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Interstices: new work on legal spaces

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Abstract

The study of space in law insists on the material world as essentially constitutive of law and in both the analytic and the continental traditions of jurisprudence, law has too often been treated as a series of abstract propositions, a structure of norms in search of applications. *Legal spaces* explores the diversity of legal norms and the disparateness of legal effects not just in terms of the social elements that constantly work to generate and differentiate it, but the physical elements too, and of course the social and the physical are likewise mutually implicated.

Interstices: new work on legal spaces

Desmond Manderson

What does it mean to talk about ‘legal spaces’; about law spatially and space legally? What is the research agenda that this volume announces, whose relevance it demonstrates, and whose methodology it showcases?

The study of space in law insists first and foremost on the material world as essentially constitutive of law. In both the analytic and the continental traditions of jurisprudence, law has too often been treated as a series of abstract propositions, a structure of norms in search of application. Admittedly, law understands itself as spatially delimited — the notion of a territory is a central if relatively modern aspect of law’s claim to authority (see Blomley 1994, McVeigh 2005) — but at the same time it is assumed that it exerts the same and absolute force throughout its jurisdiction. Instead, *legal spaces* draws on the tradition of legal pluralism (Griffiths 1986, Falk Moore 1978, Merry 1988, 2000, Kleinhans & Macdonald 1997, Mellisaris 2004) in arguing that how and what law means is influenced by where it means. Yet unlike much of the work of this tradition, *legal spaces* explores the diversity of legal norms and the disparateness of legal effects not just in terms of the social elements that constantly work to generate and differentiate it, but the physical elements too, and of course the social and the physical are likewise mutually implicated.

The law both structures our understanding of certain spaces, while at the same time those spaces themselves radically transform the experience, application, and effect of the law. Law’s definition of a

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shopping mall as a private space — even though it might be imagined by the community as a public space — will have profound effects on what can be done in it, under what conditions, and by whom (Brion 1987). A street, to take another example, is defined in a certain way for the purposes of licensing laws, and that definition will effect how we imagine it — as opposed, for example, to a *terrasse* or a garden. But the very same law in a small country town, where it is aboriginal populations that are drinking on the street, will be freighted with quite different implications (see Hogg 2002) than in a large city, where young professionals have colonised it; and where ‘the street’ itself looks, feels, sounds, and is used entirely differently. To imagine the law without imagining the space leads almost always to missing at least some part of the point.

The study of law in space will lead us towards work in the geography and sociology of law (Blomley 1994, Holder & Harrison 2003, Blomley et al 2001, Delaney 1998, Taylor 2005) which has in recent years drawn many scholars to think more carefully about how spaces themselves communicate, or disrupt, legal meaning. The socially constructed physical environment of the modern world communicates ideas about law in its streets (Mohr 2003) and its suburbs (Butler 2004), through the location and structuring of social events (Manderson & Turner forthcoming), or in the designs of its public buildings and its public symbols (Haldar 1994, Mohr 2005a, forthcoming). But it does not do so in a totalitarian fashion. The multiplicity and fluidity of meaning gives a richness and potential to the interpretative practices of the communities that are such spaces’ creators and their creatures.

It is appropriate therefore that we should begin by acknowledging the material circumstances to which this volume owes its existence. This collection brings together some of the best new scholarship in the relationship of law and space, presented at the annual conference of the International Roundtables for the Semiotics of Law, held at McGill University in April 2005. Over three days, 50 participants from a dozen countries discussed an eclectic range of topics focused — more or less — around the invited theme of legal spaces. As has previously been the case, several of the conference papers are being published in the

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International Journal for the Semiotics of Law. But the conference organisers and the committee for the International Association for the Semiotics of Law believed that the papers of the conference deserved an additional forum. *Law Text Culture* identified and selected the papers that comprise this present collection on the basis that they addressed the theme of *Legal Spaces* with unusual specificity, and in three ways particularly resonant to the ambitions of this journal: resolutely interdisciplinary, conscious of the material and aesthetic dimensions of law, and receptive to the conceptual challenges of contemporary legal theory.

The first papers in this collection draw our attention to some of the central theoretical influences upon it — Lefebvre, Foucault, Latour, Derrida. Chris Butler offers us an important introduction to the work of Henri Lefebvre (see 1984, 1991), whose pioneering writing first encouraged us to look at space not as an empty vessel but as a hypothesis whose very neutrality and truth belied the political choices and the ideological investments that it naturalised. Lefebvre so rapidly and utterly transformed our interests in space as *produced* by this combination of the philosophical and economic demands upon it on the one hand, and the material and natural contours of it on the other, that he has been surprisingly overlooked for many years. Butler's work is an important contribution to the resuscitation of Lefebvre's sociology of space. Mariana Valverde, for her part, draws on an unrivalled appreciation of the contemporary sociology of law (for example 2003), and turns her eye on an aspect — the concept of 'rights' — that has been subject in recent years to a rigorous critique. But Valverde provides an innovative perspective on this problem, exploring the spatial aspect of different modes of regulation, and showing us in detail how the regulation of behaviour indirectly, by controlling the 'use' of a particular space, differs from the regulation of behaviour directly, by controlling the 'rights' of a particular person.

Yet none of the papers in this book is happy to talk about theory merely in theory, as it were. Valverde and Butler are in fact also the most concerned to address what we might crudely characterise as the literal

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law of space — urban planning. If space is conceived as abstract, able to be divided into geometric portions then to be filled, through the techniques of zoning, with whatever is deemed appropriate by the experts who make such decisions, then a legal order insistent on separating people from social practices, dividing them and regulating them, will find little resistance from the compliant population of isolated consumers it has created. In suburbia, warns Butler, we are in danger of becoming ‘zoned out’. But if space is contradictory, able to be transformed in its everyday use, then this not only provides us with a very different vision of the processes and ambitions of urban planning, but suggests a way of resisting the planning regimes we have now. Valverde carries on closely with this argument, exploring precisely how the regulation of space as a kind of ‘use’, which Butler insists is a logical corollary to received modernist ideas of space and regulation, is in fact subtly different from the regulation of persons. So how we conceive of urban spaces, and how we understand the terms of the political debate concerning how we act in them, is of crucial significance. Butler tells us how we came to understand the spaces of a city as we do. Valverde shows us how it governs the battles we have in it, now.

Space is no less a metaphorical force in law. The level playing field, the castle, and *terra nullius*, are all spatial metaphors that have influenced whole fields of law – contract, criminal, and property law respectively. Art is one central way to expand the metaphorical resources of law’s comprehension of space. Fleur Johns’ article serves therefore as a bridge between the conception of space and its aesthetic representation in law. She takes the development of Western techniques of perspective as a central organising principle in our understanding of space, and demonstrates the extent to which they have become literalised within apparently objective legal doctrine. Analysing standard cases in the law of nuisance, Johns shows how aesthetic concepts and practices thus construct our understanding of the relationship between spaces and interests. In particular, she provides us not only with a crucial historical perspective on the concepts of property and zoning which Butler and Valverde address, but insists on ways in which the ‘zone’ *itself* is an aesthetic and spatial construct. Perspective is a body of

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theory that organises our perception of space; the tort of nuisance imports, realises, and reifies it deep within the body of law.

Developing the relationship of space to aesthetics even more materially, Kirsten Anker shows us how a painting can express a legal claim that, in the law of native title, must address itself to what we mean by space and how it is perceived. The painting in question, a remarkable artwork and a remarkable legal document, to single out just two of its many dimensions, does not accept the orthodox legal depiction of space or the orthodox legal establishment of truth. Instead, the canvas seeks to transform them by replacing a conception of the Australian outback as a washed out, 'empty space' (see Perrin 1998) with a way of seeing it as saturated with physical and normative meaning. In a similar vein, John McKay also appreciates how important the aesthetic is in mediating our understanding of space and law. His study of Diego Rivera's Detroit murals clearly shows us how the artist's work undermines, both formally and figuratively, a notion of community that either reifies us in isolated space through the language of individual identity (thus the *Bill of Rights* (1791) or the *Canadian Charter* (1982)) or else reifies us in collective space through the language of national solidarity (thus the *Immigration Act* (1901) or the *Homeland Security Act* (2002)). Instead, McKay argues that the mural itself enacts an idea of the connection between persons and their environments that is material, fluid, expansive and rhizomic (Deleuze 1987).

Both authors, significantly, see the notion of the 'frame' as key. Drawing on Derrida (1978, 1995) they each read in their chosen representations an effort to destabilise the frame, which is to say the categories that pre-determine our expectations about what law — or art — says and to whom. And both believe that the power of art lies precisely in its ability to *get* us to re-imagine, by redrawing the relationships between space and society, the legal orthodoxies that limit our understanding of property law, for example, or the law of citizenship. Law makes assumptions about the normative significance of space: a property, a land, a territory, a people. And art is capable of transforming those assumptions not just intellectually but, again, materially, physically, and therefore spiritually.

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Anker and McKay are not the only writers here who see the power of law as drawing from its metaphorical conception of space. Lefebvre, as articulated by Butler here, clearly believes that our conceptions of space — what it is and who decides — is fundamental to what we imagine law is for. Annabelle Mooney makes a well-timed plea for emptiness as a space relevant to law too. Drawing on the beach as both her study and her metaphor, she entreats a humility in our discussions of law, a realisation that the great passions of existence will and ought remain forever outside its grasp. The beach is a space that formal law regulates largely by cordoning it off and staying away. As Mooney argues, in doing so it shows a respect for and a fear of those primal desires with which law has never really come to terms. There are other normative forces of Eros and Thanatos (Freud 1995) that stabilise these shifting sands, here named ‘lore’, but while they infuse the beach they do not destroy its intimate balance between death and sex, passivity and pleasure, soul and body — sand and surf. The beach is a liminal space between the land and the water, and thus a perfect testing ground for the nature and boundaries of law. As Mooney concludes, ‘The law of the land, formal law, only puts its toes in the water and is constantly finding it cold.’ This is a line which echoes, I think, throughout every essay here.

In the final contribution to this volume, Tatiana Flessas seizes on another metaphor, that of the haunted house — a space which seems to operate by strangely formulated and secret laws of its own — and asks in what ways we might take this seriously as a way of thinking about the relationship of law and justice. Eventually I think readers will come to recognise that her themes have always and already haunted all the texts in this collection. The notion of ‘haunting’ or the trace is everywhere in the philosophical literature of justice: in Derrida (1978, 1994), in Deleuze (1987), and in Levinas (1981; and see in particular Davis 2004), to name but a few. But Flessas has a surprising source in Arendt (1994), and develops it, drawing on the themes of *Legal Spaces*, with great seriousness. She takes the metaphor of a justice that is uncanny and ethereal, irreconcilable with law’s rational order yet indispensable to it; and gives it material and physical depth. Flessas pushes the haunted

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house down the corridors of ghost stories and into real courts and real houses too. Just as in a fiction by MR James, we come to see that the real evil of Adolph Eichmann lurked precisely in his *domesticity*, in the fear that he, or someone like him could inhabit the shadows of our own houses, right now. Can we tell the living from the living dead before it is too late? What was that strange creak? Is anyone there? Does evil haunt us even now, where we least expect it? Indeed, I would go further. Remember Edgar Allan Poe's marvellous tale of a murderer who buries his victim under the floorboards of his own living room, but cannot stand the pressure of an interrogation there. "Villains!" I shrieked, "dissemble no more! I admit the deed! — tear up the planks! Here, here! — it is the beating of his hideous heart!" (Poe 1972: 281) But of course it was the murderer's own heart that haunted him. This is the horrible veiled countenance of justice that I think *does* haunt us in our own houses: an evil so banal that it might be here already; might be us.

What is compelling about so many of the texts in this selection is how closely they cleave to the everyday spaces of our world, showing us the legal norms that are given new life there, and the social practices that are constantly complicating, undermining, and rearticulating them. The house; the beach; the pub; the parking lot. This is not the stuff of appellate decisions and mandarin pronouncements; neither is it the stuff of so much theory which will not muddy its hands by showing us where and how it matters. But this is where law as a discourse that both constrains and makes sense of our lives is actually made real, and in the process disputed, fought over, changed. The pub is a space in which, as Rebecca Johnson shows us, notions of gendered bodies — swelling, lactating, bleeding — are regulated against the backdrop of a law which pretends that such 'leaky boundaries' are irrelevant to it. By describing for us the application of a particular law in a very familiar physical space, Johnson nails the lie that law is disembodied reason, and demonstrates how law participates in a politics of gendering, in which the boundaries that are policed are our bodies and the everyday spaces of our lives. By making the decision-makers barmen, and its *victims* professors of law and judges, the author entirely inverts the established trajectory of legal interpretation and shows us how dynamic and how

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prevalent is the constitution of legal spaces. Max Weber (1954) would turn in his grave. Sarah Marusek's article on the regulation of handicapped parking spaces, rather like Mooney's on the beach, accomplishes a similar trick. She too, like so many of our contributors, is engaged in a process not of familiarising the exotic but of exoticising the familiar (Bourdieu 1988: xi). Marusek argues that the policing of that well-defined space according to apparently straightforward norms is Foucauldian in the sense of implicating a constant surveillance in which we are all participants, and sometimes very actively. And here too we see that the norm that society applies right there, in the carpark, is both generated by the formal law, and yet significantly changed by the informal understandings that interpret it and give it life. Between law's formal articulation in the symbolic order and its application through the social imaginary there is a relationship to be sure; but it is a relationship that is mysterious, shifting, uncanny.

Legal spaces are everywhere and nowhere. Shadowy, hidden away, yet discoverable if only we have the audacity to climb up to the attic or down to the cellar (Bachelard 1994) and poke around a little. They haunt the everyday and the everyday haunts them right back (*The Others* 2001). Let the séance begin.

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