

Law, Property, and State, and Violence

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Physical violence, whether realized or implied, is important to the legitimation, foundation, and operation of a Western property regime. Certain spatializations—notably those of the frontier, the survey, and the grid—play a practical and ideological role at all these moments. Both property and space, I argue, are reproduced through various enactments. While those enactments can be symbolic, they must also be acknowledged as practical, material, and corporeal.

[L]aw is a creature of both literal violence, and of imaginings and threats of force, disorder, and pain [I]n the absence of such imaginings and threats there is no law . . .

—Sarat and Kearns (1992a, 1)

Diverse scholars have long identified a relation between state law and violence.¹ For John Locke, three hundred years ago, the sine qua non of political power was law's right to create the penalty of death. More recently, Max Weber defined the state and its law as that which monopolizes the violence that is transformed into legitimate force within a territory. Derrida (1990, 925) has argued that "[L]aw is always an authorized force. . . . [T]here is no such thing as law . . . that doesn't imply the possibility of being 'enforced', applied by force" (emphasis in original). Political geographers have also acknowledged a special linkage between violence and the state more generally (East and Prescott 1975, 3; Muir 1975, 80; Johnston 1990, 559).

Yet despite the routine association between law and violence within Western political theory, it still sticks in the throat. In providing the definition in political geography classes, for example, I have found a hesitation from the students and myself. We mouth the definitions, but hurry from their implications. This is because, of course, violence and law appear antithetical. Liberalism tends to locate violence in law, positing state regulation as that which contains and prevents an anomic anarchy. The rule of law is deemed superior, given its ability to regulate violence in a civilized and humane way. The result, as John Keane (1996, 7) notes, is a "frozen political imagination" towards violence.

This article, drawing from a small but important literature (for example, Cover 1986; Brady and Garver 1991; Sarat and Kearns 1991, 1992a, 1992b; Agamben 1998), seeks to contribute to the analysis of law and

violence. Much of this writing, not surprisingly, concerns capital punishment (for example, Sarat 1994, 2001) where the relation, although complex, is more evident. This article, however, focuses on violence's relationship to private property in land. I will argue that violence plays an integral role in the legitimation, foundation, and operation of a regime of private property. In so doing, I seek to make a second claim concerning space. Despite our own discipline's violent entanglements, geographers have also or benefit of land. Such a right is necessarily relational, being held against others. Put another way, property rights "regulate relations among people by distributing powers to control valued resources" (Singer 2000b, 3). Property's "bundle" of rights includes the power to exclude others, to use, and to transfer. Such rights are enforceable, whether by custom or the law. Defined thus, such rights can include both a share in a common resource and an individual right in a particular thing (MacPherson 1987). For the purposes of this article, I focus on the latter.

Despite its apparent individualism and rarefied legal appearance, private property must be acknowledged as social and political in its effects, origins, and ethical implications (Hollowell 1982; Boulding 1991; Singer and Beerman 1993; Rose 1994; Singer 2000a). As Hollowell (1942/1943, 133) argues,

of the borderline we find agencies of order such as Reason (), Law (), or right () confronted with chaotic, blind, and brute forces of pure violence () on the other side." Arguably, law is possible only to the extent

economic activity. The colonial landscapes of North America, he claimed, offered a striking contrast between the domain where property and security coexist and its antithesis—the violent spaces in which property is absent:

The interior of that immense region offers only a frightful solitude; impenetrable forests or sterile plains, stagnant waters and impure vapors; such is the earth when left to itself. The fierce tribes which rove through these deserts without fixed habitations, always occupied with the pursuit of game, and animated against each other by implacable rivalries, meet only for combat, and often succeed only in destroying each other. The beasts of the forest are not so dangerous to man as he is to himself. But on the borders of these frightful

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law—the relation between $\text{dom}(\nu)$ and $\text{dom}(\mu)$, with no obligation other than to hold and use for personal profit—began to be applied with a vengeance” (Tigar and Levy 1977, 206).

Maps and cadastral surveys are generally treated as the handmaiden of property, or as a model of the real world (Dickinson 1979, 32). Andrew McRae (1993, 1996), however, emphasizes the active role of the survey in this transformation, both through the map itself and through

it . . . depended upon force to achieve its essential purpose: the *“a politics of fear.”* Summary executions, show trials, corporal punishment, and attacks of native settlements were frequent (cf. Galois 1992).¹⁹ But even after the establishment of a state presence in the area that was to become Greater Vancouver in 1858, the threat of violence was still present, even if its actual use was moderated somewhat: “Battles were unnecessary; shows of force and a few summary executions did much to establish the new realities. In a newly acquired territory where other forms of control were unavailable, the quick, brutal, episodic application of sovereign power established its authority, and fear bred compliance” (Harris 1993, 67).

Colonialism also marked the creation of new spaces of property. In a few short decades, the geographies of property underwent a fundamental redrawing, as the systems of land ownership of the various First Nations who had used and settled the area were obliterated and subdivided by European settlers. The process by which that redrawing occurred entailed a variety of localized processes, including disease and economic disruption. It also seemed to have involved a variety of representations of native people and land on the part of the dominant society that made aboriginal title transient at best. Colonial ideologies in British Columbia held that native peoples “had been and remained primitive savages who were incapable of concepts of land title and who most certainly should not be perceived as land owners” (Tennant 1990, 40). But this transformation was also predicated on practical activity, in which the survey played a critical role (Clayton 2000). Thus, within British Columbia, a detachment of Royal Engineers was charged with mapping out land parcels and tiny native reserves in the area that would become Vancouver, facilitating an incredibly rapid redrawing of the geography of the area.

But violences, either implied or actual, were undeniably present (Blomley 2000). Such violences were not simply a secondary adjunct to the discursive realm (for example, the instrument through which ideology was put into practice), but were of importance in their own right as a vector of colonial power. Again, violence was not only an *“of law, but its . . .”*²⁰ The establishment of a Western liberal property regime was both the point of these violences and the means by which violent forms of

said, violence—whether threatened or implied—is one means through which law acts in the world. Violence is not aberrant, but central to law. It is not exceptional, but quotidian. Violence is not only a product of power, but also its vector.

forms of individual and social behavior that are attentive to others. In turn, such forms of behavior become part of the habitus, second nature to social actors. Hence, with modern society, "physical violence is confined to barracks; and from this storehouse it breaks out only in extreme

owner and others (including nonowners): "In property law

notions of common or public property. In this sense, property rights are like all others: they have an expansionary logic (Bowles and Gintis 1987; Blomley and Pratt 2001).

Yet recognition of the progressive potential of property must not blind us from an acknowledgement of the often-oppressive effects of its workings and social

instrumental importance of “imaginative geographies” in dispossession and domination (Said 1979). Struggles over space are not only “about soldiers and cannons . . . but also about ideas, about forms, about images and imaginings” (Said 1993, 7). The enactment of property, in both its routine and extreme forms, obviously entails persuasive narratives, the construction of meaning, and representations. Yet in thinking, for example, about dispossession, I am left with an unease at the rapidity with which the “soldiers and cannons” are skated over or rendered secondary to discourse, where discourse is treated as always and only textual and linguistic.

While violence can itself be “persuasive” (that is, discursive), my argument here is that it also has an important materiality. In focusing exclusively on the discursive dimensions of law and property, we forget the physicality of law, including its material violences (Cheah and Grosz 1996; Wealt 1996; Hyde 1997). The challenge, then, becomes one of thinking through the ways in which violence entails both practice and representations. This is not easy, however; indeed, for some the task is impossible, in that violence takes us beyond words.³⁴ But law is not just a language game. Its discourses cannot be isolated from material practice, but must be thought of as dialectically related to them (Greenhouse 1992; Coutin 1995). In ignoring this corporeality, we threaten to “prettify the force and violence out of the law” (Weisberg 1992, 178).³⁵ Cover (1986, 1605) insists that law “is never just a mental or spiritual act. A legal world is built only to the extent that there are commitments that place bodies on the line. . . . It reminds us that the interpretive commitments of officials are realized, indeed, in the flesh.”

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If we are interested in the geographies of law, we would do well to attend to its violences (Blomley, Delaney, and Ford 2001). At the same time, an attention to violence is incomplete without a critical geographic imaginary. Violence is important to property in terms of its origins, actions, and legitimations; yet such violences are also powerfully geographic. Space gets produced, invoked, pulverized, marked, and differentiated through practical and discursive forms of legal violence. And property’s violence is itself instantiated and legitimized, yet also complicated and contradicted in and through such spaces.

The geographies of property, like the geographies of power, must be treated as “an integral, rather than an additional, part of the picture” (Allen 1999, 205). I have tried to suggest that spatiality makes a difference to the

effects and modalities of property’s violence in particular ways. The frontier, which appears as a neutral boundary, serves as a condition of possibility for property’s violence, distinguishing and constituting at one and the same time. The survey is deeply implicated in the often-violent establishment of property regimes, serving as a practical form of networked power. At the same time, the surveyor plays an important role in the inauguration of a particular view of space as detached and alienable and thus is deeply implicated in the ideological creation of property. The distinctions between property regimes that the survey helps constitute are themselves dependent on deeply entrenched differences between those forms of property that lie within the frontier and those that lie without. The survey, moreover, is a practical act that produces the grid. Violences here are operative internally, as a form of self-despotism. More importantly, those who transgress the grid or are hard to place within its meanings can experience legal violences—often in the name of property—in very direct ways. Again, the naturalness of the grid and its distinctions can naturalize those violences.

That said, if space is a powerful medium through which property is enacted and by which its violences are legitimated, we must also acknowledge that the relation can become a little more ambivalent. The spaces of violence—such as the survey, frontier, and grid—must be recognized as social achievements, rather than asocial facts (Butler 1991). As such, we are forced to recognize their contingency and ambivalences. Socialized space can prove contradictory—for example, forcing forms of state violence that may work against its very legitimacy (cf. Watts 1997). The enactment of property is never completely contained by dominant regulatory norms but, like power more generally, is open to “inventive reinterpretation, fluid negotiation and subtle translation” (Allen 1999, 205). The success with which the “doing” of property occurs is always and ever conditional and contingent. Technologies may fail. Social networks may unravel. Social subjects may, of course, intentionally rework or contest the performances to which they have been assigned. But this is by no means necessary: individuals need not consciously fashion resistant practices to be engaged in political projects. The complexities of doing may lead to practices and discourses that complicate, compromise, or contradict the “imperatives” of dominant orderings. I can only hint at some of these ambivalences here; they point to the need for further research (Blomley forthcoming).

For example, while the legitimation of law’s violence is predicated on the construction of a space of the Same (reason) from which the Other (violence) is excluded, the

Other is always present in that Space: “[R]eason and violence do not live in different worlds” (Waldenfels 1991, 101).³⁶ This can force legal violence to reveal itself when threatened: “If reason wants not only to be valid but to

version of the rule of agricultural economics, which declares that the best land eventually goes to the best farmer.”

8. Not only is law founded through violence, but violence is itself constituted by law. For example, legal definitions of the beginnings of biophysical consciousness or the moment of brain death are the basis for determining what acts can be done to the body, such as abortion or organ removal (Skouteris 2001).
9. Fitzpatrick (1991, 80–81) notes that the violences associated with the establishment of law and order in the colonies were deemed insignificant in comparison with the “violence and disorder of savagery.” The two projects of deterritorialization and reterritorialization, of course, were not unrelated.
10. Harvey (1993) estimates that only a dozen maps survive from the second half of the fifteenth century. Around two hundred maps remain from the first half of the sixteenth century, compared to eight hundred from the second half.
11. Although, as Butlin (1979) notes, there were distinct spatial variations in agrarian change.
12. Along with the husbandry manuals of the day, surveyors treatises increasingly encouraged an individualized and monetarized view of property, although this was frequently mixed with defensive justifications or echoes of premodern sensibilities, reflecting the often hostile reception from some quarters of the surveyor (McRae 1996). See, for example, John Norden’s ([1618] 1979) remarkable “surveyors dialogue.”
13. The survey also relied upon and advocated for modern survey techniques and standardized mensuration. For discussion of the shifts in spatial metrics and their social implications, see Blomley (1994, 67–105) and Kula (1986).
14. Tawney (1912, 321) argues that although the early seventeenth century saw the last serious agrarian revolts, the folk memory lingered on, reappearing with the Levellers, who condemned enclosure, and the Diggers, who sought to “convert the waste land at Weybridge into the New Jerusalem.” Struggles over land continue in England, as evidenced in the “The Land is Ours” campaign, which often draws from these early modern precedents (TLIO 2002). Similarly, state violences, often under the sign of property, continue to target property’s outlaws, including gypsies, squatters, New Age Travelers, hunt saboteurs, and environmental protestors (Justice? n.d.).
15. For example, by deploying women to destroy fences and hedges, given the presumption of their innate lawlessness.

29. Some scholars, such as Cover (1986) and Derrida (1990), seem to see violence as an inevitable and metaphysical component of any legal form to the extent that violence is "inflicted wherever legal will is imposed upon the world, wherever a judicial decision or a legislative act cuts, wrenches, or excises life from its social context" (Sarat and Kearns 1991, 210; see also Cheah and Grosz 1996). Fraser (1991, 1328), however, consciously forswears "quasi-transcendental reflection on the 'violence' that must inhere in . . . possible legal institution in favor of analysis and . . . critique of the forms of . . . structural violence that enters into social processes of judging in, for example, the legal system."
 30. Keane (1996, 79, 50) draws on the American Revolution to argue that violence can also create bonds of solidarity, and points to the British peace movement as part of a "politics of civility," seeking to "ensure that nobody 'owns' or arbitrarily uses the means of state violence against civil societies at home and/or abroad." Foote (1997, 334) goes so far as to argue that "[v]iolence should be seen . . . as a regenerative force, one capable of refining and forging a new society."
 31. This seems an important task for other reasons. It hopefully provides a counter to the triumphalism that surrounds property, particularly with the collapse of the Soviet bloc. "As the twentieth century draws to a close," trumpets one panegyric, "the benefits of private ownership for both can be phasing with 'infliso whichne"
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In *...*, ed. H. S. A. Fox and R. A. Butlin, 65–82. Institute of
British Geographers Special Publication, No. 10. London:
Institute of British Geographers.
Carter, P. 1988.

