Placing the Law in Geography

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I am often introduced to colleagues in other disciplines as a "legal geographer," a description usually followed by the question, "I see, but what does that really mean?" When the editors of Historical Geography invited me to compile this special issue, I saw it as an opportunity to answer that question. The articles address a diverse and seemingly eclectic array of topics, including privacy, citizenship and property, and geographic analyses of the legal system itself. In what ways are all of these legal geography? Each work in this special issue addresses how the law, through both discursive strategies and direct intervention, creates places, establishes boundaries, and decides who belongs in these places and who may cross these boundaries. In turn, they show how the law and the legal system operate within particular geographical and historical contexts that constrain and direct the practices of jurists and other legal actors.

Aside from the significant exception of work on environmental regulation, the seven articles in this issue represent the range of research that now constitutes "legal geography." The first four articles, by Michael Curry, David Delaney, Joseph Nevins, and Kunal Parker, focus on questions of place, attachment, and belonging, and how these concepts are negotiated in legal settings. The next two articles, by Nicholas Blomley and Vera Chouinard, represent studies in the tradition of critical-social geography and focus their respective attention on the importance of violence in the establishment of property rights and the role of legal clinics in resisting legal oppression. Blomley's discussion of property is especially intriguing because it bridges a number of different approaches represented in this collection. The final work in the issue, by Stanley Brunn, Fred Shelley, Gerald Webster, and Wael Ahmed, suggests how the geographic origin of landmark cases may reveal important variations in regional legal cultures.

Attention to place and context, so evident in the first five articles, best defines the most recent work in legal geography, and is characterized

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by what I would describe as a contextualist perspective.[1] Originating in hermeneutic philosophy, this perspective suggests that the law creates and characterizes places in many different ways, particularly through the use of language. In doing so, a contextualist approach rejects both scientistic approaches that rely on a priori standards of "objective" geographic knowledge, as well as the radical antifoundationalism of postmodernism. A contextualist analysis of the law requires both an understanding of the meaning of particular legal texts and an understanding of the context in which these texts are produced. This includes recognition that legal terms, legal language, and legalistic logic are often employed in spheres outside the legal system. This is not to say that any of these authors formally appeal to a contextualist view, but rather that the treatment of place and law in this work falls within the boundaries of this perspective. Indeed, Gordon Clark makes a similar point when he argues for the primacy of interpretation as a "mode of argument" over positivistic, analytic methods for studies of the law in social science.[2]

In an important sense, this similarity between these diverse works reflects broader disciplinary changes in both geography and legal scholarship. In the past twenty years or so, geographers have moved toward more theoretical treatments of space and spatial relationships, and in particular, have developed theoretical perspectives that view spatial relationships as actively constituting social relationships.[3] In addition, both geography and law have emphasized the importance of texts and language. In legal scholarship for example, the "law and literature" movement has turned attention towards a more textually oriented, interpretive approach to the law.[4]

The historical dimension is particularly important for a contextualist approach to legal geography because precedent (stare decisis) plays such a fundamental role in the Anglo-American common law tradition. Thus legal geographers (and historians) must address not only historical developments that affect legal decisions, but seek to understand the meaning of legal texts and actions within a particular historical and geographic context. Indeed, the question of contextual meaning is essential to any legal question because the influence of a legal decision may last far longer than the particular dispute at issue. The way a particular legal precedent is used, manipulated, and perhaps overturned depends on the interpretation of decisions that may have been made in vastly different geographic and historical milieus.

To a certain degree, almost all contemporary work in legal geography shares contextualists concerns, although the explicit concern with place and language distinguishes contextualist approaches from other perspectives that I describe as political-legal, environmental, and social-critical legal geography. The theoretical overlap of the articles in this collection illustrates, however, that these categories are best thought of as themes rather than as separate intellectual camps.

The Emergence of "Legal Geography"

In my letter soliciting manuscripts for this collection, I suggested to contributors that although political geographers had long been addressing the law and other institutions of formal social control, it was time to assess new developments in the field.[5] Although work in political-legal geography encompasses a number of different approaches and concerns—including the spatial variation of legal systems and cultures, the operation of the criminal justice system, and the role of judges in mediating the relationship between political institutions at different spatial scales—the majority of this research addresses state or political processes, and examines the law as one aspect (albeit an important one) of these phenomena. For example, legal analysis of electoral redistricting by political geographers reflects a need to address legal issues while pursuing essentially political questions.[6] Likewise, in studies of multiethnic states, political geographers addressing legislative policies toward ethnic minorities are concerned with both the variation of laws among states and the meaning of these legal frameworks in different contexts.[7] In this sense, political geographers continue to have an active interest in the law and legal systems even if they do not place those concerns at the center of their analyses.

Law has also received ongoing attention from geographers analyzing environmental regulation. In fact, the concern with the legal regulation of environmental hazards, pollution, natural resources, land use, and zoning has been perhaps the most consistent thread of "legal geography" in the last thirty years.[8] This consistency arises in part from the practical applications of such research, although even eminently practical issues such as water resource allocation have generated scholarly research well beyond applied concerns.[9] Unfortunately, this collection does not contain an article representing this tradition, an omission that occurred because of unexpected circumstances and not because of a deliberate decision to exclude studies of environmental law. Much like work from a political-legal perspective, however, environmental geography generally analyzes the effect of specific laws or addresses the law instrumentally, as a means to an end, rather than as an important subject in its own right.[10]

I would argue that at least two developments have emerged in the past ten years that distinguish "legal geography" as a separate subfield concerned with the law and legal systems sui generis. The first originated in the emerging concerns with power, control, and authority in social (or "critical") and feminist geography. The second—and not unrelated—development has been the discipline's turn toward questions of language, representation, and textual analysis.

Social justice emerged as both an intellectual and political concern for social, feminist, and Marxist geographers in the 1960s and 1970s, and this interest evolved to address the legal and justice system in the 1990s.

Indeed, David Harvey's progression from Social Justice in 1973 to Justice in 1996 captures the flavor of this shift, although the latter work remains less concerned with formal legal institutions than with the possibility of justice in a world of social and environmental inequality.[11]

More concretely, the turn to the study of formal legal institutions and the role of law in geographic relationships can be traced to the establishment of the "Legal Geographies Series" in Urban Geography in 1993, as well as to a number of articles in the 1980s that explored the relationship between geography and legal scholarship.[12] Many of the geographers involved in this movement identified themselves as social, Marxist, or "critical" geographers, and consequently drew parallels between their own research and the writing of legal scholars working under the umbrella of critical legal studies. Both perspectives share a concern with social, economic, and political inequality and seek to demonstrate how legal institutions, conventions, and practices reinforce hierarchical social relationships.[13] In this volume, the articles by Nicholas Blomley and Vera Chouinard embody this legacy. To a certain degree, "critical legal geography" shares political geography's relatively instrumental view of law. What sets this work apart, however, is its willingness to consider the law and legal systems as worthy of study in their own right, as well as its insistence that geographic relationships are fundamental to legal practice.[14]

Thus, in many ways legal geography's emergence as a distinct subfield since 1990 has been tied to a fairly well-defined disciplinary movement with a particular set of intellectual, social, and political concerns. However, the broader emphasis on text and language in geography has also turned attention toward the law and legal systems.

Contextualism, Representation, and Place in the Law

During the 1980s, analyses of language, representation, and texts became increasingly prominent in human geography. Although this movement is most closely associated with cultural geography—and "New Cultural Geography" in particular—it also reflects more generally the rise of perspectives emphasizing the role of language, imagery, and discourse in the construction of meaning.[15] Although geographers working in this area did not form institutional ties to legal studies, the focus on textual strategies and meaning give this approach a natural affinity to legal studies. Indeed, several of the articles in this collection reflect an effort to analyze the geographic meaning of legal texts and legal landscapes. Ironically, historical geographers have sometimes used the law as a foil for the emphasis on imagery in "New Cultural Geography," arguing that legal systems are an integral part of material landscapes.[16] I would suggest, however, that in legal geography one need not oppose textual interpretation and the material landscape because legal documents are a unique kind of text.

Issues of representation, textual interpretation, and meaning are apparent when discussing landscape paintings, gardens, urban design, or other cultural products, but are less obvious when one turns to the more pedestrian subjects of the law, jurisprudence, and legal argument. In many ways, however, judicial opinions and lawyers' briefs employ similar strategies to rhetorically manipulate ideas, images, and issues. Courts and other legal actors strategically describe a particular action—the regulation of a national boundary, rules governing evidence and testimony, the creation of sanctuaries, or welfare responsibility, for example—in a way that reinforces their judgment as legitimate, legal, and constitutional. This is not to say, of course, that the use of every image, metaphor, and symbol in a legal text is a calculated decision. Indeed, several articles in this collection suggest that the legal community has devoted far too little attention to its use of spatial theories and images of place.

Nonetheless, it is essential to recognize the significant differences between a legal text and an artistic product such as a film or painting. These latter works certainly reflect social structures, political interests, and economic change, and may, in turn, influence these activities. Legal decisions, however, act in a very different fashion—to one degree or another, they have immediate and tangible effects. Political power is redistributed; contracts are enforced or voided; fines are levied or rescinded; a person is jailed or freed; and property rights are retained, transferred, or forfeited. In short, legal decisions are "speech acts" because simply making a legal statement is an activity and practice with extremely practical consequences.[17] Furthermore, the full weight and coercive power of the state stands ready to enforce the will of the court system; any individual act of defiance or resistance can eventually be controlled. What courts command and what then results may not always be the same, but the decisions handed down by courts affect lives in a tangible and direct fashion. Most importantly for geographers, the legal system often exercises its influence by changing the nature of places.

In one way or another, the first five articles suggest how legal actors (broadly defined) are influenced by their ideas about place, or by what they think places are like.[18] What places are (or should be) private and secure from the law's intervention? How should a state guard its borders? How are places defined and redefined in conflicts over welfare obligations, belonging, and citizenship? These questions are important not simply because the law may have inaccurate or incomplete conceptions of such places, but because the law can so deeply influence the nature of place and can define the kinds of activities that are appropriate in particular places. Indeed, far from being a self-contained, logical system driven by the dictates of legal rationality, the law is a highly reflexive set of rules, practices, and institutions that are constrained by geographic contexts and yet which can also alter those same contexts.

Making and Unmaking Places

The first two articles in the collection address the question of privacy and protected places. Michael Curry's article extends his recent work on privacy and technology by analyzing two alternate conceptions of privacy—one based on the protection of places and the other on the protection of information. He suggests that rules exempting spouses, physicians, ministers, and attorneys from courtroom testimony have typically been seen as protecting private information because this information is exchanged in relationships that are fundamentally important to humans. Nonetheless, the exemption of these classes from testimony can also be seen as protecting fundamentally important places. In this regard, changes in both technology and the social relationships that occur in these places raise new questions for the legal system. Conversely, decisions by courts about privacy can deeply influence where basic human activities and relationships can take place.

The second article, by David Delaney, provides a richly detailed analysis of some of the same issues by exploring changes or "constitutions and reconstitutions" of sanctuary and privacy. In a provocative argument, he suggests how federal judges in both refugee asylum cases and search and seizure cases use a metaphysical distinction between objective knowledge and subjective beliefs to mark certain places as protected or private. In order to mark off these places, legal actors spar over both the relative importance of subjective beliefs and objective knowledge, as well as the distinction between them. Ultimately, however, the decisions in these cases have geographically tangible effects of closing off the United States as a place of sanctuary or of shrinking the zone of privacy protected by the Fourth Amendment.

The next two articles, written by Joseph Nevins and Kunal Parker, concern issues of citizenship, foreigners, and community obligation. Each addresses the question of who belongs in the U.S. and how political and legal actors at different spatial scales negotiate answers to this question. Nevins examines the origin and consequences of "Operation Gatekeeper," an effort by the Immigration and Naturalization Service to close off the U.S.-Mexico border to unauthorized migrant crossings. He argues that the strategy to portray the national border as a "legal line of defense" actually serves to "erase a historical geography marked by sustained efforts…to distinguish between 'citizens' and 'aliens' as well as between Mexico and the United States."

Parker, a legal historian, addresses issues of citizenship and belonging in the context of eighteenth- and nineteenth-century Massachusetts. In an analysis of "poor laws," he shows that conflicts between towns and the state over each jurisdiction's welfare obligations were articulated as a question of geographical attachment. During this period, the conflict shifted from a question of "settlement," or membership in the local political community, to citizenship, or membership in the political body of the

commonwealth. Individuals who were "out of place" shifted from being defined as simply poor or transient to being defined as foreigners and aliens. This shift occurred in large part because the place to which one could belong shifted from local towns to the state as a whole.

Nicholas Blomley returns the collection to a theme mentioned by Delaney, but particularly prominent in critical-social geography of law: the role of the legal system in enforcing social and economic hierarchies. In a nuanced discussion of a dispute from nineteenth-century Vancouver between the Canadian Pacific Railway and a local resident, he argues that violence is fundamentally tied to the creation of property. Indeed, the establishment of a legal property regime is the geographical embodiment of violence, albeit violence that is hidden because it is held motionless. Blomley uses this case to further argue that a view of property (or the law more generally) as simply a discursive strategy of persuasion and narration is inadequate. Rather, the law must also be analyzed as a set of actions with direct material effects.

In her study of legal clinics in Toronto during the 1970s and 1980s, Vera Chouinard directs attention to the ties between the law and legal practice and the effects of social geographic context on this relationship. Clinics, particularly those serving marginalized groups such as immigrants, tenants, disabled and injured workers, and the poor, are unique legal actors because they simultaneously resist and are regulated by the legal system. Struggles over the proper role of legal clinics involve disputes not only over their administrative control, but over the kind of inequalities that call for legal action and the kind of activities that are "legal" rather than political. Through a detailed examination of one such clinic, Chouinard shows how particular geographic contexts can shape the form and outcome of these conflicts.

The final essay in the special issue explores several basic geographic questions, including "Where do landmark Supreme Court cases originate?" and "Why do certain states and regions of the country generate more landmark cases than other areas?" The authors—Stanley Brunn, Fred Shelley, Gerald Webster, and Wael Ahmed—suggest that the origin of such cases can reveal important patterns of legal cultures, geographic variations in court prestige, and citation networks among jurists and other legal actors. In doing so, the authors offer an agenda for further work on the law in political geography.

All of these articles illustrate that "legal geography" is emerging as a more distinctly defined subfield while simultaneously broadening its methodological and theoretical base. I hope that this collection, along with other recent work, will spark greater interest in the rich and understudied relationship between place and the law.[19]

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Notes

1. See Trevor Barnes and Michael Curry, "Towards a Contextualist Approach to Geographic Knowledge," Transactions of the Institute of British Geographers, n.s. 8 (1983): 467-82.
2. Gordon L. Clark, "Law and the Interpretive Turn in the Social Science," Urban Geography 10 (1989): 209-28.
3. Nicholas K. Blomley emphasizes the active role of space in legal relationships in Law, Space and the Geographies of Power (New York: Guilford Press, 1994). However, the effort to develop theoretical views of spatial and social relationships is also evident in more general works such as Robert Sack, Conceptions of Space in Social Thought (Minneapolis: University of Minnesota Press, 1980); and Anthony Giddens, The Constitution of Society: Introduction of the Theory of Structuration (Berkeley: University of California Press, 1984). The founding of journals such as Environment and Planning D: Society and Space in 1983 reflect this intellectual movement as well.
4. The origin of "law and literature" is generally traced to the publication of James Boyd White, The Legal Imagination. Abridged edition. (Chicago: University of Chicago Press, 1985/1973). For a recent overview of this highly heterogeneous movement, see Michael Freeman and Andrew D.E. Lewis, Law and Literature, Current Legal Issues 2 (Oxford: Oxford University Press, 1999); for a critique, see Richard A. Posner, Law and Literature, Revised and enlarged edition (Cambridge, Mass.: Harvard University Press, 1998).
5. Some of the most prominent examples of work on the legal system by political geographers before 1990 include Gordon L. Clark, Judges and the Cities: Interpreting Local Autonomy (Chicago: University of Chicago Press, 1985); Gordon L. Clark, "The Geography of Law," in Richard Peet and Nigel Thrift, eds., New Models in Geography (London: Unwin Hyman, 1989): 310-37; Keith D. Harries and Stanley D. Brunn, The Geography of Laws and Justice: Spatial Perspectives on the Criminal Justice System (New York: Praeger Publishers, 1978); Ronald J. Johnston, Residential Segregation, the State and Constitutional Conflict in American Urban Areas (London; Orlando, Fla.: Academic Press, 1984); and Ronald J. Johnson, "The Territoriality of Law: An Exploration," Urban Geography 11 (1990): 548-65.
6. Examples of such work include Richard L. Morrill, Political Redistricting and Geographic Theory (Washington, D.C.: Association of American Geographers, 1981); and Ronald J. Johnston, Fred M. Shelley, and Peter J. Taylor, eds., Developments in Electoral Geography (London: Routledge, 1990.)
7. One can compare efforts to map spatial variations in legal systems with studies arguing that laws that are apparently similar may have sharply different intents and results. Ernest S. Easterly, "Global Patterns of Legal Systems: Notes Toward a New Geojurisprudence," Geographical Review 67 (1977): 208-20; Alexander B. Murphy, "Territorial Policies in Multiethnic States," Geographical Review 79 (1989): 410-21.
8. Recent work in this tradition includes Rutherford H. Platt, Land Use and Society: Geography, Law, and Public Policy (Washington, D.C.: Island Press, 1996); and Gary L. Thompson, Fred M. Shelley, and Chand Wije, eds., Geography, Environment, and American Law (Niwot, Colo.: University Press of Colorado, 1997).
9. See, for example, Jacque L. Emel and Elizabeth Brooks, "Changes in Form and Function of Property Rights Institutions Under Threatened Resources Scarcity," Annals of the Association of American Geographers 78 (1988): 241-52; Marvin Waterstone, "Of Dogs and Tails: Water Policy and Social-Policy in Arizona," Water Resources Bulletin 28 (1992): 479-86; James L. Wescoat, "Toward a Modern Map of Roman Water Law," Urban Geography 18 (1997): 100-5; and James L. Wescoat, "The 'Right of Thirst' for Animals in Islamic Law: A Comparative Approach," Environment and Planning D: Society and Space 13 (1995): 637-54.
10. For example, Robert B. South, "Environmental Legislation and the Locational Process," Geographical Review 76 (1986): 20-34.
11. David Harvey, Social Justice and the City (Baltimore: The Johns Hopkins University Press, 1973) and Justice, Nature and the Geography of Difference (Oxford: Blackwell Publishers, 1996).
12. Two of the earliest articles that addressed the relationship between geographic and legal scholarship were Mark Blacksell, Charles Watkins, and Kim Economides, "Human Geography