
The Big Gap Beyond? Property, Planning, and Space

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Drawing on Michel Foucault's theory of space as a complex matrix of competing power relations, involves interrogating the conception of space as anything but static: it is not "the dead, the fixed, the undialectical, the immobile" (Foucault 1980: 70), but is rather 'a socially produced space' (Lefebvre 1991) saturated with power relations, so that "in enacting law, we enact space, and vice versa" (Blomley 2003: 31). Doreen Massey is acknowledged as a key influence on this work, through Sarah's emphasis on "embracing the uncertainty of space" (Keenan 2014: 13). This work adds further depth to the field of legal geography, exploring the relationship between law, space and identity in a way that is "profoundly subversive" (Blomley 1994: 26), but which also "[offers] a more complex perspective on the law-space-power nexus" (Benda-Beckmann and Benda-Beckmann 2014: 30), turning away from a conception of space as "the deadened material over which legal disputes take place" (Ford 2001: 82), by considering "how law operates through rather than upon space" (Keenan 2014: 27). In my own work, this is best exemplified by the unstable and ambiguous 'nomadic' classification in law. Hence, rather than regarding nomadism as a manifestation of "chaos and rootlessness" on the periphery of a "legal grid" (Keenan 2014: 28), Sarah has prompted me to question "how spaces come to be shaped such that some subjects fit and others are out of place" (Keenan 2014: 35).

In my research on the nomadic Roma diaspora, I came up against the staggering circularity of the reconstituted subject as one who is typically property-less, dispossessed, and marginalized. Embracing 'the spatial turn' in law enables me to retreat from this paradigm of dispossession by, as Sarah writes, "shifting the focus of analysis away from the legal subject" – in this case, that of the wandering nomad, the marginal outsider – "and on to the broader spaces in which that subject is embedded" (Keenan 2014: 5). Indeed, Sarah's critique of legal geography seems to be that it "does not offer to explain how space might travel with the subject" (Keenan 2014: 35), which is also, in my view, missing in a nuanced way from

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analyses of law's relation to diaspora;¹ and that, furthermore, it does not have an adequate theoretical framework in which to deconstruct the concepts of spatiality and law, or to "[explore] what either 'law' or 'space' might mean beyond the particular area or controversy being explained" (Keenan 2014: 35), which could enable us to "[develop] political strategies that can better address the social and material contexts in which [this particular framework has arisen]" (Keenan 2014: 35).

The Gypsy and the Poet

In his poetry collection *The Gypsy and the Poet* (2013),² David Morley focuses on the encounter between the nineteenth century poet John Clare and his friend, a Gypsy named Wisdom Smith. I will engage in a brief spatio-legal reading of David Morley's poem 'The Pen' in the context of anti-nomadism laws and restrictive planning legislation, in order to briefly relate the influence Sarah's thinking has had on my work. What I have taken from our discussions is a need re-frame Morley's observations "away from the propertied subject and on to the spaces through which property is constituted" (Keenan 2014: 14). In this way, there is a seismic effect on reading the concept of ownership.

Morley's poem is about the moment John Clare is attempting to write in the absence of his friend, Wisdom Smith. The pen is an emblem of a different reading of space, in that it falls from his hand but is still "writing its way across a world". Morley writes:

The poet lets his pen fall. It rolls on a bearing to the door.
Clare follows it with his eye. The nib tuts over the stone floor
writing its way across a world as if held by an invisible child. ('The Pen')

Morley's poet exists both in a material condition through the pen he lets fall, and in an unsettled "spinning" place. He is located but the space is not static – it is responsive and relational, just as the Gypsy Clare is indirectly addressing in his poem is both absent and present in the text. This relationality is of course key to any understanding of property rights as a "legally defined relationship between persons with respect to an object" (Davies 2007: 13), and yet the emphasis still remains on the 'possessor' in law, rather than the conceptual things, places and spaces mobilized in the spatial assemblages of private property relations

¹ Although legal scholarship has considered the way in which diasporic subjects 'carry law with them' (Benton 2009; Kapur 2010; Bayir and Shah 2012) this has not focused on the way space is constructed in this account.

² See Appendix for the poem in full.

(Keenan 2014: 14). This is where a reading of spatiality demands recognition beyond the dichotomy of ‘inside/outside’: to ask “who/what counts as a ... (legal) subject [and] who/what constitutes a legitimate object of proprietary claims” (Whatmore 2003: 213; see also Strathern 1999): how is the space operating in this aesthetic? How do we talk about possession without talking about possession?

‘Gypsies’, Planning and Space

The idea of Gypsies invading or camping unlawfully on territory plays into positivist assumptions about space as a static zone as a receptacle for repressive legislation. To quote at length from Sarah’s book:

Legal judgments, executive powers, legislation and legal commentaries tend to treat space as something to be planned over, built on, cultivated, bought, sold, and/or protected: a blank canvas or platform to be smoothly acted upon. Space is implicitly understood as separate from the subjects who occupy and move through it. (Keenan 2014: 21)

I want to talk about a Traveller camp in Essex, Dale Farm, made infamous recently following news stories about the evictions that took place there. Although legally occupied, this encampment had swelled from a site of three or four pitches without planning permission for the extended occupation.³ Evictions were ordered and then postponed subject to judicial review. This was set up as the legitimate vs the illegitimate, a dichotomy that haunts the Roma diaspora: despite that fact that indeed, in the UK, a minority camp illegally, and many are owners but do not have planning permission (Quarmby 2013: 9; see also Richardson and Ryder 2012). The local MP said in parliament he had “no problem with law-abiding Travellers” (Quarmby 2010: 10) – it was the outlaws *misusing* the space he disliked.

Prohibitions against so-called ‘vagabonds’ in the form of anti-nomad laws, and numerous vagrancy Acts have been prevalent from the 16th century onwards. Punishment included expulsion, deportation and even death (Fraser 2007: 123-126). The effect of enclosure on the commons prevented the migration of Gypsy groups who followed seasonal labour routes: hence, “the land available to Gypsies and Travellers disappeared” (Quarmby 2013: 21; see

³ Katherine Quarmby notes that “Limited planning permission had been granted to a small number of English Gypsies in the 1990s on a site adjoining Dale Farm” (2013: 3-4).

also Bancroft 2000). Vagrancy was denounced as an ‘infestation’ of the country (Eccles 2012), increasing hostility and entrenching the belief in Gypsies as “vagrants ... disturbing the social order” (Quarmby 2013: 23).⁴ Yet, despite this spectre of the nomad as a “threat” to the settled society (Gilbert 2014: 2), they were simultaneously romanticized as the ‘wandering stranger’, living off the land in opposition to the rigid conformity of modernity, trapping Roma within “romantic but nonetheless repressive projections” (Sigona 2005: 746) [which are] “objectified through the law” (Sigona 2005: 749), “noble savages [living apart and] untouched by civilization” (Hancock 1997: 204) yet penalized by a series of increasingly restrictive laws.

In 1960, the Caravan Sites Act stated occupation should be determined on the basis of a license and could be prohibited through council order, which prevented Gypsies and Travellers from “using the vast majority of their traditional stopping places” (Quarmby 2013: 48), although the 1968 Caravan Sites Act placed a duty on councils to provide stopping sites, which was acknowledgement of the right to live a nomadic lifestyle (yet this ambivalent definition also meant that Gypsies and Travellers “could lose their legal status if they ceased to travel” (Greenfields and Home 2014: 137)). Nevertheless, evictions and resistance to provide suitable halting sites led to the establishment of a conflict where the interests of the Gypsies and Travellers were set against the interests and entitlements of the “settled community” (Quarmby 2013: 64), which came to fruition in the Criminal Justice and Public Order Act 1994, which “abolished any statutory protection to provide accommodation for Gypsies... and made it a criminal offence, with heavy sanctions, to camp on land without the owner’s consent” (Greenfields and Home 2014: 137). Such draconian legislation, ostensibly directed at raves and New Age Travellers in a Thatcherite era, meant that “[e]ven the shortest of stays at a traditional stopping place was now a criminal offence” (Quarmby 2013: 72). This ‘movement in law’ can be recognized as “another act of enclosure, a further assertion of exclusive rights by those who claim to own the land” (Monbiot 1995).⁵

Writing about the Dale Farm evictions, Katherine Quarmby relates that the debate over what was described as an ‘illegal’ site appeared to feed into a shaping of space, framed as an issue

⁴ Abby Bardi writes of how, “[i]n rejecting conventions of property and ownership in post feudal society, Gypsies became a convenient receptacle for anxieties about other social mores” (2008:113).

⁵ Although subsequent legislation – including the Housing Act 2004 and Circular 1/2006 – placed a requirement on local authorities to address the allocation and provision of sites, the paradigm for space as a condition of ownership was established.

of dispossession and illegality, when in fact this was “land they owned, but for which they did not have planning permission” (Quarmby 2013: 90). A concept of invasion and a threat to the very land itself was intrinsic to the socio-legal construction of the Gypsy Traveller,⁶ through the narrative of the encampment as a “breach of the law” (Quarmby 2013: 130).

A way out of the nomadic vs settled binary

This is why I needed to find a way out of this limited paradigm of ownership, and why I have a problem with the idea of marginality. This is why I think it is problematic that Quarmby identifies that “occupying land illegally was a kind of self-help resistance campaign” (2013: 93) where reactions against nomadism are seen as a guarding of the nation-state as it is authorized through law, rather than being read in the context of the shaping of space.

The idea of these Gypsy camps as situated on the periphery is problematic, in this reading: it should be possible to recognize that stopping places are often blighted sights (Cemlyn et al 2009: 9), but I take issue with the construction of spatiality explicit in the assertion that these families stop “on the margins” (Jones 2007: 384). Arguing that “[s]topping-places were used for hundreds of years *until* they were enclosed by law” (Quarmby 2013: 185) [my emphasis] plays into the idea of enclosure itself: it limits space along the claustrophobic lines of sovereign power as inseparable from law’s enactments. The idea of being “itinerant *because of* legislation” (Hancock quoted in Quarmby 2013: 241) [my emphasis] thus leaves intact this concept of space as a static receptacle, which is highly problematic. The only ‘alternative’ to this violent contestation is seen as either assimilation, or strictly controlled ‘legitimate’ segregation, which can be seen in, as the Romani poet Charlie Smith puts it, those “kept at a distance on the reservation[s]” (1995: 26) around the world.

This is what Morley explores in his poem. The encounter between John Clare and Wisdom Smith is not one of *resolving* space. As Sarah acknowledges, legal geography has gone some way to exposing the fiction of “space [as] the blank area in which law takes place, or upon which it acts” (2014: 21). Morley writes that, “John Clare writes air between his words. He senses his friend beside him” (‘The Pen’). This brief and punctuated passage is broken by a wide gap, between parentheses, carved into the page. There is a different contention of space

⁶ Although the Commission for Racial Equality and its successor the Equality and Human Rights Commission (EHRC) came out (albeit infrequently) in support of grassroots Gypsy and Traveller organizations, it was often no match for the weight of this socio-legal framework, partially encouraged through case law which identified a special and distinctive group identity.

here, in the literal blank openings and Morley's tightly woven structure: where enjambment constructs not terra nullius but an elsewhere that is also a definite here: Morley writes that "Wisdom has wended/below the horizon to an earth beyond Northamptonshire.... /By now the room and world are in a spin, one around the other – a gyroscope buzzing inside a gyroscope" ('The Pen'). There is perpetual motion, not without restrictions or spatial limitations, but recognized as a conditioning and conditioned force.

The absence enclosed between square brackets, is there to be acknowledged. In other words, we must go beyond much of the work done in legal geography to theorize law and space in conceptual terms: just as it is not enough to say that Morley leaves this gap, or 'blank space' behind, neither can we adopt Delaney's vision of the indivisible nomosphere (2010), nor argue that law is inescapable, "everywhere in space but also, and somewhat more radically, how space is everywhere in law" (Stramignoni 2004: 184), as this diverts attention from the complex idea of space as loaded, as *both and* neither inside *and* outside. This totally re-frames the concept of nomadism, and demands a re-interrogation of relations of power; particularly evocative in this work is where Sarah explores the concept of 'taking space with you' (2014: 8), which for me, is a radical critique of the anti-nomadic emphasis of the law.

In her introduction Sarah claims that her book "does not produce a manifesto or agenda for...effective political change" (2014: 9), but I would argue that in calling for "a deeper unsettling of space" (2014: 9) it *is indeed* a manifesto, or at the very least, it could be. So I would ask Sarah these questions: what alternative political strategies might arise from a reconceptualization of space in law? What ethical considerations must we take into account if we are to endorse Massey's "call for a normative framework of 'geographies of responsibility' [which] allocates responsibility according to the relations and connections that constitute different spaces ... rather than following the legal model of allocating responsibility according to the acts of individual subjects" (Keenan 2014: 54-55)? Can law facilitate such dynamic multiplicities and what would it look like if it did?

I would argue law is not capable of adapting to such a framework: how could the legal system cope without this singularity? Does it just have to remain at the order of a transient "reference system" (Keenan 2014: 59)? In other words, how do we get beyond the conceit of the possessor/dispossessed? What becomes of the nomad and can the term 'outlaw' ever be a useful concept in the spatial reading of law?

If “property [is what] happens when space holds up a relationship of belonging” (Keenan 2014: 65), can space ever “unravel” (Blomley 2003: 32) if subjects ‘take the space with them’: is there, then, a space where one can be ‘left behind’? I would construct this as the absent presence in Morley’s blank space on the page between parentheses.

But do we risk returning to terra nullius, albeit in a different form? Is there, perhaps, ethical value in defining a limit within the critical project of ‘contesting closure’ (Holder and Harrison 2003: 5), and do we want to, indeed, go further than this to radically redefine what ‘dispossession’ might mean in the context of the spatial critique?

Sarah argues that “A space of belonging is a space of propriety – a space where being properly or improperly orientated affects what is possible for the subject” (Keenan 2014: 85): I would ask Sarah, and then, what *is* possible for the subject? Where do critical legal scholars need to go in defining this possibility? What is next for the reading of space in law?

Can I finally, congratulate Sarah warmly, on the production of a book that asks these critical questions, interrogates the complexity of the “relation between space and the subject – a relation that raises new questions regarding how subjects move through, belong to and constitute ever-evolving spaces” (Keenan 2014: 39). Sarah’s work does more than open up the debate: it challenges the foundation of a dominant legal narrative which says that there can be those who are always relegated to the realm of the dispossessed, and this is where it ends.

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Appendix

The Pen

John Clare writes air between his words. He senses his friend beside him []. But Wisdom has wended below the horizon to an earth beyond Northamptonshire. The poet lets his pen fall. It rolls on a bearing to the door. Clare follows it with his eye. The nib tuts over the stone floor writing its way across a world as if held by an invisible child. It pricks at his knee with its one claw, a kitten pawing to be held. John reaches down; then howls as the pen stabs his hand. He yanks at the thing. Flesh-suction grips and the wound tightens like an anemone of ink. By now the room and world are in a spin, one around the other – a gyroscope buzzing inside a gyroscope. ‘If I could win a name through poetry and sacrifice friendship for that prize’ – the pen rattles loose. John sinks to the floor. He senses his poem beside him [].

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Taken from *The Gypsy and the Poet* (Manchester: Carcanet Press, 2013)