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## Of Place and Law

### ***About this chapter***

This chapter aims to introduce the reader to the intertwining relationship between law and place from a variety of perspectives, including but not limited to doctrinal legal analysis. Legal geography, an interdisciplinary academic project that has gained popularity in the past decades, will also feature in the discussion, aiming to bridge a gap between two seemingly unrelated fields of study, which are, however, built on common conceptual ground: there cannot be law without a place of application. In this vein, law and geography go hand in hand in the dedicated study of the rules that shape, create, and govern place, and it is the present chapter's intention to posit that this relationship should be acknowledged in theory as well as in practice. Unambiguous as it may be, this relationship remains largely overlooked in the study of the law, which is seen as "insensitive" to the place-specificity of human activity.

The chapter will commence with a short introduction to the existing academic thought on law and place by briefly touching on the interdisciplinary endeavours of legal geography, whilst highlighting the lacuna in "traditional" legal theory's appreciation of *place* and *space*. From there, the chapter will delve into the role of *place and space* in doctrinal legal thinking more explicitly, identifying areas of law that merit geographical attention, and advocating for an alternative interdisciplinary viewing of law and society through the geographical lens. Consequently, this chapter attempts to offer fertile ground for the cross-pollination of ideas with respect to the geographical appreciation of the law, and vice versa.

### ***An overview of place in law***

Traditionally, the law has constituted its own academic discipline, distinct from the social and political elements that lead to the creation of legal rules. Under this prism, reading and applying the law appears to remain immune to non-doctrinal or black letter analysis, for fear that the impartial application of rules be jeopardised. It follows that any prejudiced or biased application of legal rules can affect legal certainty, which is incompatible with any democratic system of governance. This traditional viewing leaves little room for expansion into adjacent and related disciplines, when it comes to the way the law is read and applied; the law remains a rigid and impermeable construct.

This is a sought-after quality of the law in a democratic legal system, as the law needs to be seen and recognised as such, and to be applied equally; however, this also constitutes the law's harshest critique and constrain, since phenomena such as social inequalities and geographical particularities do not seem to *prima facie* affect legal decision making. To address this lacuna, academic scholarship has expanded into socio-legal and geographical dimensions. Nevertheless, such projects remain mainly on the theoretical plain, as indeed, the study of the letter of law, alongside its application and enforcement, remain doctrinal in nature. For the purposes of the present, attention is paid to the

expansion of law into geography (and vice versa), in an attempt to “map out” how law and place configure each other in “traditional” and “non-traditional” legal thinking.

Hardly a newcomer in legal thinking and legal literature, the relationship between law and the notion of place is continuously entering new paradigms and is constantly being enriched with new works of academic merit. A lot has changed since Blomley’s *Law, Space, and Power* (1994), with legal geography entering the debate and establishing itself as a distinct field of scholarship, mainly as a human geography sub-project. Indeed, legal geography as an academic pursuit has caught the attention of critical geographers wishing to focus on the spatial dimensions of the law, its institutions, as well as other non-state actors (Bennett, 2011, Konsen, 2013, Hubbard, 2012, indicatively). At the same time socio-legal and critical legal scholars are constantly re-discovering geography’s appeal, addressing issues ranging from the spatialities of injustice in the broadest sense (Delaney, 2016) to more traditional disputes related to a designated place (e.g. housing, landlord/ tenant disputes, property transactions *inter alia*), and perhaps most famously, to issues related to the regulation of the public versus the private place.

Despite the above, the present contribution does not aspire to become a précis of the legal geography project per se; this would fall outside the scope of a compendious discussion on law and place. At this point, it suffices to say that legal geography has been the most dedicated attempt to provide the law with a spatial interdisciplinary reading, emphasising the role of place in the making, the application and the interpretation of legal rules. For those interested, the development of the academic discourse on legal geography is periodically being documented by David Delaney (2015, 2016, 2017), who reports on the progress made in the study of the field both thematically and methodologically, by offering a critical assemblage of academic literature from both the geographical and the legal perspective. Rather, the aim of this short essay is to consider the relationship between law, place, and space from a variety of perspectives, including but not limited to “traditional” doctrinal legal thinking, which might not be as familiar to non-lawyers. It is interesting to observe how traditional legal theory has more recently attempted to answer questions predominantly left to the hands of socio-legal scholarship, including issues regarding the relationship of place and space with the law.

Whilst it is interesting and indeed inspiring to witness the expansion of *lawless* geography into *anti-geographic* law (Blomley, 1994; Clark, 1989; Delaney, 2000; Pue, 1990) and vice versa, it is important to explore why this mutual understanding had not always been evident. The claim “place matters” which has long been advocated in geography, has reached both adjacent and more remote disciplines, and rightly so. On the other hand, however, it is not surprising to see that the law does not seem to “matter” to the same extent, given its traditional static and reactive nature. Plainly put, the law is traditionally seen as something to be dealt with “later” and by lawyers, despite its omnipresent nature and its place-making qualities.

Indeed, the relationship between law and place is undisputed, even though it has not been always documented as such. Not only does the law make place (as stated previously), it also *constitutes* place, indicating one of the most interwoven relationships between disciplines: geography aside, law is perhaps the only discipline across humanities and social sciences that is so closely related to the notion of place; place is a *sine qua non* condition for the existence and the application of the law.

The law shapes and defines its place of application to the extent that the two become inextricably interwoven to form a sphere of authority. Once this sphere of authority has been established, the

study and the application of the law can begin, as people, institutions, actors and disputes are brought together to form the legally relevant place. This place “ends” where the power of the law to apply ceases: outside the borders of the sovereign state the laws of other jurisdictions may apply (speaking for instance of the domestic jurisdiction) or perhaps none, should we speak of supralegal or infralegal issues (extralegality or issues of non-legal relevance), as per Johns (2013) in Blomley (2014). As such, the law has both inherent spatial relevance and place-making capabilities; it affords meaning to a well-defined place that the law itself creates. It follows, that under this prism this interwoven relationship is a facet of legal certainty, as place and legal order constantly configure each other, and can always be asserted and interpreted judicially.

### ***Place and space in legal theory***

Such is the unambivalence of the law’s spatial relevance that a broader debate on the significance and the role of the place in law per se is almost a non-issue in doctrinal legal thinking, which sets out to answer questions *in* law rather than *about* the law. From this perspective, the place of a given legal order is the place or the territory, where a people establish their self-governing will. Consequently, from a constitutional perspective, law represents a spatial declaration of sovereignty and manifests itself within the borders of a given territory, but also outwards i.e. internationally, for as long as it remains rooted in the same sovereign mandate (international representation of states and participation in international institutions). Hence, in international law terms, this so-called Westphalian sovereignty is respected and acknowledged as a principle of non-interference in matters of domestic jurisdiction, as recognised in the Charter of the United Nations (United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, available at: <http://www.unwebsite.com/charter>).

So far, the law’s traditional spatial manifestation visualises as the constant flow or dialectic between the national and the international. In normative terms, outside the geographical and physical borders of the domestic jurisdiction lies the universal foundation of international law. The legal continuum remains unbroken, and so does the uninhibited spatial presence of the law itself. In this vein, Teubner has commented on ‘the historical unity of law and state’ (1997: xiii), reaffirming the territorial relevance of a legal system.

More recently however, traditional legal theory has examined this inherent spatial element of the law under post-Westphalian, modernist perspectives that question the law’s origins, and considers to what extent and in what way norms that bypass this traditional perspective will (or can) be recognised as law (Walker, 2010). And this is something that merits the attention of the non-legal scholar: law has the ability to create metaphorical borders (co-ordinates as per Walker) in order to establish itself, thus dismissing issues that have not been legislated or adjudicated, as mentioned previously albeit briefly. What remains outside these borders are issues of justice/ injustice, or rather issues that have the ability to foster relevant legal debates, meaning questions on what should and could be legal/ illegal and is not yet. This border-crossing between law and non-law is not just a theoretical exercise in what separates legal from social sciences, it is also an indication of the difference between a place where the law exists and applies, and a *space* comprising of various human and non-human actors where questions relevant to the law are raised.

To illustrate, in normative terms the law is situated in space and time, a quality that Walker refers to as situatedness of “*qua* law in space and time” (Walker 2010:16), signalling an act of framing the space-time continuum in order to assert legal meaning, and thus secure legal certainty. Not only does this quality point to the law’s static nature, thus affording the law place-making qualities, it also allows for further practices of complementarity and compartmentalisation within the law itself. Once established and situated in space-time, the law provides its own frame of reference:

*‘The law of the sovereign state [...] may conceive itself in finite terms, as limited in space and marked by a beginning (...) in time; yet it recognises no space within the place of its jurisdiction and no time [...] where the activities of those located within that expanse of space and time can escape its jurisdiction. The law of the sovereign state, then, pertains, potentially at least, to the whole of law and the whole of life under the law who fall under its perpetual jurisdiction’* (Walker, 2010:56).

We can see therefore, that the law requires both physical and metaphorical borders. Physical, geographical borders are required to separate the legal orders of different sovereign states and the transition from the national to the international, and metaphorical borders to separate the legal from the non-justiciable. The two are not mutually exclusive, as the legal continuum, once delineated or *situated* geographically, affords meaning to its surrounding places and concepts in perpetuity, as seen in Walker’s writings.

More recently, legal scholarship has faced the need to engage with the post-national era of legal globalisation, where the traditional legal viewpoint or dichotomy of national and international has required revisiting. Even in the globalised world where the lines between private actors and international institutions (and thus obligations) become blurry (i.e. from the WTO to the ICANN), legal certainty still needs to be achieved. In this vein, two concepts re-enter the debate, the need for boundaries-setting in the legal hierarchy, and the role that geography (as a discipline) is called to play in achieving legal certainty.

Aiming to address the first issue, Lindahl (2010) reaffirms that the regulation of human behaviour by the law occurs through the setting of boundaries that determine ‘*who ought to do what, when and where*’ (2010: 35). Lindahl posits that even though legal orders appear de-territorialised in a global environment, they still manage to become accumulated by the national jurisdictions, leading to some form of emplacement rather than displacement of global legal orders (internalisation and application of international law or EU law serving as an example). Therefore, he contests that ‘*...no legal order is conceivable unless it is bound spatially*’ (2010: 44).

What Lindahl actually points to (perhaps unintentionally) is the inevitability of entering into a debate about place and geography, if we wish to address issues that challenge the traditional normative legal perspective. We need to delve into the roots of the law in order to address more perplex issues about the law in a globalised environment. In other words, it is time to revisit *qua* law, something that Walker set out to consider. Ultimately, it appears that this is something that cannot be done un-geographically, especially since the law’s traditional borders and boundaries are constantly being challenged: what makes the law is tied to where the law happens.

Thus, considering what makes the law reiterates Lindahl’s and Walker’s assertion that, among other things, the law is made *by* and *in* a certain place and a certain time. In the globalised, post-Westphalian world what remains to be answered is if the place where law happens should be the

sovereign territory that subsequently assigns meaning to the national and the international, the law and the non-law, or an alternative notion of place and space, where borders and boundaries remain fluid, and so does the very idea of what constitutes law.

### ***The fluid borders of legal certainty***

As Antonia Layard (2010: 412) has pointedly observed, speaking about the “law of place” means to separate and delineate ‘*places from spaces, applying different legal rules either side of an often-invisible boundary line*’. It is true therefore that for the legal scholar this distinction between place and space denotes more than a theoretical exercise: as law happens and exists *somewhere* there can be no legal certainty until that *place* is prescribed. Consequently, it can be argued that in the relevant legal space, relationships, actions, actors, and institutions carry legal weight, and as such require a closer examination by legal scholars, practitioners, and lawmakers. Should a certain action occurring in the relevant legal space be legal or illegal? Should people and interactions in the relevant legal space attract the attention of the legislator and the judiciary? In other words, is there or should there be law in its normative sense? If so, what should that law be?

Ultimately, this exercise of delineation is an exercise in affording legal meaning or an exercise in legal certainty. This is the legal equivalent to the definition provided by Carter et al (1993) that ‘*place is space to which meaning has been ascribed*’. Even though disputed in critical geography (e.g. Massey, 2005), this distinction between place and space holds merit when talking about the law and its *situated* qualities in normativity. The most evident manifestation of this invisible legal boundary line between the legal place and the relevant legal space can be found *somewhere* where the traditional jurisdiction is either absent or *in limbo*, meaning *somewhere* where power relations, resources and spatiality are all much more able to play their part in determining (legally informed) decisions, absent the traditional jurisdiction (Collis 2004).

Examples of this can be numerous, ranging from outer space to Antarctica, and from unregulated urban squats to illegal activities in public spaces (e.g. cannabis festivals, graffiti, parkour). In such situations that seem to fall outside a predetermined place of authority, legislators and legal scholars have struggled with ascribing legal specificity. In the cases of outer space and Antarctica national appropriation and claims of sovereignty are expressly excluded, by virtue of Art. II of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (18 UST 2410, 610 UNTS 205, 6 ILM 386, 1967), and Art. IV of the Antarctic Treaty (402 U.N.T.S. 71, 1961).<sup>1</sup> This means that the law of no single sovereign state applies to these particular spaces, whereas international law is evoked for the remainder of human activity with respect to scientific exploration and international cooperation.

To illustrate, a dispute with respect to human activity will be treated as a dispute arising between two or more nationals of specific sovereign jurisdictions, willingly subject to the rules, norms, and

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<sup>1</sup> Note that by virtue of para.2 Article IV “*No acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica. No new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctica shall be asserted while the present Treaty is in force*”, whereas several states have either claimed or reserved the right to claim territories in the future.

conventions that make up the international legal order. It follows, that notwithstanding its geographical significance, the place of a dispute can become completely bypassed by a sovereign legal system. This does not necessarily mean that such spaces remain irrelevant to the law, as this unique interaction between law, human activity and place specificity should be factored in the way the law is applied and enforced, nevertheless. In other words, these places manifest the departure from the standard Westphalian viewpoint, challenging the notion of space and place in traditional legal thinking; their study advances the need to read the law in a geographical and place-specific manner.

Similarly, in spaces of ambiguous legal status within a specific jurisdiction, we encounter paradoxical relationships with the law. Such spaces within a recognised jurisdiction can challenge the way the law is made and applied “from within” pushing the limits of law-making once again. In these terms, an urban squat remains an illegal occupation that often borders legitimacy and acceptance by the authorities (Ntounis and Kanellopoulou, 2017), despite any claims for “sovereignty” from the part of the squatters (as in the case of Freetown Christiania in Copenhagen, Denmark). Equally but on a smaller scale, graffiti or parkour (Mould, 2009) can be appreciated as forms of art and sport, adding value to the urban environment (Mubi Brighenti, 2010, Layard and Milling, 2015, Iljadica 2017, *inter alia*), even though they may contradict municipal regulations. From a criminal law perspective, Crowley, Ryan and Dunn (2015) examined the alternative penal system that governs prisons in Kyrgyzstan, identifying a quasi-sovereign legal ordering running in parallel with the Kyrgyz penal code (the law “outside”).

On the antipode, we encounter pseudo-public spaces, meaning spaces where the public element is present in geographical terms (i.e. a place for public use) but the legal element has been withheld. These consist of spaces such as shopping centres and privatised town centres, where legal rights such as freedom of assembly and freedom of speech remain restricted (MacSithigh, 2012) by virtue of the rights deriving from private property. Even though such cases are not aligned with the notion of sovereignty, they still manifest a spatio-legal oxymoron in the modern era of astute privatisation.

It follows that spaces such as these, either remain outside the confines of a traditional jurisdiction (literally or metaphorically) or represent an alternative reality thereof, something that shifts the onus from norms to alternative guarantees of societal integration (Jalava, 2003). In consequence, we can see how the law’s boundary lines can remain fluid in both substance and enforcement. The relevant legal space can bear qualities and characteristics that challenge the law’s normative certainty. At the same time, the law remains present as a frame of reference, a juxtaposition between *here* and *there*. This shows that the law’s normative confines still need to be acknowledged, and unsurprisingly so: ‘*that which is placed outside of law is not simply a space of not-law but is itself a product of law*’ as Blomley explains (2014:136).

Hence, should we agree that in the relevant legal space power dynamics, human interaction, human and non-human actors, all carry equally weight in achieving legal results (e.g. regulation of human activity) whilst bypassing the rules of the jurisdictions *outside*, what remains to be seen is *how* this is possible, and what this could mean for the sought-after legal certainty. Taking for instance the example of a group of squatters wishing to engage in urban planning activities or operate a business out of the illegally occupied premises: how can any resulting endeavour gain legitimacy, having itself become delineated from the laws of the *outside* jurisdiction? And should it ultimately gain such

legitimacy through societal acceptance, what does this mean for the production of law and the establishment of legal certainty?

### ***Legal bracketing as an exercise in legal certainty***

Trying to find common ground and deduce acceptance by the legal source, as well as by the law's institutions and relevant actors, can be a challenging exercise, predominantly since it requires revisiting what makes law or *qua* law (going back to Walker's writings once again). I believe that Blomley's concept of legal bracketing can help bypass this theoretical impasse. Blomley refers to the law's ability to '*stabilize and fix a boundary within which interactions take place more or less independently of their surrounding context*' (2014:135). There exists a difference however, between what Blomley defines as bracketing in legal terms and what normative scholarship describes as the law's situated borders. Blomley's concept of legal bracketing aims to bring a specific situation to the foreground and afford legal meaning to a certain interaction's diverse and heterogeneous constituent parts. Bracketing in this sense, means to afford legal meaning by putting an interaction under the microscope and by simultaneously disentangling it from those elements that lack legal relevance, in a set place and time.

Hence, bracketing is not about crossing some fluid boundary lines from lawlessness to certainty; it requires observing an interaction closely. As such '*it entails complex and subtle calculations that govern what is, and what is not to be included within a particular setting*' (2014:136). He explains that bracketing does not (and should not) equal simplification, as the law is not a simple thing (the law matters!), but a performative frame, carrying effect and real-life consequences. Delineated in space and time as it may be, Blomley's legal bracket is as temporal as the interaction in hand requires (e.g. a land dispute, a contract, a planning application). This temporality does not require legal isolation and re-interpretation of actors and interactions. Rather, it affords an interaction with legal clarity and certainty by accepting its heterogeneity and by focusing on *how* the law happens. Elsewhere, Blomley has referred to such a space as a *splice* (1994, 2003) Thus, the concept of legal bracketing accepts the law as relational, a coming of being of '*entities, a temporary touching down of heterogeneous and spatially stretched relationships*', borrowing from Massey's writings on space (2005).

Arguably, the best quality of the legal bracket is that it remains meaning and space-specific without being *prima facie* tied to a pre-defined legal order. Thus, bracketing an interaction and subsequently aiming to appreciate how the law comes into being, allows for an alternative viewing of the spatio-legal conundrum that could potentially address the issues encountered in spaces of legal ambiguity. Within the *splice*, law is both performed and relational: this enables the social and spatial elements that "make law" to become accentuated and examined as such. Consequently, interactions within a *splice* can be further categorised into areas of legal practice (e.g. contract, tort, criminal law etc), something that complies with legal certainty.

This results in the relevant legal space of ambiguity becoming a space of legal relevance, a space where the law has meaning beyond the scalable hierarchies that the traditional jurisdictional order prescribes (Valverde, 2009). Indeed, in normative terms the law recognises vertically defined hierarchies; beginning from the international, down to the national and the local (Ferguson and Gupta, 2005). This vertical viewing has been found to exclude rather than include socio-spatial relations and interactions in the name of legal ordering: an example of this can be seen in the Canadian cases of *Federated Anti-Poverty Groups of BC v. Vancouver (City)* 2002 BCSC 405 and *Victoria (City) v. Adams* 2008 BCSC 1363,



Victoria (City) v Adams 2009 BCCA 563, where the panhandling and camping-out practices of homeless people claiming their rights to livelihood were deemed objectionable by municipal regulations. Commenting on these cases, Blomley (2012) argues that these regulations are designed to exclude the poorest from the public space and to micro-manage space within city limits and raises the question of the municipality having acted *ultra vires*. Bracketing these activities, however, allows for an equal representation of the claims of both parties, bypassing the restrictions of the legal hierarchy. Within the bracket, human activity is seen in conjunction with the place where it occurs, and its legality or the illegality is consequential to both social and spatial factors. Ultimately, and going full circle to where this short piece started, within Blomley's splice the law does not have to shed its social and geographical dimensions.

It follows that Blomley's and other scholars' writings on the legal space (e.g. Delaney's *nomosphere* 2004, 2010, Graham, 2010 and Philippopoulos-Mihalopoulos, 2007 *lawscape*) remain heavily related to critical geography, as they seek to '*investigate the co-constitutive relationship of people, place and law*' (Bennett and Layard, 2015: 406). Besides, legal geography's distinctive feature is the elegant and detailed attention to '*the complex processes of legal constitutivity*' (Delaney, 2015: 98) and the analysis of the reciprocal or mutual constitutivity of law, society, and space. In addition, Braverman (2011) lays down the questions a legal geographer should contemplate on, namely *where* is this place, event, or dispute located, *what* do we see, and *how* do legal and spatial meanings combine. By following these proposed methodologies, the result would be an evaluation of the legal continuum, since the legal, the spatial, and the social come under investigation.

As Holder and Harrison suggest (2003: 4) "doing law in geography" helps our understanding of how law shapes physical conditions and legitimates spatiality, and makes clear that law has a physical presence, or even many presences'. The work of Braverman et al. (2014) notes the relationship between the where and the how of law and space, pinpointing that the legally significant place is anything but static; a constantly flowing dialogue can be observed, an ability of the legal space to influence how law happens. This realisation is crucial to the present analysis as, given the ability of the where and the how to converse, their interdependence can also be deduced.

## **Conclusion**

To conclude, even though this present essay promised not to become a report on legal geography, it did result in arguing that geography can provide theoretical and more practical answers to questions that traditional Legal Theory has started to raise. Legal geography stresses '*the normative appeal and institutional significance of place*' when examining local legal cultures, and argues for the '*imbrication of the legal, the social and the spatial*' (Blomley, 1994: 28,63). This shall not be done at the expense of the legal element, as the law too matters. One last thing that needs to be pointed out is that the law's static and spatial qualities do not have to be mutually exclusive. We still need to be able to delineate the law from its surroundings and afford legal meaning to interactions. This is a prerequisite in any democratic sovereign state, where the rule of law prevails. Nevertheless, legal certainty needs to be achieved in a manner that does not exclude spatial and social concerns from its narrative. This can be achieved should attention be paid to *how* and *where* law happens, following practices such as Blomley's bracketing.

By emphasising on the triadic element brought forward by such a geographical viewing of the legal space (legal, social, spatial), geography can be employed not only to enrich legal thinking, but also to bypass practical impasses encountered in traditional legal hierarchies (the rights of the homeless to livelihood, of the activists to protest and so on). Ultimately, geography can aid groups and individuals 'voice' spatial concerns and rights associated with places, by introducing an alternative to the traditionally  $\alpha$ -spatial legal framework.

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