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Caroline Griffith

Sarah Klosterkamp

Alida Cantor

Portland State University, acantor@pdx.edu

Austin Kocher

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Legal Geography

Caroline Griffith, Sarah Klosterkamp, Alida Cantor, Austin Kocher

Abstract: Legal geography is an interdisciplinary area of scholarship that focuses on the intersections and co-constitution between law and space and place: that is, how law and legal processes produce space/place, and how particular places in turn influence law. Rather than thinking of law as an abstract, universal, a-spatial set of rules, legal geography examines the ways in which law is situated in place, and how places are shaped by legal practices and processes. The study of legal geography can be thought of more as a set of questions than a cohesive subfield, a broad critical lens that can be applied to study a wide variety of topics. As such, legal geography can be found scattered across many different areas of social science and law, providing a useful tool for thinking about the co-constitution of law and space/place across a wide range of different fields, topics, and scales. The formation of research specialty groups within the Law and Society Association and the American Association of Geographers in recent years are evidence of the ongoing formalization of legal geography as an area of scholarly inquiry.

Keywords:

Legal Geography

Legal Methods

Law and Space

Legal Theory

Critical Legal Studies

Human Geography

Introduction

Legal geography is an interdisciplinary area of scholarship that focuses on the intersections and co-constitution between law and space and place: that is, how law and legal processes produce space/place, and how particular places in turn influence law. Rather than thinking of law as an abstract, universal, a-spatial set of rules, legal geography examines the ways in which law is situated in place, and how places are shaped by legal practices and processes. Like other forms of socio-legal studies, legal geography starts from the premise that legal ideas and processes must be situated within historical and social contexts. However, legal geography differs from socio-legal studies in that it takes an explicitly *spatial* perspective, specifically focusing on place and space as produced through legal processes, and vice versa.

Legal geography is a multidisciplinary endeavor. It is neither an area of legal scholarship nor simply a subdiscipline of human geography; instead, it encompasses a diverse array of inquiries of scholars from a range of disciplines who foreground law and space in their studies (Braverman et al 2014). The study of legal geography can be thought of more as a set of questions than a cohesive subfield, a broad critical lens that can be applied to study a wide variety of topics (Delaney 2015; Bennett & Layard 2015). For example, scholars interested in political ecology and nature-society relationships may choose to use a legal geography lens to examine the legal processes of environmental regulation, property ownership, and associated power relations. Meanwhile, those interested in urban studies may use legal geography to understand processes of redlining, gentrification, and policing and how these power relations shape place and space. As such, legal geography can be found scattered across many different areas of social science and law, providing a useful tool for thinking about the co-constitution of law and space/place across a wide range of different fields, topics, and scales.

History & theoretical foundations

Legal geography is a relatively young field with roots in both sociolegal studies and human geography. Initially in the 1980s and 1990s, sociolegal scholars began examining spatial aspects of law through work on territory, racism, and urban-suburban dynamics, while separately, human geographers began examining legal questions and themes through studies of urban governance and political geography (Braverman et al 2014). The critical legal studies movement coalesced these lines of work in the 1990s, effectively launching the highly interdisciplinary work that continues today. Scholars using a critical legal studies approach drew from Marxist and poststructuralist lines of thought to critically examine questions of power. There are a number of key thinkers that have shaped the field. For example, Nicholas Blomley's highly influential 1994 book *Law, Space, and the Geographies of Power* focused on property, gentrification, and power from a critical legal geographic perspective. David Delaney's 2003 book *Law and Nature* examined relationships between nonhuman nature and law. Other key scholarship that has shaped legal geography includes Don Mitchell's work on urban public space, Gordon Clark's examinations of legal theory, and Richard Ford's scholarship on racialized spatial differentiation (Braverman et al 2014).

Since the beginning of the 21st century, legal geography has become both a more established scholarly project, as well as a more diverse and multidisciplinary one. A wide range of scholars including anthropologists, sociologists, and historians are joining geographers and legal scholars in studying relationships between law and place/space. These scholars are studying a broader array of topics beyond legal geography's initial focus on property and urban space and are using a wider range of theoretical approaches including decolonial, more-than-human, and indigenous perspectives. For example, Sandy Kedar (2003) uses legal geography to study land dispossession, settler colonialism, and occupation in Israel/Palestine; Irus Braverman (2012) interrogates nonhuman legalities in by examining captivity and zoos; and Betsan Martin, Linda Te Aho, and Maria Humphries-Kil's book *ResponsAbility* (2019) draws from Indigenous legal frameworks around the Pacific to examine environmental governance. Legal geographers incorporate a diverse array of critical, structural, and post-structural social and political theory, as well as legal theoretical frameworks that come primarily out of the American and European law school tradition. Legal geographers also incorporate understandings of legal pluralism, acknowledging law's multiple sources and critically examining how indigenous legal systems interact with colonial legal systems (Robinson & Graham 2018). The formation of research specialty groups within the Law and Society Association and the American Association of Geographers in recent years are evidence of the ongoing formalization of legal geography as an area of scholarly inquiry.

Methods

Drawing primarily from human geography foundations, legal geography typically draws from qualitative methods to examine how the law unfolds, enables, hinders, or erases institutional knowledges and state power on a multi-scalar level (Faria et al 2020, 1101). Seeking to disrupt taken-for-granted categories such as the 'global', the 'national', legal borders, individuals and their (legal and physical) subjectivities, legal geographers use a range of methodological tools to pay attention to multiple dimensions of law and space. Two methodological developments deserve particular attention. First, some legal geographers use primarily *archival* methods. Digging deep into archival work on legal cases, they analyze law and legal processes, sometimes looking across time and cultures, and often taking a historical perspective to examine legal-geographical relationships in a detailed way. For example, Gorman (2019) uses archival methods to examine US state law decisions, while Schenk (2019) examines negotiations over sharia law interpretations. Through archival research, both show how legal processes may be enacted differently based on gender, class, and other markers of identity, deeply imbued with patriarchal power across time. Second, some legal geographers turn to *fieldwork*. This work is situated in observation and ethnographic examination of legal proceedings on geographic topics. For example, Faria et al (2020) demonstrate what can be gained for legal geography by utilizing the courts as a site for ethnography. They

illuminate how the “everyday legal goings-on and the trans-scalar structural machinations of state violence” (Faria et al. 2020, 1095) are entangled within current legal proceedings such as migration and asylum cases, corporate fraud, or antiterrorism trials. Legal geographic methods are often based in qualitative human geography but remain open for development. Faria et al (2020) advocate for grounded data sets, embodied transcripts, global intimate analyses of legal power, scholar-activism, and striving to ‘study up’ the power hierarchy of legal and policy actors (Nadar 1972; Brickell, Jeffrey & McConnell 2021).

Contemporary directions in legal geography

Environmental Governance

Recent scholarship on environmental governance draws on legal geography and political ecology methods to examine the “environment both as an object of governance and a terrain of legal struggle in the legal arena, the political economic context in which law and legal contexts are embedded, and the material outcomes at stake” (Andrews & McCarthy, 2014: 9). Geographers have used this approach to study topics such as the legal and political context of shale gas extraction in Pennsylvania (Andrews & McCarthy 2014), the governance of uranium mines in the American West (Benson 2012), the “underground political ecology” of extractive economies in El Salvador and the Andean countries (Bebbington 2012), and the capacity of the public trust doctrine to protect hydro-social landscapes in California (Cantor 2016). This area of legal geography draws on critical theories of property to think about how law shapes particular constructions of nature as property, the types of property uses it legitimates, and where these different uses come into conflict (Blomley, 2003). To understand how and why particular property regimes are applied to particular resources at particular times, law and society scholar Heinz Klug instructs scholars to locate historical shifts in the development of property regimes, as well as their “social construction” through the community of users, managers, and policymakers who shape them over time (Klug 2002). Within this realm of scholarship, geographic methods can help to deconstruct the “assumed uniformity of legal norms and the spatiality of legal knowledge” to move toward a more grounded understanding of the place-based, spatial, political, and social realities of “local legal cultures” (Blomley 1994; p. 53).

Legal geographic scholarship in the area of environmental governance has intersected with science and technology studies in questioning the production of expertise and knowledge. This research reveals that despite claims of objective expertise, the administrative agencies responsible for establishing environmental rules and regulations are not insulated from political influence by special interests such as extractive industries. Instead, they find that “administrative rationalism seeks to organize scientific and technical expertise into bureaucratic hierarchy in the service of the state” in ways that do not change the structural status quo (Dryzek, 2021: 89). Geographer Rebecca Lave asserts that while many political ecologists have studied the *application* of environmental management frameworks and policies that “legitimize state or corporate appropriation of local resources,” the field has “paid comparatively little attention to the *production* of [the] environmental knowledge claims... that enable them” (2012: 19; emphasis added). This has prompted a new wave of scholarship that attends to the production of environmental science that enables environmental appropriation, commercialization, and privatization to further deconstruct claims of objective environmental expertise (Lave 2012). A related area of legal geographic scholarship that questions dominant models of expertise and knowledge production comes from engagement with Indigenous studies. This thread of scholarship, which has important implications for environmental governance, emphasizes legal pluralism and the validity of legal systems other than those rooted in Western legal tradition, and challenges settler-colonial dispossession of land and water (Robinson and Graham 2018; Curley 2021).

Race & Gender

Contemporary legal geographers have addressed how intersectional issues of race and gender are expressed in legal processes, at intersecting scales ranging from the body to international scales. For example, in examining how security within war time has always been rendered and shifted by the perception of women and children on the ground, Carpenter (2006) deploys an intersectional and multi-scalar analysis of how a layered system of gender-rendered and patriarchal patterns intersects with/in state-led efforts in protecting civilians deeply affected by such policies. As Allsopp reminds us more recently, it is frequently “the binary of all the men are in the militias and all the women are victims” (2017, 176), which is orchestrated by elites to address and counter violence in wartime, by calling to pay more attention to the gender-rendered realities. In a similar vein, by combining both feminist geopolitics and the vibrant work of (feminist) geolegalities, Sarah Klosterkamp (2021) illustrates how power-geometries and (legally) interconnected sites of ‘race’ and ‘gender’ play a distinct role in contemporary state-led articulations of power at place. In the comparative analysis of more than 25 anti-terrorism proceedings in Germany, their underlying policing, and custody procedures, Klosterkamp shows that first, male, racialized bodies tend to be classified, charged, and convicted as “terrorists” more frequently than female bodies, and secondly, foreign nationals, predominantly Syrians, are disproportionately more frequently and for longer detained in preventive custody than German nationals returning from Syria. Paying attention to these legal geographical renderings which always come most obviously into play on an intersectional level (Crenshaw 1989; Gorman 2019; Schenk 2019), illuminates how law enforcement’s efforts are “not simple, static constructs but may be buttressed or distorted by implicit moral frames that ‘piggy-back’ on or ‘stow-away’ inside the norm in question, often contradicting it” (Carpenter 2006, 2). In this vein, legal geographical work enables us to attend and highlight “the law’s place- specific, embodied, lively, and lived geography” (Faria et al. 2020, 1112), by working with and through its spatial and timely dimensions, deeply rendered and shaped by/within/through the state politics at place (Klosterkamp 2021, 9).

Law, Space, and Human Rights

Much of the critical geographical scholarship that first flew the legal geography flag did so out of an urgent need to call into question the implicit relationship between power, law, and rights. Despite recognizable gains in dismantling official forms of legal racism through the Civil Rights of 1964 and the removal of explicitly racist immigration restrictions in 1965, by the 1980s and early 1990s, scholars began to explore the more implicit dimensions of legal racism and the limits to liberal theories of law, to call into question just how far the formal expansion of civil rights went (Brown and Halley 2002). Geographers began to question what Blomley (1987) called “impact studies” of law, in which law is uncritically accepted at face value and mapped onto cartographic space. Instead, these scholars explored the law as a basis and an outcome of social struggle which depended upon the legal interpretation between everyday life and law (Delaney 1998). This provocation towards an analysis of law as legal violence and the geographically conditional (rather than unconditional) existence of legal protections was exemplified in Herbert’s (1997) book on the police, which, prompted by the beating of Rodney King in Los Angeles, revealed the cunning, everyday use of space and law to enable—not limit—their use of force. Delaney (2004, 2010) would later introduce and elaborate upon the concept of the “nomosphere” as precisely this kind of complex, multi-sited, and multi-scalar entanglement of law, space, and power.

Legal geographers’ critical engagement with the actually existing world of law as a social practice in the domestic context continues to shape research on the contentious status of the human and civil rights of non-citizens alongside the right immigration enforcement and border controls across the developed world. Alison Mountz’ (2010, 2020) global research agenda on border externalization and ‘offshoring’ examines the ways in which nation-states exploit the legal ambiguities at their edges or on islands to ‘illegalize’ migrants and to ensure that migrants remain in a precarious legal state as a result of their emplacement. Flores, Escudero, and Burciaga (2019) further explore how undocumented youth in the United States develop what they call a “legal-spatial consciousness” as a result of the multiple spaces and scales through which they experience and are forced to navigate the ongoing production of their il/legality. (See also Harrison and Lloyd (2011), Varsanyi (2008), and Samers (2004) in the European

context.) Martin, Scherr, and City (2011) and Heyman (2001) add to this work by exposing the enormous gap between formal categories of law and the intensive creative translation work that, in these cases, attorneys and border patrol officers do to make law function. Although not all these scholars initially identified with the legal geography label, their work drew upon (both in citation and in theory) on critical engagements with law, space, and rights and have become recognized as influential sources of inspiration for legal geographers today.

Conclusion

We conclude with a review of an overarching theoretical debate within legal geography. The main thrust of this theoretical discussion focuses on how to conceptualize the relationship between law and space. This often includes identifying overlaps between geographic theory and legal theory, but sometimes leads to arguments that there is inherent incompatibility between the two. The central theoretical tension here is typically illustrated as a tension between law's claim of being a-spatial and a-political as a central strategy of achieving and maintaining hegemony and the critique that, at the same time that law disavows the socio-spatial world, it nonetheless is busy drawing upon and shaping the socio-spatial world in ways that are spatially uneven and socially unequal. That is, the law does violence in the world and to the world, while at the same time covering its tracks and purporting objectivity.

There are several approaches to resolving this tension, which can be described as attempts to integrate (merge the two), assimilate (subsume one with the other), or differentiate (maintain a distinction, perhaps with hierarchy). *Integration* of law and space involves the argument for continuity between legal and geographic spheres, viewing the two as inextricably co-constituted. David Delaney (2004, 2011) exemplifies this approach to legal geography through his articulation of the concept of the “nomosphere” which aims to conceptualize the inextricable relationship between legal rights and social space.

Assimilation of law within geography views law as a superstructural effect of underlying social, political, and economic relations present at any point in history. This perspective is most associated with Marxist approaches to critical geography and critical legal studies (Collins 1984). *Differentiation* between law and space involves making the argument that, while not entirely disconnected, law is its own unique form of rationality that operates—or aspires to operate—under a distinct logic with its own genealogy embedded within (but not subsumed by) history and geography (Valverde 2009). Scholarship within legal geography does not always fall distinctly under one of these three categories, and most work can be characterized by theoretical moves that fall under more than one of these rough groupings.

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