for uniformity, interpretative activity on the ground evidences significant place-specific variations. To an extent, it is wrong to cast these two impulses as dichotomous. Indeed, they seem to run alongside each other, coexisting in an uneasy and shifting relationship. These contradictory commitments make themselves felt in different ways and at different levels. Within one regional office, for example, the tension was characterized as "a way of life," it being noted that the agency was faced with the dilemma of instilling two potentially contradictory traits in officers in the field. On the one hand, there was a desire to foster individual "professionalism," whereby officers, on their own in the field, would act as independent and responsive professionals; on the other hand, there was a continuous concern with "discipline," expressed as the conformity to agency demands for enforcement uniformity.\(^{18}\)

PREEMPTING THE LOCAL

The day-to-day workings of OSHA, I have argued, do not reveal the "disappearance" of space and place, but its continued salience. The geographies of regulation seem to be an issue of contestation and struggle.

\(^{18}\)Interview with Ron Ramey, September 22, 1988.
Briffault goes on to note that federal constitutional decisions have also affirmed localism. The U.S. Supreme Court, he claims, has "treated localities as active, locally responsive governments, not just administrative arms of the states" (1990a, p. 85). Despite a pervasive recognition that local governments are subordinate to the states, we find a continued affirmation of their representativeness and their valuable legal role.

Of course, it is easy to overstate this argument. It is undoubtedly true that there is still a judicial hostility to such claims, especially when local autonomy is more formally treated. Even here, however, the dilemmas of place and space resurface. We can see this, in the context of worker safety, in relation to recent legal struggles concerning "federal preemption." The dispute is simple: in recent years, certain local jurisdictions have instituted criminal proceedings under state criminal law against local employers in whose workplaces employees have died or have been injured. This has spawned a growing number of court appeals by local employers who have sought defense in the Supremacy Clause of the US Constitution, arguing that the existence of a federal scheme of workplace regulation "preempts" such local initiatives.20

The growth in local criminal prosecutions derives from a perceived vacuum in federal regulation that reflects, in part, the "rolling back" of the American federal state in the regulation of worker safety over the last decade (Knudsen, 1988; Morehouse, 1988). The resources devoted to OSHA have declined significantly: for example between 1980 and 1987 the number of inspectors was cut by 25%, leaving some one thousand officers to police nearly five million workplaces. Certain high-profile accidents such as the 1987 collapse of the L' ambulance Plaza in Connecticut, the 1991 fire at a poultry processing plant in Hamlet, North Carolina that killed twenty-five workers trapped in the building behind locked exit doors, and recent explosions at Texas oil refineries have also heightened local concern. Local involvement also reflects a perceived structural weakness of the OSH Act, given its limited provision for criminal prosecutions, with maximum civil and criminal fines set at $10,000, and a jail sentence for a criminal violation pegged at six months.21 As of 1990, only forty-two cases had been referred by OSHA for criminal conviction, and only one employer, a contractor from South Dakota, had spent time in jail.22 Conversely, local prosecutors, relying on state criminal codes, are able to bring much more stringent remedies to bear, as Table 4.1, which offers a comparison of federal and local remedies in recent cases, reveals.

Given these structural and institutional weaknesses, OSHA has faced growing criticism (Note, 1989b). According to one OSHA watchdog, "the federal government has a record of abject failure when it comes to obtaining justice for those killed... in American workplaces" (National Safe Workplace Institute, 1988, p. 4). It is this regulatory vacuum that local criminal prosecutions have sought to fill. As Jay Magnuson, an official in the Cook County, Illinois, states attorney's office, noted, "it had become apparent to [local prosecutors] that in fact the federal government is not doing the kind of job that we expected. Therefore, it falls back to the traditional local level to enforce" (Magnuson, 1987, p. 8).

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<th>Table 4.1. Federal/Local Remedies</th>
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<td><strong>OSHA</strong></td>
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<td>Film Recovery Systems Inc.</td>
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20Article VI, clause 2, of the United States Constitution states that "This Constitution, and the Laws of the United States which shall be made in pursuance thereof... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby." It is judicially accepted that state laws are preempted by federal laws where an explicit or implicit congressional intent to preempt can be inferred from federal legislation. For a discussion of preemption and federalism, see Blomley (1990).

21Proposed amendments to the OSH Act under the Comprehensive Occupational Safety and Health Act (5 1622, HR 3160) include the expansion of criminal penalties to include "serious bodily injury," as well as fatalities, and an increase in fines and prison terms.

22In this, the OSH Act differs markedly from other federal statutes, such as the Environmental Protection Act (Bureau of National Affairs, 1989, p. 22).
At present, the constitutionality of such local initiatives is legally undecided. Several lower state courts have held in favor of preemption, as has one higher state court. While rulings in favor of preemption appeared to be the dominant tendency (see Note, 1987), more recent decisions appear to have been going the other way. In Illinois, Michigan, and New York, for example, state high courts have rejected the preemption argument. However, the issue remains ambiguous. The U.S. Supreme Court has refused to decide the issue, denying certiorari on an appeal from Magnet Wire, 1989. Accordingly, the issue will vary from state to state.

Battles over the preemption of local regulatory agency appear to be of importance to labor law beyond the occupational safety field. Grassroots coalitions of activists, local environmental groups, and trade unions have lobbied state governments to fill a federal vacuum in other areas of labor regulation. As a result, local prosecutors have been drawn into a number of areas of economic regulation, such as disputes over plant closure and worker information concerning toxic substances, previously regarded as federal responsibilities. Employers have again sought protection in the Supremacy Clause, to the extent that in virtually every kind of lawsuit that is filed on employment issues today there is some form of preemption defense that can be raised" (Weinstein, 1989, p. 9). There are also intriguing parallels with the Canadian and British experiences. Following a series of well-publicized accidents—especially those relating to the Channel Tunnel—it has been suggested that British management should be subjected automatically to criminal investigation to see if manslaughter charges should be brought (Manchester Guardian, August 16, 1992). Given their similar federal structures, the similarities between U.S. Canadian worker safety protection are even more striking (Bakan & Blomley, 1992; Blomley & Bakan, 1993).

The preemptive strike

In reviewing the worker safety court decisions, it is not hard to find a vindication of the centralization narrative. A clear line of argument in opposition to local prosecutions can be discerned, given a claim that local "public" regulation illegitimately interferes with "private" sector relations. The Sabine decision of 1988 offers one useful point of entry.

In September 1985, Benjamin Eaton and Juan Rodriguez, two Texan construction workers employed by Sabine Consolidated Inc., were killed when the 27-foot deep trench they were working in collapsed. The president of Sabine, Joe Tantillo, was indicted by the Travis County attorney under the Texas penal code, which provides that a person commits an offense if she or he causes the death of an individual by criminal negligence. After his conviction, Tantillo appealed, arguing that because the case was based on occupational safety issues, the trial court had no jurisdiction, this field of law being preempted by the OSH Act. The state, while conceding that OSHA Act standards did indeed cover the workplace at issue, nevertheless contended that the Act did not preempt the exercise of state criminal law in the workplace. The court, however, was to rule that "OSHA [i.e., the OSH Act] preempts any state regulation of work places governed by OSHA safety regulation . . . [and] that the criminal prosecutions here amount to such regulation" (p. 868). The court consequently reversed Tantillo's conviction, and acquitted him.

The decision seems to rest on two geographic claims. First local legal initiatives are treated with considerable mistrust. Effectively characterizing the place in locational terms, the court expressed disquiet at the actions of the county in instituting criminal proceedings, the practical effect being "to set up a body of state law affecting workplace safety issues already governed by federal standards promulgated pursuant to s. 655 of OSHA" (p. 868). Such a federalist distrust of local action is central to other preemption cases. Arguments have frequently been made that local initiatives conflict with the regulatory uniformity implied by the OSH Act, that, in so doing, they return to the regulatory chaos of the pre-OSHA period; and that the consequence is an uneven "playing field" for business. In all cases, great play is made of the inherent untrustworthiness of local regulators. For example, the Chicago Magnet Wire case, noted earlier, prompted Chicago attorney Edward Miller, whose firm prepared an amicus brief filed by the U.S. Chamber of Commerce, the Illinois Manufacturers Association and other employer groups, to argue that his clients "would rather have a uniform federal standard for workplace safety.

23Sabine Consolidated Inc. v. Texas, 1988, 756 S.W. 2d at 865.
than be at the mercy of however many thousand district attorneys there are each determining what the safety standards should be for individual companies" (Prosecutions of Employers, 1989, p. 1612). Following the decision, Stephen Bokat (1989) echoed Hamilton’s complaint of the "interferring and unneighborly regulations of some States" by suggesting that "the enforcement of safety and health regulation [will be thrown] into disarray as local prosecutors and grand juries apply ad hoc notions of what is a safe and healthy workplace" (p. 135).

Second, the Sabine decision rests on a claim concerning a divide between public and private actions. It is argued that the specific location within which the deaths occur—the "private workplace"—removes those actions from the purview of the local state. The decision here turns on section 4 (b)(4) of the OSH Act which provides that the "common law, or statutory rights, duties or liabilities" of employers and employees are to be preserved with respect to deaths and injuries "arising out of, or in the course of employment." State prosecutors have relied on the first part of the section to argue that a congressional intent exists to preserve the applicability of state criminal codes. Although a federal body of legislation remains in effect, in other words, this does not preclude other forms of intervention, including those that rely upon state criminal codes to regulate the "rights, duties and liabilities" of employers and employees. However, the Sabine court interprets this section to mean that the states are only free to regulate worker safety so long as those regulations do not interfere with federal regulation. Given that the criminal charges of the state "were based on a failure to perform a duty found in a statute which does prescribe safety standards," their practical effect was to "effectively establish new workplace safety standards" (p. 868) and are thus preempted by the OSH Act.

In making this argument, the Sabine court emphasizes the latter half of section 4 (b)(4) which relates to those deaths and injuries "arising out of, or in the course of employment." This section, it claims, "makes it clear that such state regulation is entirely preempted by federal law" (p. 869). There is, in other words, something distinct concerning employment that precludes local regulation. Essentially, the assumption here is that the workplace, by virtue of its "private" status, is exclusively a federal responsibility. The court holds that the section "addresses only actions between employers and employees, not the relationship between state and federal law, or the right of state prosecuting attorneys to bring criminal prosecutions" (p. 868). Similarly, in Magnet Wire, the court held that the "courts...have consistently found that the purpose of this section was to preserve the existing private rights of injured employees relative to work-

REMAPPPING THE WORKER: CITIZENSHIP AND LOCAL POLICE POWER

The Sabine account is logical and coherent, and accords with the treatment of place given by the centralization narrative. A suspicion of local intervention is coupled with a defense of property so as to strike down local legal initiatives and further deepen local powerlessness. However, this is not the only way in which these cases have been decided. A significant number of decisions have rejected the federal preemption of man’s compensation, State tort law, and other common law remedies against employers but not to create any additional civil remedies in favor of employees" (p. 1175). There is something distinctive, it seems, about the "private" matrix in which the fatalities occurred that precludes the application of local regulations protecting citizens from local crime. As Frug (1980) documents, local criminal prosecutions of employers constitute an illegitimate regulatory intervention into the privatized relations of a corporate rights holder by a "power wielding" public corporation.28

The Sabine court, then, implicitly distinguishes between "employees" and "citizens," situating the former within a specific nexus of relations that denies them the protection they might enjoy as "citizens" of a local jurisdiction. Such a distinction, of course, reflects the classical liberal divide between the "public" and "private" domains. Employment relations have been traditionally construed as situated in the latter, defined by instruments of private ordering and the various rights attendant upon ownership of private property. In other words, when Juan Rodriguez and Benjamin Eaton went, for the last time, to work, they entered the private sphere, thus acquiring the status of a private "employee." As a consequence, they were no longer afforded all the protections that they might have had as citizens of Travis County, Texas.

28It follows that local intervention, if it is to occur, can only be of a distinctive form, that is, employment-related. Thus the law, as applied to employment relations, undergoes a curious transformation. No longer a form of criminal law, it is redefined as an attempt to set up worker safety standards. Thus, an attempt to charge the president of a company with criminal negligence following the death of two construction workers is redefined as an attempt "to establish local standards governing the digging of ditches, a subject regulated in detail by...the OSHA standards for trenching...." Criminal prosecution based on the violation of State or local standards for working conditions "amounts[ ] to an impermissible attempt to regulate, through the State criminal laws, conduct now regulated by OSHA. By prosecuting appellant for not digging ditches safely, the State intruded on an area covered by OSHA regulations" (Sabine, ibid., pp. 868-869, my emphasis).
responsibility as the concern for protecting the public against crime" (p. 24). Decentralization, castigated by the pro-preemption courts as an obstacle to efficient regulation, was redefined as an essential component of political life. We can see this argument reiterated by local prosecutors who insist, again and again, that there there is something special and distinctive not about the work site, but about decentralized political life and the locality, in which the worker and the manager, by virtue of their particular location, share. Local prosecutors make reference to certain valued qualities of the decentralized polity, including its traditional "police power" (Webber, 1989). For example, Jay Magnuson, the head of the Cook County states attorney's unit that investigated and indicted Film Recovery Systems, Inc., following a workplace fatality, argued that "local prosecutors have this traditional belief that their role is to protect their citizens and to insure the safety and health of their citizens no matter where they are. If we are to protect citizens on the highway from drunk drivers or on the sidewalks, in theatres, in restaurants, who is to say to us that we cannot protect their health and safety inside a workplace?" (Magnuson, 1987, p. 8). Similarly, the high courts of several states have indicated a renewed openness to such arguments. In Magnet Wire, 1989, for example, the court held that "The power to prosecute criminal conduct has traditionally been regarded as properly within the scope of state superintendence... The regulation of health and safety has also been considered as 'primarily and historically' a matter of local concern.' The appeal to local "police power" is an important one that requires some elaboration.32 Despite the continued centralization of formal legal powers, and the occasional interjurisdictional clashes between state, federal, and local authorities over policing, American criminal law enforcement has remained a highly localized institution, centered on municipal and county governments (Tiedeman, 1886, pp. 612-614; Weston & Wells, 1976). In this sense, a remarkable continuity between medieval English


32Similarly, a 1987 note in the Harvard Law Review (Vol. 101, pp. 535-554, 1987) challenges arguments that the OSHA Act preempt state criminal law, arguing that "police power and control over violent crime are quintessentially the functions of state governments" (p. 549).

31The concept of "police power," in the American legal system, is a broad one that relates not only to crime prevention but also to forms of civil regulation. Its narrow meaning is given by Freund (1964) as the protection of public safety, order, and morals. Cooley used a broader brush, defining it as "a system of internal regulation, by which the State seeks not only to preserve the public order and to prevent offenses against the State, but also to establish for the intercourse of citizens with citizens those rules of good manners and good neighborhood which are calculated to prevent a conflict of rights, and to insure to each the uninterrupted enjoyment of his own [sic] so far as it is reasonably consistent with a like enjoyment of rights by others" (quoted in Tiedeman, 1886, p. 2).
patterns of self-policing and the tithe system, the highly localized moral communities of seventeenth and eighteenth century North America (Maier, 1970), and the present day can be traced. Several studies have also linked criminal justice to local community mores (Harries, 1988; Harries & Brunn, 1978). This applies not only to police forces, but to other legal institutions, including the local judiciary and prosecuting attorneys, who, by virtue of their discretionary powers and their "gatekeeper" function, occupy a vital position within localities (Munkkonen, 1990; Yngvesson, 1990). At the nexus of local community forces, the electorate, and the local legal apparatus, the local prosecutor is, to Cole, "the epitome of decentralization" (1973, p. 115; also see Roettinger, 1957), in possession of a highly developed sense of place.

The pervasive claim concerning state and local agency and community standards thus imparts a historical resonance to Cornellier's characterization of crime as "deeply rooted in local feeling and responsibilities." Although constitutional law recognizes the legitimacy of local criminal policing, it generally draws the line at interventions into private employment relations. Yet it is precisely this border, constructed by courts such as Sabine that is crossed by courts such as Cornellier. More accurately, the status of the "private employee" is redefined. These alternative readings, as it were, resist the "modernization" of work, rejecting the boundaries that construct the private workplace as distinct from the local public domain and the employee as different from the citizen, and thereby contest the very basis for denying the benefits of local criminal law from workers. The employment relation is remapped as situated in the local jurisdiction—as in place. The employee and employer are "reenshranched" as local citizens and made subject to the same rights and responsibilities as other local people. Cornellier, for example, refers to the state's responsibility to protect the lives of "employees, and all other citizens" (p. 25, my emphasis). Similarly, George Cohen (1989) argues that "there is a strong presumption against preemption of a state's exercise of its historic police power."

32William Novak's (1989) fascinating discussion of the republican discourses used to justify extended local police powers in the early nineteenth century is relevant here. Escalating a narrow liberalism, the emphasis of certain judges and other legal and political commentators was on community, obligation, and regulation. Moreover, local governments were charged with a vital role in the preservation and protection of a "well-ordered society" by virtue of their peculiar proximity and "visibility."

33Munkkonen and Helm (1989) indicate this gatekeeper function in the context of the preemption dispute, suggesting that "prosecutors are increasingly willing to use the criminal law as a means of expressing community moral outrage against companies that endanger human life by transgressing boundaries of acceptable risk" (p. 46).

The state plainly has a special interest in controlling conduct that is motivated by a malicious or reckless mental state and that endangers the lives of its citizens, whether the conduct occurs in the context of operating a car or operating a workplace" (p. 35).

Again, we can find many local prosecutors similarly arguing for the artificiality of the public/private distinctions and its attendant spatial categories. An assistant prosecutor with the Cook County states attorney's office argued that Magnet Wire was guilty of criminal violence, "the same as an aggravated battery on the street." The only difference was that the criminals, in this case, "were individuals wearing ties" (New York Times, August 20, 1990, p. A10). Other district attorneys have noted that:

If there was an explosion in a factory stemming from hazardous conditions and dozens of workers died, local prosecutors would be preempted from prosecution. Yet if the explosion resulted in the deaths of residents in the surrounding area, or a passerby, or a delivery person, we would not be preempted from prosecution. All these deaths would occur due to the same reckless or negligent conduct. But we could prosecute only for the deaths of those who were not employed by the factory. (Richard Daley, Cook County D.A., quoted in Committee on Government Operations, 1988, p. 10)

There is no difference between exposing a crowd to a bullet and exposing workers to a lethal substance. People are coming to understand that when a person is killed it is not necessarily an accident. Sometimes it's a crime. (Jan Chatten Brown, Special Asst. D.A., Los Angeles, quoted in Local Officials, 1985, p. 1132)

This is a claim that some state courts have recently accepted. In Hegedu, 1989, for example, the court stated "that OSHA is concerned with protecting employees as workers . . . the State is concerned with protecting the employees as 'citizens' from criminal conduct. Whether this conduct occurs in public or in private, in the home or in the workplace, the State's interest in preventing it and punishing it is indeed both legitimate and substantial" (p. 29).

Sabine and Cornellier, I think, reveal the contours of an important divide, a divide that marks much more than mere jurisdictional squabbling; more, indeed, than a liberal anxiety concerning the "intermediate" group. This tension also expresses itself, I have argued, in internal disputes concerning agency discretion. At issue in both disputes are opposing theories of local legal life. One line of argumentation treats excess local power—expressed either in terms of autonomy or discretion—with mis-
trust, given its illegitimate interference into the "private" sphere, its problematic heterogeneity, and its suspect partiality. The opposing argument, however, resists the "privatization" of local life, embraces the spatiality of social life, and expresses a commitment to "discretionary justice." 24

This tension, defined differently, is generally treated as unproblematic. Indeed, it could be taken as indicative of the vitality of legal practice and the federalist project, with its presumptive model of two discrete but harmonious judicial powers, federal and state, sovereign in their own spheres. Here it is assumed that competing claims can be resolved through a "balanced" and "rational" arbitration. Recognizing that the federalist experiment would generate questions of "intricacy and nicety," Alexander Hamilton (Madison, Hamilton, & Jay, 1788/1987) was nevertheless confident that time "can mature and perfect so compound a system, can liquidate the meaning of all the parts, and can adjust them to each other in a harmonious and consistent whole" (p. 458). Contemporary federal scholarship continues to assume intergovernmental "coordination," "co-operation" and "congruity" (Elazar, 1987, pp. 182-183; Wendell, 1949, p. 20).

Yet I think such tensions are far more suggestive than is supposed (cf. Luhmann, 1988). Rather than signaling the "maturation" of the federal "balance," they reveal its continued contingency. The dilemma seems to be that any attempt to find "congruity" in the context of the preemption decisions, or to establish some Archimedean point from which to adjudicate between competing commitments to discretion, is difficult, if not impossible. Although both are clearly liberal in their presuppositions, the different interpretations of local power that they offer render compromise or coordination elusive. To Sahine, for example, place is characterized from without, in locational terms; conversely, Cornellier, views local legal action from the inside. As a consequence, the manner in which the interpretations are constructed and the standards by which interpretations are assessed are qualitatively different. The Cornellier court, although formally referring to the relevant statute, adopts an interpretation that is contextual, assessing the legitimacy of the actions of the local state with reference to the sociospatial context within which it is embedded, that of the locality. The Sahine court, however, attempts to construct an interpretation that we can define as textual. 25 In other words, the analysis does not wish to depart from the narrow confines of the "plain language of the statute and case law" (p. 867). In effect, the court appears to be self-consciously abstracting its interpretation from any geographic context. The case is reduced to a discussion of the legitimacy of the action of the state with reference not to the context within which the state is constituted, but in terms of a specific set of legal texts. 26

As I have argued elsewhere (Blomley, 1990), there appears to be a fundamental indeterminacy at the heart of the federal project. Given the contested nature of federalist language, claims for the centralization of legal regulation can always be convincingly countered by decentralization arguments, and vice versa. A "balanced" stance on federalism appears elusive; there is no "killer argument" (Stewart, 1977). "The federalist balance between centralism and localization, between two sovereigns, each dominant in its own sphere," Heller (1986, p. 210) argues, "is seen instead as yielding hopeless conflict." And this conflict, I suspect, derives in large part from the degree to which American political and legal discourse is riven by competing conceptions of space and place. Both Cornellier and Sahine and disputes concerning discretion occupy the tip of a discursive iceberg.

NORMATIVE GEOGRAPHIES

The spatial diversity and local boundedness of social life, I have argued, have not been entirely effaced, but remain as vital coordinates of dispute and ambivalence. As a consequence, American political and legal discourse evidences not closure, but continued uncertainty. Despite those powerful arguments that have been made against the "spirit of the locality," and regardless of the centralization of legal agency that has occurred institutionally, doctrinally, and interpretatively, oppositional voices continue to treat place as a locale rather than a location. Principled arguments in defense of local legal life, long in evidence within federalist debates, bility. The strategic significance of either maneuver, however, is that it seems to demand specific standards of verification at the expense of others. Again, however, there is no logically necessary link between decentralism and a textual interpretation, or vice versa.

24This is not to say, of course, that these alignments are fixed. It is not hard to find cases of localist, discretionary arguments that advance privatization, or vice versa.

25Of course, a completely textual or contextual interpretation is an interpretive impo-
remain very much in evidence today. Local legal power retains both its analytic purchase and its normative potency. The assumed centrality of Dillon’s rule to judicial decision making must be moderated by a recognition of the support given to some forms of local legal action by state and federal courts. And despite efforts to the contrary, agency discretion, shaped by the contingencies of place, is widespread. Law is not only structured by the dilemmas of history, in other words; to the extent that it is “in the world,” it confronts and struggles with the spatial diversity and boundedness of human life. The resultant spatiality of law is made manifest in competing and contradictory commitments both to discretionary justice and to place-bound law and unitary legality. The internal contradictions identified by critical legal scholars, such as those between rules and standards, or those between objectivism and subjectivism, certainly figure in these geographies. However, I do not think that they are simply reducible to them.

An exploration of the spatiality of law and the contestation of place is important and, with a few exceptions, has been too long neglected. Such an analysis reveals the many fractures and contingencies of the legal enterprise, throwing into further question assertions of legal closure. However, a recognition of the links between space and political action also directs us to the material consequences of such internal ambiguities. And indeed, the politics of place and space reveal themselves with deadly force when we return to the occupational safety and health field.

The number of those who die or are injured in American workplaces is staggering. Levy (1988, p. 4) suggests that 390,000 new work-related illnesses and around 100,000 work related deaths occur in the United States every year. Those who die at work are often killed under gruesome circumstances, as Table 4.2 demonstrates.

Over the last decade, the situation has shown little sign of improvement. Indeed, several recent cases, including the charges brought against some large meat-packing firms such as Morrell and IBP in the Midwest, have uncovered horrific working and safety conditions that seem little improved from the days of Upton Sinclair’s The Jungle. During the 1980s, the total OSHA budget declined (from $232 million in 1978 to $195 million by 1985, for example). Republican OSHA appointees changed OSHA enforcement rules, exempting companies from inspections if their records showed lower than average accident rates. The number of OSHA inspectors has dropped (from 1,328 in 1980 to 1,044 in 1987) and the

**TABLE 4.2. Causes of Death in Work Safety Incidents, Los Angeles County**

- Body cut in half by a scrap metal baler
- Unshored hole collapsed
- Fell from sling after suffocating in a confined space
- Body cut to pieces by a pet-food grinding machine
- Electrocuted by high-voltage wire
- Crushed by steel roller
- Crushed when load fell on head
- Mixing machine, not properly secured to floor, crushed victim between machine and wall
- Brick wall collapsed on victim
- Scalded when a pressure vessel at an oil refinery exploded
- Fell from a stock order picker that lacked safety railing
- Explosion of oil waste storage tank

*Source: National Safe Workplace Institute (1990, p. 9).*

number of serious violations cited has fallen (from 33% of total citations in 1980 to the mid-20% range between 1981 and 1987). It has been suggested that OSHA inspectors under Carter were three times more likely to issue a willful citation than those under the Reagan administration. Between 1981 and 1988, critics have alleged, over 9,000 workers have died in job-related accidents that would not have occurred if enforcement trends in place under the Carter administration had continued (OSHA “megaﬁne,” 1988, p. 793). Stung by such accusations, OSHA did move towards increased fines against certain high-proﬁle offenders in the late 1980s. However, critics have charged that the “megaﬁne” strategy serves only to cloak an already weakened enforcement strategy, and has been unduly eroded by a willingness to cut “sweetheart” deals with major corporations (OSHA “megaﬁne,” 1988, p. 793). All of these problems have prompted charges that OSHA, once the active watchdog of workers health, has become the lapdog of business. Senator Edward Kennedy, in a congressional hearing in May 1986, went so far as to describe the deregulatory process as “a blueprint of how to effectively repeal a statute without changing the law” (quoted in Perl, 1986, p. A13).

Most of these changes derive from the deregulatory impulses of the Reagan–Bush era. The dismantling of OSHA, however, also entailed significant shifts in the geographies of regulation, transformations which have been characterized as some of the more lasting regulatory reforms of the administration (Fix, 1984, p. 177). The official goal here was characterized as the “flattening of hierarchies” within the federal system, en-
tailoring the return of "power and responsibility to the states, where they belong" (Reagan, 1988, p. 5). While the New Right logic for such changes may, at base, be deregulatory, the transfer of regulatory authority to the states in areas such as environmental protection and mining regulation, as well as occupational safety, has been prosecuted in the combined language of both economic efficiency and states rights. In its selective recovery of certain antifederalist impulses combined with a Tieboutian appeal to locality and efficiency, this engenders a curious combination. Ronald Reagan had no problem in quoting James Madison—hardly a champion of decentralized government—to argue that America "has always been governed best when governed by those closest to the people" (1988, p. 6) while John Sununu—as he vacated the chair of the National Governor's Association—could oppose the "overcentralization of power" (1988, p. 7) by arguing for the Tieboutian dynamism, flexibility, diversity, and responsiveness of localized authority.

The consequences for OSHA proved immediate and significant. Assistant Secretary Auchtner, asserting that "in the last analysis, local problems are best addressed by those closest to them," held that "our goal is to encourage a reasonable degree of uniformity in standards nationwide, while still allowing states flexibility to meet local needs" (quoted in Minn. 1984, pp. 656-657). Some early agency initiatives included the removal of all federal compliance officers from states that had signed operational agreements with the agency, and the halving of federal staff assigned to the monitoring of state plans (although this was replaced by the development of the integrated management information system). A powerful and controversial early signal of the reduction of federal oversight was the Reagan administration's withdrawal of Carter's proposed revocation of Indiana's occupational safety and health plan in 1981. Other significant changes included a slowing of the promulgation of regulations under the OSH Act and the adoption of the "voluntary-compliance" policy, by which a company is exempted from inspections (other than of its records) if its injury and illness rate (as reported by the company) falls below the national average. The emasculation of OSHA has been enshrined, in large part, in the language of place. Rather than acknowledging the neconservative impulses that underpinned the deep cuts into American public spending, Republican administrations appealed directly to localism and state's rights. In a similar vein, some advocates of enhanced discretionary powers have extended the logic of their argument to advocate decentralization even to the level of the individual work site, arguing that collective agreements between individual unions and employers are more responsi-