

Law's Spatial Turn: Geography, Justice and a Certain Fear of Space

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Abstract

This is a critical reading of the current literature on law and geography. The article argues that the literature is characterized by an undertheorization of the concept of space. Instead, the focus is either on the specific geography of law in the form of jurisdiction, or as a simple terminological innovation. Instead, the article suggests that law's spatial turn ought to consider space as a singular parameter to the hitherto legal preoccupation with time, history and waiting. This forces law into dealing with a new, peculiarly spatial kind of uncertainty in terms of simultaneity, disorientation, materiality and exclusionary corporeal emplacement. The main area in which this undertheorization forcefully manifests itself is that of *spatial justice*. Despite its critical potential, the concept has been reduced by the majority of the relevant literature into another version of social, distributive or regional justice. On the contrary, if the peculiar characteristics of space are to be taken into account, a concept of justice will have to be rethought on a much more fundamental level than that.

Keywords

Law and geography; law and space; spatial justice.

I. Where is the Law Turning to?

In turning spatial, the law has engendered a paradox. On the one hand, in the last decade or so the interest in spatiality has increased vertiginously. The law has moved in a spatial direction, progressively discovering its situatedness, its terrain. The law now constructs itself as a location in a social net of spaces, awakening to what Michel Foucault in his oft-quoted 1960s lecture “Of Other Spaces,” called the “relations of proximity between points.”¹ Legal theory is progressively more comfortable with concepts such as mapping,

1. Michel Foucault, “Of Other Spaces,” trans. J. Miskowiec, *Diacritics* 16 (Spring, 1986) 22–7.

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scale, territory, boundary, and other geographical terms, and sociolegal scholarship regularly turns to concepts and practices of emplacement, consideration of local conditions, geographical peculiarities of the case in question, and so on. But here we have the paradox: despite the prominent connection between law and geography, law's engagement with *space* is being increasingly despatialized.² In turn, this reveals a fear of the unique peculiarities of space and its theoretical import. Indeed, the main focus of this commentary is precisely the problem of marginalization of space in law, for which geographical terminology and references, however profuse, do not compensate.³ In that sense, "fear" should be understood as both fear of alterity in its material presence augured by the spatial turn; and of the law itself, of what the law can become. Fear is meant here as an anxiety that trammels law's understanding of itself and its textual boundaries.⁴ This fear of space risks turning what for law can be a defining contact with radical alterity into a mere disciplinary excursus.

Let me clarify from the outset that there is nothing reprehensible even if law's spatial turn is simply a cross-disciplinary adventure that experiments with geographical terminology and attempts to situate the law in its geographical context. Whether as terminological flirting or geographical input, it remains an indication that the law is relinquishing its ivory tower (and slowly moving towards its tower of Babel). This move is welcomed in terms of law's discursive closure. But the same move will have to be seen with suspicion if it remains a token that merely mollifies instead of becoming the epistemological and possibly ontological *revolt* that a spatial turn signals. To put it even more metaphorically, a spatial turn can indeed be observed in the law, but the law negotiates its turning in ways that move

2. If indeed it has ever been "spatialized." As Doreen Massey writes at p. 17 of *For Space* (London: Sage, 2005), subsequently Massey, *For Space*, a decisive book for the kind of observations put forth here, "[spatial conceptions] are unpromising associations which connotationally deprive space of its most challenging characteristics."
3. Exceptions of course are both many and luminous, only a small part of which can be referred to in this article. It is, however, interesting but beyond the scope of this article to look at it from the perspective of different "jurisdictions." Thus, an imperialist Anglo-American scholarship has been found to marginalize at least to some extent other scholarships: Nicholas Blomley notes the relevance of this for critical geography "that aspires to internationalism and solidarity, reflexivity, and the analysis of power." ("The Spaces of Critical Geography," *Progress in Human Geography* 32(2), (2008), 285–93, p. 290). One notes, for example, that Franco-phone or Italian spatial/legal scholarship systematically goes beyond this fear of abstraction, while at the same time dealing with the issues in hand. On this, see Edward Soja, "Taking Space Personally" in Warf and Arias, *The Spatial Turn*; and indicatively, Massimo Cacciari, *L'Arcipelago* (Milano: Adelphi, 1997); Franco Farinelli, *Geografia* (Torino: Einaudi, 2003); Jean-Luc Nancy, *Los Angeles ou La Ville au Loin* (Paris: Fayard, 1999); Mikhail Xifaras, *La Propriété, Etude de Philosophie du Droit* (Paris: Presses Universitaires de France, 2004). See also an interesting wave of theorization in Environmental and Property law: indicatively, Holder and Harrison, *Law and Geography*; Desmond Manderson, ed., *Law Text Culture*, 9, 2005, special issue on Legal Spaces; Mark Halsey, *Deleuze and Environmental Damage: Violence of the Text* (Aldershot: Ashgate, 2006).
4. In other words, fear is always fear of fear. I have dealt with this in "Fear in the Lawscape," in Priban, ed., *Bauman's Liquid Law and Society* (Oxford: Hart, 2007), subsequently Philippopoulos-Mihalopoulos, Fear.

away from, rather than within spatiality. This is the question that the present text attempts, if not to answer, at least to ask: why is law's "spatial turn" turning away from space?

To foreshadow what I analyse below, law's engagement with space ought to reach further than either terminology or specific geographical emplacement. Space adds itself as a singular parameter to the hitherto legal preoccupation with time, history and waiting, and forces law into dealing with a new kind of uncertainty: one that emerges from the peculiarly spatial characteristics of simultaneity, disorientation, materiality and exclusionary corporeal emplacement. Perhaps the main area in which this turning away from space forcefully manifests itself is that of spatial justice, with which I deal in the last section of this article. Despite its critical potential, the concept has been reduced by the majority of the relevant literature into another version of social, distributive or regional justice, without any specific spatial characteristic being taken on board. However, if spatial justice is simply a just distribution of resources in a given region, one is left wondering whether any justice can possibly afford not being "spatial" in this narrow sense. On the contrary, if the peculiar characteristics of space are to be taken into account, a concept of justice will have to be rethought on a much more fundamental level than that.

In sum, law's spatial turn presents two opportunities: first, to rethink of the law's spatiality, namely the novel unpredictability of space that has now flowed into law. And second, to reclaim the concept of spatial justice from a socially diffusing, geographically applied concept of regionalism, while also making a case for it from within the law – for it is indeed the case that the latter is generally and quite unjustifiably the grand manqué of spatial discourse, widely thought to be adequately represented by the political discourse.⁵ To this effect, this article begins with a critical reading of the law and geography field. Just as any critique, it finds itself oscillating between siding with the thing it criticizes and assuming a different position. While I welcome the geographical references in law, I also protest against the "despatialization" of space for law, namely, the process of denuding space of its spatial characteristics which, if integrated, may reveal an exigent and even threatening presence within the law.

II. Law and its Space

A new spatial semiotics has rushed in to fill the gap left by the absence of space itself. This semiotics is almost *de rigueur* in several discourses whose analytical depth has been enriched by references to mapping, scale, horizon, domain, field, space/place, boundary, crossing, topology, and so on. Law's text has found its context in an ambiguous terminological strip that allows the law to carry on judging without traumatizing itself too much. Of course, metaphors are not inferior to whatever the thing behind the metaphor might be. Metaphors are often the only means of overcoming the problem of disciplinary boundaries, thereby mutually revealing the other side.⁶ At the same time, however, metaphors

5. This is the reason, I believe, for which potentially important books for law and space (such as Massey's *For Space*, or Edward Soja's, *Thirdspace*, Oxford: Wiley-Blackwell, 1996) do not make any reference to law but simply to a generalized, politically mediated normativity.

6. Davina Cooper, *Governing Out of Order: Space, Law and the Politics of Belonging* (New York: Rivers Oram, 1998), subsequently Cooper, *Out of Order*.

can become too comfortable.⁷ They start working against the objective of confluence, facilitating instead a distance between, in this case, law and space by appeasing the discourse with small chunks of meaty allusions. Metaphors remain a part of the legal discourse, which is far too integrated to allow law to exceed its boundaries and connect with the radical opportunities of space.

Here, I want to try and move beyond metaphors. But formed in a non-metaphorical way, law's spatial turn can be disturbing on many fronts. It obviously disturbs a certain positivist concept of the law as immaterial, universal and abstract. It also disturbs a sociolegal understanding of the law as grounded, empirically proven and geographically situated. It finally disturbs a certain critical concept of the law as particular and embodied. While the first is not surprising, the last two do sound odd. These two kinds of legal literature are justly assumed to be better equipped to deal with a spatial, material influx. It is, after all, through sociolegal and critical legal thinking that spatiality has been embraced. No doubt, Nicholas Blomley's powerful challenge of the early 90s to put law and space together on a solid philosophical and sociolegal footing⁸ was followed by some equally powerful attempts to respond to the challenge.⁹ But the majority of the literature following that, especially the literature emerging from legal thinkers (as opposed to geographers looking into law) seems to be more and more indifferent towards a theoretical understanding of space for law, and consequently falling into a few rather too comfortable patterns. I will schematically list three types of pattern, in full consciousness of the unjust violence of such a categorization.

The first way of putting law and space together is by constructing space in a narrow, legalistic way as jurisdiction.¹⁰ Jurisdiction (space) may change eventually (time) through juridical developments or disputes. But in this formulation, space remains fixed, "static" and simply following its traditionally more alluring antipodes of time.¹¹ A surprising amount of literature is still characterized by what I would call "the parochial turn," namely the turning towards a conveniently constructed canvas that confirms hypotheses, barricading itself behind a geographical emplacement and never considering the *world* as

7. Barney Warf, "From Surface to Networks" in Warf and Arias, eds, *The Spatial Turn: Interdisciplinary Perspectives* (New York: Routledge, 2009); Doreen Massey, *Space, Place and Gender* (Cambridge: Polity, 1994).

8. Nicholas Blomley, *Law, Space and the Geographies of Power* (New York and London: Guilford Press, 1994), subsequently Blomley, *Power*.

9. E.g., David Delaney, *Race, Place, and the Law, 1836–1948* (Austin: University of Texas Press, 1998); Cooper, *Out of Order*.

10. Mark Blacksell, Charles Watkins and Kim Economides, "Human Geography and Law; A Case of Separate Developments in Social Sciences," *Progress in Human Geography*, 10(3) (1986) 371–96.

11. See, however, an attempt to form a flowing concept of jurisdiction by Richard Ford as "simultaneously a material technology, a built environment and a discursive intervention" in "Law's Territory (A History of Jurisdiction)," in Blomley, Delaney and Ford, eds, *The Legal Geographies Reader* (Oxford: Blackwell, 2001), p. 201. On time and space, see Edward Soja, *Postmodern Geographies* (London: Verso, 1990); David Harvey, *Spaces of Capital: Towards a Critical Geography* (London: Routledge, 2001); Alan Pred, *The Past Is Not Dead: Facts, Fictions, and Enduring Racial Stereotypes* (Minneapolis: University of Minnesota Press, 2004).

space. This criticism has already been made on the level of geography, namely the global as opposed to the localized city or countryside,¹² and demonstrates how the question has repercussions that reach beyond the purely theoretical.¹³ Space must be thought of as the disjuncture between the global flow and the territorial structure,¹⁴ the tangible and the distant, the particular and the universal: or, as Austin Sarat and Thomas Kearns put it, “the immediate and the familiar juxtaposed to the distant, strange, and cosmopolitan ... origin and home, point of departure and place of return.”¹⁵ And space as world, or “the opening of space-time” as Jean-Luc Nancy puts it,¹⁶ is neither just the global nor just the local, but the vast space of immanence and questioning in which the law finds itself.¹⁷ In avoiding to see space as the world, the law indulges a double fear: fear of the resistance generated in the world;¹⁸ and fear of itself, the law, in that any look in the mirror may reveal mismatches between appearance and self-understanding, means and mission, force and justice. These fears are released, open up as it were, when the *world*, rather than jurisdiction even in its globality, is considered to be the space of the law.

The second approach constructs space as a process – thus, seemingly the opposite of the first construction. Here, space is fluid, dynamic, ever-changing, a veritable *accueil* of difference. Space is idealized as a panacea for social injustice, casting anathema to time and history.¹⁹ The law clings onto this new “ideal” space and delivers itself from its normative obsession by allowing the spatial influx to operate as law’s new clothes. While this is arguably preferable to a parochial turn, it is still not adequate. First, it idealizes space in ways that space cannot sustain. To put it rather bluntly, only law can deliver law

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12. A valid point itself, but not conclusive, as Massey effectively argues in her *World City* (Cambridge: Polity, 2007) – a book about London and the world.
 13. “On the one hand space and places are increasingly the product of global flows; on the other hand we work with a politics both official and unofficial that is framed by a territorial imaginal and formal structure.” Massey, *World City*, p. 14.
 14. Zoe Pearson, “Spaces of International Law,” *Griffith Law Review* 17(2) (2008), 489–514; See also Andrea Brighenti, “On Territory as Relationship and Law as Territory,” *Canadian Journal of Law and Society*, 21, 2 (2006), pp. 65–86, for a countertheorization of space.
 15. Austin Sarat and Thomas R. Kearns, “Beyond the Great Divide: Forms of Legal Scholarship and Everyday Life” in Sarat and Kearns, eds, *Law in Everyday Life* (Ann Arbor: Michigan University Press, 1993), p. 5. Sarat and Kearns refer to the concept and practice of everyday, but its distinctive spatial language and its import make it, at least for my purposes, tautological with the spatial.
 16. Jean-Luc Nancy, *The Creation of the World or Globalization*, trans. D. Pettigrew and F. Raffoul (New York: State University of New York Press, 2007), p. 73.
 17. David Delaney, “Beyond the World: Law as a Thing of this World,” in Holder and Harrison, eds, *Law and Geography* (Oxford: Oxford University Press, 2002), subsequently Delaney, *Beyond the World. The concept of the world, and consequently of Nancy’s mondialisation or Luhmann’s Weltgesellschaft, is different to the usual terrain of globalization.* See, e.g., Urs Stäheli, “The Outside of the Global,” *New Centennial Review* 3(2) (2003), 1–22
 18. See Philippopoulos-Mihalopoulos, *Fear*.
 19. Thus succumbing to what Henri Lefebvre in *The Production of Space*, trans. D. Nicholson-Smith (Oxford: Blackwell, 1991), subsequently Lefebvre, *Production*, has called the fetishization of space.

from its obsessions.²⁰ Second, it ignores the always-already spatial conception of the law,²¹ the materiality of law and its inevitable emplacement in space.²² Third, it marginalizes the disorder, fragmentation and unpredictability that come with space, in favor of a limpid and linear spatial construction – for even as process, space and its modes of production are thought of as given to prognosis and essentially static. In that sense, the seeming radical nature of space becomes institutionalized, co-opted as part of the institutional discourse, streamlined to serve the purpose of the system. Or even worse, space becomes law's ideality, an instrument for law's escape from itself. The consequence is potentially perilous: the law simply carries on feeding its own sense of superiority, "its importance, history, and its disciplinary identity,"²³ further swallowing up the supposed factuality of space for purposes of its own imagined co-extensiveness with an imaginary social totality. Thus, law's all-inclusion has mastered even space.

Finally, the third category of space and law literature is characterized by the phenomenon of "add space and stir."²⁴ This approach reduces space to yet "another" social factor, "another" perspective which does not offer anything more than at best a context and at worst a background. This is probably what Lefebvre wanted to avoid when he wrote "space is not a thing among other things, nor a product among other products: rather, it subsumes things produced and encompasses their interrelationships in their coexistence and simultaneity – their (relative) order and/or (relative) disorder."²⁵ If the spatial turn exhausts itself in considerations of background, thus failing to function as the epistemological ground on which such "coexistence and simultaneity" can be demonstrated, then we can more accurately talk about geography rather than space. Geography, the imaging of the world, the *grapheme* (-graphy) of the earth ("geo-"), is a representation.²⁶ As such, it reveals but also conceals its reference, namely space itself. As David Delaney puts it, geography "seems to stand for spatialities, places, landscapes, materiality, and the thick and sensuous domain of the visible."²⁷ Geography indeed *stands for* all that, itself an epistemological avenue through which some of these things are sketched. And geography converses with the law – but what *stands for* law? Is the distance between law and talking

20. This is a post-structural interpretation of Luhmann's ideas. See my *Niklas Luhmann: Law, Justice, Society* (London: Routledge, 2009).

21. This connection is not a new thing for law, but a coming-forth of what has already been there and whose origin can only retrospectively be located, even personally: Nicholas Blomley in "From 'What?' to 'So What?': Law and Geography in Retrospect." in Holder and Harrison, *Law and Geography*, at p. 17, subsequently Blomley, *From What*, talks about how he has been working on the subject for "nearly two decades."

22. Andreas Philippopoulos-Mihalopoulos, *Absent Environments* (London: Routledge, 2007); see also Martti Koskeniemi, *From Apology to Utopia. The Structure of International Legal Argument* (Helsinki: Finnish Lawyers' Pub. Co., 1989) on how law's universal claim can only claim validity if the particular resonates in it.

23. Blomley, *From What*, p. 21.

24. Bradon Ellem and John Shields, "Rethinking 'Regional Industrial Relations': Space, Place and the Social Relations of Work," *Journal of Industrial Relations*, 41(4) (1999), 536–60.

25. Lefebvre, *Production*, p. 73.

26. Derek Gregory, *Geographical Imaginations* (Oxford: Blackwell, 1993).

27. Delaney, *Beyond the World*, p. 67, added emphasis.

about the law (e.g., in the form of legal theory) comparable to the distance between this “experiencing” space, and talking about space?²⁸ Geography as a discourse can only to some extent facilitate law’s conceptualization of space.

In some ways, space beyond metaphor is an abstraction that vies with the traditionally conceived abstraction of the law (as opposed to a situated, concrete law in space). But if David Cunningham is correct in his suggestion that it is only through another form of abstraction that capitalist abstractions can be fought,²⁹ then on a different level, the abstraction with which the law dominates the geographical discourse is threatened by this different abstraction, the abstraction of a space beyond metaphor and facile terminological novelty. Thus, even a radical reading of the law that accords special emphasis to the particular (and one thinks of feminist readings which emphasize the relevance of space), even that kind of reading fears space in its abstract philosophical dimension, because the law may then lose its newly founded and only with great difficulty conquered embeddedness.³⁰ And this is quite right: the fact that both law and space are seen in their material, concrete production is a result of recent sociolegal and critical scholarship,³¹ certainly constituting a radical step in an important direction. This hard-won step is by no means beyond threat.

Consequently, I am not making an argument for de-concretization of space in law, for space as a universal abstraction, or for a return to grand philosophical understandings of space. On the contrary, I support a full spatialization of law, a full embracement of law’s emplaced concreteness, *but once the connection between law and space and its repercussions have been adequately thought out*. For I find that this fear of space affects the way in which the concretization of law is played out. Precisely because the interest in constructing the theoretical foundations of such an enterprise has waned, we are left with a literature that keeps on reproducing spatial clichés without venturing into the radical territories so gallantly promised by the concept of space. And perhaps the most tangible example of this lost opportunity, as I show in the last part of this article, is the concept of spatial justice. Thus, the argument here is for a reinstatement of the particular embeddedness of the law but only once its mechanisms have been adequately thought out and distressed with a view to a fuller, more potent understanding of the connection between law and space. For this article fears something too: if the spatial turn carries on unfolding itself only on the concrete, ignoring the abstract, philosophically examined

28. Op. cit.

29. David Cunningham, “The Concept of Metropolis: Philosophy and Urban Form,” *Radical Philosophy*, 133 (September/October 2005) 13–25, and “Spacing Abstraction: Capitalism, Law and the Metropolis,” *Griffith Law Review*, 17(2) (2008), 454–69.

30. Itself not entirely innocent – the example of “European legal space” seems to be illustrative of precisely this kind of territorial, bureaucratic and essentially jurisdictional authority. See the ECHR judicial exploration of the concept in *Issa and Others v Turkey*, Application 31821/96, Judgment 6 November 2004.

31. Indicatively, Blomley, *Power*; Peng Chea and Elizabeth Grosz, “The Body of the Law” in Chea, Fraser and Grbich, eds, *Thinking through the Body of the Law* (New York: New York University Press, 1996); David Harvey, *Justice, Nature and the Geography of Difference* (Oxford: Blackwell, 1996); Gillian Rose, *Feminism and Geography* (Minneapolis: University of Minnesota Press, 1993); Don Mitchell, *The Right to the City* (New York: Guilford Press, 2003).

side of either space or law, the discourse itself will be impoverished and debilitated. Thus, to David Delaney's caution "any effort to effect a dematerialization of law must be regarded with suspicion,"³² I would also add a caution against the fetishization of legal materiality. By not armouring itself against the conceptual minefield that abstraction can be, and permitting itself an unanchored embeddedness, law's spatial turn risks being co-opted by conservative political and social thinking (just like other "grand" ideas, such as sustainability, globalization, identity and so on). By not facing its fear of abstraction, the space of the law allows whoever feels more at ease with it to manipulate its embeddedness, thereby converting it from a radical tool to a hegemonic presence.³³

So, what does space contribute to law? As said earlier, space for law is not (just) jurisdiction, ideality or geography. It may at times be, represent or indeed be represented by all that, but these leave out some truly "irritating," disturbing, upsetting facets of space. Let me refer again to Massey's description of space: a product of interrelations and embedded practices, a sphere of multiple possibilities, a ground of chance and undecidability, and as such always becoming, always open to the future.³⁴ This seeming openness is firmly conditioned:³⁵ multiple possibilities indicate lack of direction and possibly destination; continuous becoming means also instability and unpredictability; interrelations denote a difficulty in pinpointing causality, origin, actors. One can try and move this closer to law: space embodies the violence of being lost, of being uncertain about one's direction, orientation, decision, judgement, crisis. It is in space that the violence of drawing lines, of *horizein* (of delimiting the horizon, of judging) takes place. It is precisely in the same space that these judgements are exposed, questioned, thrown out of context. Law is *nomos*,³⁶ dividing and allocating, partitioning and governing. Law is the act of *krinein* that denotes both judgement and, perhaps even more significantly, critique.³⁷

Because of its material, emplaced demands, space forces the law to turn toward itself and judge its own judgements: space is the terrain of law's questioning *par excellence*. This, however, does not occur merely because space is concrete and geographically delineated. Space can no longer be considered simply in terms of its material particularity. Space must also be considered in terms of its indifferent universality as a gesture of uncontained violence: space withdraws from the human, and any mediation through concepts of "place," "identity" or "agency" simply reiterates the violence by dissimulating its effect. In comparison, time is gentle: time heals whereas moving in space is mere escapism;³⁸ time is only now, and all can be embraced (even illusory) in the

32. Delaney, *Beyond the World*, p. 80.

33. It is widely observed that the language of the material and the particular is no longer the prerogative of progressive politics but also of significant portions of conservative ideology. Whether this is simply rhetoric, it is simply irrelevant.

34. Massey, *For Space*.

35. For Massey, through its parallel development with politics. *For Space*, pp. 10–12.

36. Carl Schmitt, *The Nomos of the Earth in the International Law of Jus Publicum Europaeum*, trans. G. L. Ulmen (New York: Telos Press, 2003).

37. As Costas Douzinas and Adam Gearey announce "without the law, critique would not exist, and vice versa. If law finds its destiny in its contestation, critique is bound constantly to become law." *Critical Jurisprudence: The Political Philosophy of Justice* (Oxford: Hart, 2005), p. 36.

38. Caren Kaplan, *Questions of Travel* (Durham, NC: Duke University Press, 1996).

all-contained present moment, itself folding within its history and its desire; but space is always parallel, always elsewhere, always another. Time is static, space is moving.

This combination of material and immaterial, concrete and abstract is the reason for which Lefebvre called space a “concrete abstraction.”³⁹ In the same vein, law is also a concrete abstraction, characterized by its paradox of materiality and immateriality. And when these two concrete abstractions are brought into dialogue, the foundations of both are tested. To put it plainly, space forces law to question its ethics. Nowhere than in space is law’s internal conflict between the universal (or, across geographical boundaries) and the particular (or, the material emplacement) more forcefully tested. The lack of certainty, direction, orientation, predictability, causality that space brings, shakes law’s judgement, the certainty of legal decisions, the irreversibility of judgement, the causal link on which a judge relies. Space is not just the question “how would this decision be formed over there?” but significantly, “why is the decision expected to be formed in this way here?” The result is a law that keeps on questioning itself, not in eternal undecidability but in continuous acknowledgement of its own limitations: the law can only do that much, and even that is not certain. Space is law’s mirror on which the irresolvable paradox between its universality and particularity is thrown into relief. *Spatiality is an ethical position.* This is not only because of space’s materiality but also because of space’s abstraction, its non-geometrical luminosity of *here*.

Space brings an awareness of (other) spaces, both within and significantly beyond the reach of the law, which, in turning spatial, the law will have to take into consideration. Further, space is the axis of precisely the disjuncture between the global flow and the territorial structure,⁴⁰ the tangible and the distant, the abstract and the concrete. <footnote 41 deleted at author’s request. Please renumber from here!>This begs a question of resilience for the law: how can the law open up to this construction of space that destabilizes, shakes up and resemiotologizes law, without at the same time making itself implode, collapse under the weight of its spatiality? But one has to remember that, after all, it can only be the law that turns *itself* spatial. The law, through its theory, invites space to become part of the legal corpus. What is more, law’s spatial turn is the process of awareness of law’s always-already spatiality, its connection to space and its questioning qualities.⁴¹ Thus, the spatial turn is not a process of invention but a bringing forth in an

39. In Lefebvre, *Production*, Lefebvre following Marx, considers space a concrete abstraction, namely an abstraction devoid of content and independent of context, which, however, can only be understood through a practice, a concretization that is linked to the space of everyday. See also Chris Butler, “Géographie critique du droit et production de l’espace: théorie et méthode selon l’oeuvre d’Henri Lefebvre,” in Forest, ed., *Géographie du Droit: Épistémologies, Développements et Perspectives* (Québec: Presses de l’Université Laval, 2009).

40. Zoe Pearson, “Spaces of International Law”, *Griffith Law Review* 17(2) (2008), 489–514; See also Andrea Brighenti, “On Territory as Relationship and Law as Territory,” *Canadian Journal of Law and Society*, 21(2) (2006), 65–86, for a countertheorization of space.

41. This is how the spatial turn has been understood in some disciplines, such as religion or indeed history: Santa Arias, “The Geopolitics of Historiography from Europe to the Americas,” in Warf and Arias, *The Spatial Turn*; Sigurd Bergmann, “Theology in its Spatial Turn,” *Religion Compass* 1(3) (2007), 353–79. One of course may legitimately wonder whether law is ready for this kind of spatialization.

ethical reciprocity of hospitality where the host becomes hostage and the law, a willing victim of its own transcendence, ultimately fails to resist its own inviting twists and turns.⁴² In this way, law is made aware of both its limits and, significantly, its limitations in a confident way.⁴³ law becomes confidently modest as it were. This is because, in order for the law to bring forth its spatiality, the law needs to suspend itself, go beyond and even against itself in order to invite, welcome and accommodate this destabilizing presence. This, however, does not stop the law from being fearful of such a guest. The law is threatened by the expanses of contingency opened up by space, at the same time both more material and more abstract than the equivalent complexity originating in law's mingling with other "guests," such as culture or social context in general. The law has to act through its limitations *and* despite its own limits, indeed despite its own fears of spatiality, in order to reap the fruit of what this new spatiality bears.⁴⁴ Such considerations require of the law to think of *justice* more seriously.

To sum up: in its spatial turn, the law is faced with the demanding task to conceptualize a space proper to, yet transcending of, the law. The law's (re)turn to the concreteness of geography must be conditioned by an adequate conceptualization of space, for otherwise the spatial turn risks being at best a token and at worst a co-opted turn. If the role of space in the law is to be taken seriously, space must appear in its complexity as both an opportunity and a threat, a guest and a host, a thing of the law as well as a thing that goes beyond the law: to put it differently, space is a demand for a radical conception of justice, a *spatial justice*. In what follows, I attempt to sketch this intensely paradoxical boundary concept between law and space.

III. Spatial Justice

In a thorough and far-reaching take on law and space, Igor Stramignoni makes the case for an understanding of legal space that goes beyond both geographical and metaphorical space. The author suggests "a somewhat different, non-linear, non-measurable, non-calculable, indeed incalculable sort of space – a different 'space,' an-*other* space, a *space-other*, a space that, however, is *not* other than space, whilst at the same time being

42. Jacques Derrida, *Adieu*, trans. P. Brault and M. Naas (Stanford, CA: Stanford University Press, 1999). See also Delaney's, *Beyond the World*, distinction between "law-in-space" and "space-in-law"; and also the space of law in Piyel Haldar, "In and out of Court: On topographies of Law and the Architecture of Court Buildings," *International Journal for the Semiotics of Law* 7(2) (1994), 185–200, and Linda Mulcahy, "Architects of Justice: the Politics of Courtroom Design," *Social & Legal Studies* 16(3) (2007), 383–403.

43. On this, see the introduction to the volume, Austin Sarat, Lawrence Douglas, and Martha Merrill Umphrey, eds, *The Limits of Law* (Stanford, CA: Stanford University Press, 2005).

44. Terms that try to map this new territory include Blomley's "splice" (Blomley, *From What*), Delaney's "nomosphere" ["Tracing Displacements: or Evictions in the Nomosphere," *Society and Space* 22, 6, (2004), 847–60] and Philippopoulos-Mihalopoulos's "lawscape" ["In the Lawscape," in Philippopoulos-Mihalopoulos, ed., *Law and the City* (London: Routledge, 2007)], all of which, more or less explicitly, trace the paradox between law and space.

radically *other* than the instrumental space with which we are formally familiar.”⁴⁵ I take these also to be the parameters for a discussion on spatial justice,⁴⁶ itself a way in which the law both fulfils and transcends itself. I would like to insist on the adjective “spatial” here, not just because this kind of justice is described in spatial terms, but significantly because it can only be understood through space. As I show below, there are two characteristics that demand the adjective: first, in an ontological manner, the radical nature of this justice that works in different ways than its habitual temporal or social conceptualization; and second, in its epistemological counterpart, the location of justice, both within and without the juridical space in aporetic calculation.

First, a brief outline of the way in which I think the concept of spatial justice ought to be rethought. Following from the previous section’s criticism, spatial justice needs to operate with a concept of space that transcends the regional without at the same time falling into the trap of the undifferentiating universal. For this reason, I am turning again to Massey’s description of space, and more specifically, its “simultaneity,” namely “the contemporaneous existence of a plurality of trajectories.”⁴⁷ This simultaneity occurs among “intertwined, openended trajectories,”⁴⁸ peculiar delights of the turn, a parallel presence of avenues and dead-ends. Simultaneity can also be found in a Deleuzian understanding of a pervading spatiality that assumes the guise of “the delicate milieus of overlapping perspectives, of communicating distances, divergences and disparities, of heterogeneous potentials and intensities.”⁴⁹ This description of space is removed from the usual benign descriptions of geographical relevance or even simple binarisms between bad space (public) and good place (home), and relies instead on a complex, somewhat value-free description of the spatiotemporal distance between subject and object while confounding the two.

It is obvious then, that in such spatial descriptions, time is not excluded but positively integrated as a non-prioritized parameter.⁵⁰ This is also the way in which I read Derrida’s by now influential conceptualization of justice.⁵¹ Briefly, justice for Derrida is always *à venir*, always to come, a horizon.⁵² But, at the same time, this horizon is devoid of the

45. Igor Stramignoni, “Francesco’s Devilish Venus: Notations on the Matter of Legal Space,” *California Western Law Review* 41, 147–240, p. 173. Stramignoni connects this space with the uniqueness of the event, thus bringing it closer to the temporal and the particular.

46. For a critical genealogy of the concept of spatial justice, see Mustafa Dikeç, “Justice and the Spatial Imagination,” *Environment and Planning A* 33, (2001), 1785–1805.

47. Massey, *For Space*, p. 14.

48. Massey, *For Space*, p. 113.

49. Gilles Deleuze, *Difference and Repetition*, trans. P. Patton (New York: Columbia University Press, 1997), p. 50.

50. Indeed, Massey explicitly talks about time and space.

51. Further see my “Suspension of Suspension: Settling for the Improbable,” *Law and Literature* 15(3) (2003), 345–70, subsequently Suspension of Suspension.

52. “Justice remains, is yet to come, *à-venir*, it has an, it is *à-venir*,” Jacques Derrida, “Force of Law: The ‘Mystical Foundation of Authority,’” trans. Michael Quaintance, in D. Cornell, M. Rosenfeld and D. Gray Carlson, eds, *Deconstruction and the Possibility of Justice* (New York: Routledge, 1992), p. 27, subsequently Derrida, Force.

planning that goes with anticipation.⁵³ It is a horizon without waiting, since justice is always required immediately, its demand is always already upon us. In that sense, one does not wait for justice – in its demand, justice is already *here*.

The simultaneity of the deconstructive *here* and *to come* is reflected in the explosion of “here” into the infinity of what Christopher Stone has called “strangers in space,”⁵⁴ the ones who demand justice simultaneously and indeed embody a simultaneous, “diachronic,”⁵⁵ constantly here, justice. This is distilled in the legal concept of *intragenerational* equity, the unsurprisingly lesser sibling of *intergenerational* equity, where spatial simultaneity demands recognition: protect the environment, the globe, the space of the world, not just for ourselves, not even just for future generations in the name of sustainability, but for the others in space whose alterity is persistent yet invisible, absent yet of the present generation. In the same vein, demands for spatial presence are currently heard from that obscure boundary between the human and the non-human (artificial, animal, inanimate). Claims for representation of the kind that Christopher Stone and Bruno Latour have put forth⁵⁶ are progressively replaced by claims for spatial presence and indeed simultaneity.⁵⁷ The usual negotiating strategies in such cases frequently betray both parties.

Another example, this time from the geopolitical arena, before I sketch the concept of spatial justice: I remember seeing published widely in the media at some point in 2005 a photograph of a graffiti written on a wall in Gaza by an Israeli soldier that said “this is the only land I know.” One can read this in many ways, but I would simply like to read it as an indication of the “impossibility” (in the Derridean sense: “the *condition of possibility* ... is also its *condition of impossibility*”⁵⁸) of spatial justice: historical, personal, corporeal, ethnic, all of these claims wrapped up in a net of monadic positions, *where each position is necessarily occupied by one person, where each body can only stand where other bodies do not*. Of course the land can be shared – but space is much more than just land. The demand for spatial justice unfolds a monadology of the particular body, an irreplaceability of position and an impossibility of sharing the same space at the same time. Not unlike Husserl’s *egology*, namely the thematization (perception, realization, materialization) of the surrounding space of a body by the

53. The horizon becomes the limit “from which I pre-comprehend the future. I wait for it. I pre-determine it. And thus, I annul it.” Jacques Derrida and Maurizio Ferraris, *A Taste for the Secret*, Donis and Webb, eds, trans. G. Donis (Cambridge: Polity Press, 2001), p. 20.

54. Christopher Stone, “Ethics in International Environmental Law,” in Bodansky, Brunnee and Hey, eds, *Oxford Handbook of International Environmental Law* (Oxford: Oxford University Press, 2008).

55. Costas Douzinas and Ronnie Warrington, *Justice Miscarried: Ethics, Aesthetics and the Law* (New York and London: Harvester Wheatsheaf, 1994).

56. Christopher Stone, *Should Trees Have Standing? Toward Legal Rights for Natural Objects* (Los Altos: William Kaufmann, 1974); Bruno Latour, *Politics of Nature* (Cambridge, MA: Harvard University Press, 2004).

57. E.g., Rosie Braidotti, *Transpositions: on Nomadic Ethics* (Cambridge: Polity Press, 2006); Giorgio Agamben, *The Open: Man and Animal*, trans. K. Attell (Stanford, CA: Stanford University Press, 2003).

58. Jacques Derrida, *Specters of Marx: The State of the Debt, the Work of Mourning, and the New International*, trans. P. Kamuf (London: Routledge, 1994), p. 65.

body itself,⁵⁹ spatial justice insists on the precise coincidence between occupied space and body trace, a solid particularity that in its turn thematizes the world: “this is the only land I know.” But what kind of justice is this? For it may be relatively easy to care for the ones “over there,” but what about the ones who want to be “right here,” right where we stand?⁶⁰

Before attempting to answer this, a sum up: spatial justice has to be thought in terms of embodiment and spatiality, on the one hand firmly located in the particularity of one’s body *right here*, and on the other, within the folds of a universal *impossibility* of simultaneous emplacement. Simply put, spatial justice is the strife to conciliate the arguably justified demands of both ego and alter to be simultaneously at precisely the same space, to occupy precisely the same corporeal trace in space at precisely the same time. Thought in this way, spatial justice is a strife for and also an argument to abandon the ubiquitous quest for identity, and look instead for a relationality that connects void rather populated spaces.⁶¹ Indeed, this is the radical call of spatial justice: the demand for a plural, emplaced oneness, the firm position of the body in space and the consequent thematization of the world, including the disorientation, the multiplicity of directions, the simultaneity of movement.

In some respects, this is reminiscent of Iris Marion Young’s concept of together in difference.⁶² Except of course that here there is conflict, an inherent conflict inscribed on the very bodies of difference. For all bodies have the same exigency, all particularities are emplaced not only in the particular spatial contour that their embodiment traces, but in the wider perspective of the world as seen through each one of them. The singularity of position whirls together with the potential multiplicity of the world in a simultaneous eclipse. And conflict arises, a conflict of bodies that will never be sated. There can of course be negotiations, dialogue, arrangements: but spatial justice cannot be seen merely as another testing ground for Habermasian idealizing speeches or ambitious deliberative politics, namely the ways in which spatial justice has been mostly conceptualized so far.⁶³ It is saddening that even here, in the open terrain of spatial justice, the fear of space creeps in (the fear of the contingent, the vertigo and the sense of being lost that space brings) and the concept is regularly reduced to social or distributive justice. It is deeply

59. Edmund Husserl, *Cartesian Meditations*, trans. D. Cairns (The Hague: Martinus Nijhoff, 1973), p. 73.

60. Derek Gregory, *The Colonial Present: Afghanistan, Palestine, Iraq* (London: Blackwell, 2004).

61. Relationality with a potentially spatial element has been posited in Tarde’s *Monadologie et Sociologie* (Paris: Empecheurs De Penser En Rond, 1999) and his philosophical move from “being” to “having,” with some interesting repercussions for property. See also Bruno Latour, “Gabriel Tarde and the End of the Social,” in Patrick Joyce, ed., *The Social in Question: New Bearings in the History and the Social Sciences* (London: Routledge, 2002).

62. Iris Marion Young, “The Ideal of Community and the Politics of Difference” in Nicholson, ed., *Feminism/Post-modernism* (New York: Routledge, 1990).

63. But see Edward Soja, *Postmetropolis: Critical Studies of Cities and Regions* (Oxford: Basil Blackwell, 2000); Desmond Manderson, *Proximity, Levinas and the Soul of Law* (Montreal: McGill-Queen’s University Press, 2006); Peter Goodrich, “First we take Manhattan: Microtopia and Grammatology” in Philippopoulos-Mihalopoulos, ed., *Law and the City* (London: Routledge, 2007).

disappointing that the current literature prefers to propose rather banal political positions of measured experimental value that simply continue cultivating existing liberal ideologies, rather than taking advantage of a concept as luminous and as potentially radical as spatial justice in order to propose an agenda, no less utopian than the above political positions but certainly less banal. For indeed the challenge of spatial justice is that of a perennial conflict that cannot be negotiated except through a radical ethical gesture. Spatial justice is a chasm, an empty space that cannot be colonized by any political position.

With this I come to the second characteristic of spatial justice, namely its epistemological location. My suggestion is that spatial justice should be sought between law and space, the negotiating arena between the two disciplinary abstractions. Spatial justice speaks to both but in a way that transcends their individual boundaries and even their newly forged common ones. Still, one has to begin somewhere. As Stramignoni suggests, “here, as elsewhere, one must start from *some* linear, measurable, calculable space.”⁶⁴ This Derridean formulation posits the beginning of the calculation of the unknown from within the linearity of the known. Jacques Derrida famously said, “incalculable justice *requires* us to calculate. And first, closest to what we associate with justice, namely, law, the juridical field that one cannot isolate within sure frontiers.”⁶⁵ I read Derrida’s position as a call to begin from within the law en route to a suspension that leads to the aporia of justice.⁶⁶ Thus, calculating the achievement of spatial justice from within the law is only the beginning, itself simultaneously reflected by another calculation from within space. But the two calculations are never to meet, except in this constructed space of excess between law and space, which is neither the one nor the other, but the necessary hiatus for the incalculability of spatial justice. In this sense, spatial justice belongs solely to neither law nor space, but between them, relinquishing itself to the epistemic difference of whatever space or law represent for each other. This means that law can never colonize space (or vice versa) in its search for spatial justice. Law and space remain elusive for each other, beyond the means of each other, faithful representatives of the simultaneous multiplicities of spatial justice.

This is perhaps the crux of the concept of spatial justice – and indeed the answer to the kind of justice that spatiality dictates: that the only way in which its demands can be met is through a *withdrawal*, through the departure of the one who occupies the contested space, and the simultaneous conceding of priority to the other’s claim.⁶⁷ This is a violent

64. Stramignoni, Notations.

65. Derrida, Force, p. 28. Note that the calculation for Derrida refers not to law (the calculable par excellence), nor to justice, but to their relation. See also my analysis in *Suspension of Suspension*.

66. In other words, “the primordial scene of the nomos opens with a drawing of a line in the soil. This very act initiates a specific concept of law, which derives order from the notion of space.” Cornelia Vismann, “Starting from Scratch: Concepts of Order in No Man’s Land,” in Huppau, ed., *War, Violence and the Modern Condition* (Berlin: Walter de Gruyter, 1997), p. 46. See also Luhmann, *Law as a Social System*, trans. K. Ziegert, ed. F. Kastner, R. Nobles, D. Schiff and R. Ziegert (Oxford University Press, 2004) and further Philippopoulos-Mihalopoulos, *Absent Environments*.

67. For the development of this in the context of law and the city, see Andreas Philippopoulos-Mihalopoulos and Sharron A. FitzGerald, “From Space Immaterial: The Invisibility of the Landscape,” *Griffith Law Review* 17, 2 (2008) 438–53. For the concept of kenotic withdrawal, see Simone Weil, *Waiting for God* (London: Harper Perennial, 1992). Also, Emmanuel Lévinas, *Totality and Infinity*, trans. A. Lingis (Pittsburgh, PA: Duquesne University Press, 1969).

withdrawal, one that exposes the ways in which one has selected one's emplacement, as well as the argumentation of one's claim. Spatial justice demands of me a strong statement of emplacement and a withdrawal from that statement, so that the other, the one who also claims to be emplaced precisely here precisely now, can have access to the abandoned armour of my identity claim. Such a withdrawal, however, will have to be conceived in a permanent state of oscillation. My withdrawing is an invitation for the other, not only to occupy the space from which I withdrew, but also to withdraw in her turn. Withdrawing before the space of the other stops nowhere but to her withdrawal. And further, oscillation between, on the one hand, the strife for spatial justice, and on the other, the regulation of the modes of withdrawal. This is the inevitable distance from the permanence of Levinasian radical ethics: after justice, there comes the law. The law regulates the way to justice, in a constant oscillation that dictates the withdrawal of law before justice and equally the withdrawal of justice before law. *Law is the necessary precondition of spatial justice.* For when one withdraws, one displaces someone else. Or indeed, the one who is more powerful withdraws less or not at all. It is then when the pendulum returns, from the just to the legal, from the utopia of perpetual withdrawal to the utopia of regulated emplacement.

This withdrawal I would also advocate for law and space in terms of their epistemological positions. In epistemic modesty, one begins with what one knows, but allows a space for the other before which one withdraws. Law withdraws and reforms itself in view of the demands of space. This is much more than a call for continuing interdisciplinarity. Rather, it is a call for disciplinary disruption, for a violent displacement of both law and space in their epistemic abstractions. There is nothing comforting about this: simultaneously within and alien, invited and host, justified by the prior necessity of invitation, space disrupts the law, forces the latter into leaps beyond anticipation, and may indeed place it under excessive pressure to negotiate continuously its own position. This is the space in which spatial justice must be sought but may never be found. And this is all right. The calculation has set the oscillation in motion. And then? What happens *if* spatial justice is "attained"? What happens when the utopian moment of ideal simultaneous emplacement is fixed? Well then, space becomes geography, justice becomes the law, and nothing transcends the boundaries anymore. Utopia has to be reinvented. So back again to the search for spatial justice, to the impossibility of contemporaneous emplacement. For the connection to be retained, spatial justice must remain unattainable yet always within reach.

The implications of this philosophical position are multiple, but can be roughly put into two categories: one is a utopian prescription of a society whose parts withdraw in constant movement, claiming different emplacements, altering perspectives and multiplying their emplacements in a mode deracinated from spatial identity yet deeply entrenched in their momentary spatial emplacement. Identity is no longer land possession but relational (and inevitably conflictual) withdrawal. This quasi-Deleuzian, quasi-Luhmannian form of emplaced flow proves as utopian as the other position: that of a "realistic" description of what there is to do in order to help things improve. I say that this is an equally utopian position simply because strategies of improvement can only move along a deeply entrenched path of existing deliberations, negotiations and decisions. Its apparent realism is counteracted by a deep-seated utopian belief in the tried and failed practices of deliberative democracy. In the end, these two positions do not differ.

They are the best one can have given the existing conditions, and whether one tries to push improvement through administration or utopia through ethics, one ends up with a similar incremental change. I would like, however, to suggest an added ingredient to these two: the necessity of oscillation between a utopian ethical gesture and a position of political negotiation. To try and solve a geopolitical, regional, distributive or simply neighboring problem without a concept of spatial justice haunting and disturbing the process from within is simply unjust.

What I have tried to show here is the need for a reinstatement of the law as the ground of spatial justice. Once the law, through its own spatial turn, claims a position in the formulations of spatial justice, the latter can begin being a more tangible, more concrete concept that will be informing (in a violent, withdrawing way) not only the deliberations of law itself but also of the current interdisciplinary attempts. Spatial justice is a challenge, precisely because it has to remain uncolonized by any discipline, yet filled with them in withdrawing apparitions. We are left with something akin to necessity. Law's spatial turn promises to bring forth a space within the law both welcoming and terrifying in its capacity to disorientate and destabilize. Geographical grounding and metaphorical diversions may be the easy way out, but a far cry from a radical conception of spatial justice. The law must turn, by exposing itself to the simultaneous contingency of space. Once this is sketched, the law can return to its calculation – but only to take flight again. In this oscillation between law and space, my and the other's here, the concept of spatial justice can be sought: an acknowledgement of the impossibility of common space, and a resolute withdrawal before the priority of the space of the other.

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