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## ENTANGLEMENTS OF LAW AND SPACE: AN INTRODUCTION

**Abstract.** Introduction to the thematic volume of *Acta Universitatis Lodziensis. Folia Iuridica* – devoted to the issue of law and space – provides basic context for the publication, placing special emphasis on the current state of legal geographical inquiries conducted by Polish scholars. Moreover, it briefly presents each article in the volume and comments on articles’ selected aspects to show how they can be located within the entire broad legal geography scholarship.

**Keywords:** legal geography, non-places, Israel–Palestine, Recovered Territories of Poland, crime mapping, spatial analysis of crimes, Viking–Laval case, personal law.

## SPLĄTANIA PRAWA I PRZESTRZENI: WPROWADZENIE

**Streszczenie.** Wprowadzenie do tematycznego tomu *Acta Universitatis Lodziensis. Folia Iuridica* – poświęconego zagadnieniu prawa i przestrzeni – omawia jego zasadniczy kontekst, kładąc szczególnie nacisk na aktualny stan geograficzno-prawnych analiz prowadzonych przez polskich uczonych. Ponadto wprowadzenie zwięźle przedstawia każdy z artykułów w tomie i komentuje ich wybrane aspekty, by ukazać, jak mogą być umieszczone w całym szerokim nurcie geografii prawnej.

**Słowa kluczowe:** geografia prawna, nie-miejsca, Izrael–Palestyna, polskie Ziemie Odzyskane, mapowanie przestępczości, przestrzenna analiza przestępczości, sprawa Viking–Laval, prawo osobowe.

This volume of *Acta Universitatis Lodziensis. Folia Iuridica* is devoted to investigations concerning different forms of law-space entanglements. They are analyzed by Polish scholars, who, even though all have a background in law, in fact represent different research approaches and even different legal disciplines. Consequently, readers can find in this volume both “soft” – qualitative or even purely theoretical deliberations – as well as “hard” quantitative research reports. Moreover, the authors in this volume conduct their research as sociologists of law,

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historians of legal and political doctrines, and legal philosophers and theorists – both critically/continentally and analytically oriented. Despite their different academic legal affiliations and traditions, in this volume they all exhibit an interest in how law relates to space and how space relates to law. However, it should be stressed up front that not all of the contributions in this volume express an unwavering conviction on the value of the spatial problematization of law.

Leaving this particular issue for later, it is more important to stress at the beginning that although broadly understood legal geography is a vigorously developing research current that provides many interesting and promising avenues for a diverse array of scholars interested in law and legal phenomena (for a brief, relatively up-to-date overview, see, for instance, Derman 2020), in Poland it is still relatively unknown and rarely practiced. Without going into possible reasons for this, it is not to say that legal-geographical problematics is completely absent in Polish legal scholarship. On the contrary, the situation is changing, which is evidenced not only by single papers tackling such problematics (for instance, Mańko 2019, who addresses the delimitation of Central Europe from the rest of Europe), but also by entire book-length publications. The book we co-edited with Marcin Wróbel in 2018 was the first Polish volume dedicated to law-space entanglements. *Przestrzenny wymiar prawa [Spatial Dimension of Law]* (Dudek, Eckhardt and Wróbel 2018) contains highly original studies on legal cartography (Ptak-Chmiel 2018), crime mapping (Szafrńska 2018), explication of the phenomenon of honor through spatial concepts (Klakla 2018), theoretical framework for courtroom architecture analyses (Stępień 2018), multidimensionality and nonlinearity of borders on the example of Israel and Palestine (Górska 2018), single-sex public transportation in India (Drwal 2018), locations of refugee centers in Poland and their implications (Nazimek 2018), spatiality and territoriality in Polish mountain pastoral communities (Wróbel 2018), spatial consequences of selected examples of Polish People's Republic's legal regulations (Eckhardt 2018), and the Sunday trading prohibition that recently came into force in Poland (Dudek 2018).

Obviously, in comparison to how legal geography is developing in other countries like Israel or Australia, there is still much to do in Poland, in the sense of the mere quantity of legal-geographical studies that could be conducted. Nevertheless, we believe that the works presented in this volume of *Acta Universitatis Lodzensis. Folia Iuridica* and other already published works of Polish scholars propose substantial contributions to the dynamically developing studies on law and space. To convince readers of this, in the remainder of this Introduction we do not focus on giving a general impression on what specific articles are about (in the end, this function is realized by abstracts). Rather, we will try to present how particular articles in this volume or their specific parts correspond to various threads in the relevant literature and in what way they can be read as suggestions for some reflection on and future research in legal

geography. Having said that, we would also like to stress that the following remarks are nothing more than our own interpretations and opinions. Obviously, the presented articles can be seen differently than what we propose. Nevertheless, we decided to provide some commentary to put each contribution in a broader context and also explain the structure of the entire volume.

The volume begins with the article of Michał Dudek. In comparison to the rest of papers, his contribution can be regarded as the most general, tackling not so much a specific, delimited case of law-space entanglement, but engaging in theoretical discussion concerning one of the more influential spatial concepts in the humanities and social sciences. Namely, noting a significant neglect by legal scholars (legal geographers included) of Marc Augé's concept of non-places and conducting a law-sensitive close reading of the Augéan account (mostly Augé 2008), Dudek argues that law is in fact constitutive for non-places and that their legal nature is already between the lines in Augé's *Non-Places: An Introduction to Supermodernity* (orig. *Non-lieux, introduction à une anthropologie de la surmodernité*). In a way, then, Dudek's piece can be likened to many other studies that analyze various spatial concepts and theories – at first glance non-legal – from a broadly understood legal perspective and, for instance, show their relevance for understanding law and its functioning (for example, Butler 2012 on Henri Lefebvre's theoretical contributions). Specifically, in finally addressing Augé's non-places from a legal point of view, it can be regarded as filling a notable gap in a more theoretically-oriented legal geography.

The second article presents Ewa Górska's continuation of her interest in Israel–Palestine spatial politics (see Górska 2018). Drawing inspiration from Edward Said's concept of imagined geographies, she proposes a concise account of how Israel realized and still realizes, through its successive legal regulations, its projections with respect to Palestinian lands. Obviously, Górska's subject of interest can be considered as one of the more classical threads in legal geography, every now and then provoking new analyses (see relatively recent, Kedar, Amara and Yiftachel 2018). Her contribution tackles a number of interesting dynamics between imagined geographies and material and legal (in)existence of certain sites. One can read the following sequence from Górska's analyses. From Israel's perspective of rich and detailed imagined geographies, a certain actual, material state of Palestinian lands should be inexistent to make room for the realization of various projections. Before though these projections can be brought to life in a material, physical sense, they are specifically mediated through legal regulations. What is especially thought provoking and suggestive of further investigations is Górska's suggestion that law's inherent vagueness and low specificity with respect to the immense richness of legal regulations' objects (like existing sites incongruent with imagined geographies) is the feature that efficiently enables the realization of projections. In accordance with specific regulations, some materially existing site can be declared as legally inexistent. Such a lack of recognition

provokes and justifies some material actions that are intended to realize a declared legal status and thus take a significant step toward bringing to life imagined geographies. Naturally, there can and should be some questions with respect to this sequence suggested between the lines by Górska, most importantly about its adequacy not only with respect to Israel–Palestine, but also to other instances of broadly understood intergroup conflicts. Perhaps this sequence repeats throughout history? Such a question is justified because some of the other complex issues mentioned by Górska are indeed noticeable in contexts other than Israel–Palestine relations. For example, she briefly addresses the politically motivated practice of changing names of specific sites through legal regulations – the issue that is also a subject of interest in the next article in the volume, but which analyzes a completely different situation.

In the third paper, Piotr Eckhardt continues his highly original, unprecedented project to “spatialize” the law of the Polish People’s Republic; that is, to analyze its various legal decisions and regulations from the perspective of their impact on space, including its very ordinary, everyday sense. Unlike in his previous work, however, in his contribution to this volume Eckhardt does not address regulations enacted in the Polish People’s Republic long after the end of World War II and concerning more mundane issues like passports or the permissibility of residing in the capital, Warsaw (see Eckhardt 2018). His current article invites to consider a much more foundational aspect for the Polish People’s Republic – how the space of western and northern lands (so-called Recovered Territories, as they were not within Polish jurisdiction before the war) was treated in the Polish legal system. Eckhardt carefully investigates what regulations were issued for these lands immediately after the war, what they contained, and how they can be understood. On this occasion, he tackles the same issue as Górska – legally-mediated renaming of certain sites. In light of such an explicitly recurring theme in both Górska’s and Eckhardt’s contributions and its more implicit, between the lines, presence in many other relevant works (see, for example, Trbovich 2008, 434), one can propose that scholars working in legal geography should perhaps theoretically deepen such remarks. Not to be groundless, it is actually surprising that the well-known concept of a palimpsest is so rarely explicitly used in a spatio-legal context (but see the exception of South Africa’s Constitution Hill, for instance: van Merle, de Villiers and Beukes 2012, 567). Similarly is in the case of the ultimately broader issue of toponymy. While research on place-naming practices is not oblivious to law’s relevance to them (see, for instance, Rose-Redwood, Alderman and Azaryahu 2010, 465), so far legal geography does not appear to use this specific resource. However, one can ultimately say that both Górska and Eckhardt are actually addressing specific palimpsests – stacking, successive resignifications (renamings) of certain sites. Moreover, their articles are reminders of law’s highly significant role in that place-naming processes.

Keeping in mind the important call to stop thinking in binary categories of law and space and instead to think about their mutuality and codependence (for example Blomley 2003), for the sake of this short Introduction to the volume we can still say that Górska and Eckhardt are interested in how law influences space. In turn, the next two articles can be seen as tackling the issue of space's relevance for the law, but in more indirect way than is usually done in legal geography literature. Specifically, they are reports from original quantitative studies on the spatial distribution of, and spatial factors underlying, criminal acts. Even though they are both interested in space's broadly understood influence on crime, these particular dynamics have further consequences to real estate prices, a sense of safety, and, last but not least, changes in law enforcement strategies applied to given regions or even changes in law itself. In the end, in city districts with high crime rates one can expect that prices for houses and apartments will have to be decreased in order to attract potential customers, who may have reasonable concerns about a given "criminal" city region. Obviously, high crime rates can also cause increases in the number of police patrols or even amendments to some relevant regulations. Naturally, these space-crime-law dynamics are sketched here in very broad strokes, but this reminder of them is necessary because the fourth and fifth articles are ultimately focused on one part (space-crime), leaving the entire dynamics for readers to "guess" for themselves. With this reservation, we can say what exactly can be found in the two papers following Eckhardt's piece.

The fourth article, by Jan Bazyli Klakla, Ewa Radomska, and Michalina Szafrńska, is a continuation of their studies of crime mapping (see Klakla and Szafrńska 2017; Szafrńska 2018). In their contribution here, they carefully present and discuss their research on Kraków's (Poland) land use and facilities and their influence on the spatial distribution of property crimes. In the fifth article, in turn, Andrzej Porębski presents and explains his hierarchical cluster analysis of crimes in Baltimore (U.S.), as conducted on the basis of official, open access police data. Needless to say, these articles go well together. Because of this, they can be commented on here simultaneously. The already-suggested issue of expanding inquiries from space-crime analyses into a full account of space-crime-law dynamics is not crucial in their case. Moreover, realization of such an ambitious task requires much more space than allowable in *Acta Universitatis Lodzensis. Folia Iuridica*. In our opinion, in the context of the current state of legal geography, it is more important to notice that when it comes to empirical research, legal geographers use "soft," interpretative, qualitative methods, and seem to avoid "hard," quantitative tools (see, for instance, Gillespie 2020). Meanwhile, criminological research on space and criminality – to which both Klakla, Radomska and Szafrńska, and Porębski refer and which is in fact highly relevant for inquiries about space and law – successfully utilizes sophisticated quantitative methodology, a part of which is presented in these papers. In other words, it seems that legal geography should perhaps engage in dialogue with

other legally- and spatially-sensitive research currents that are also acquainted with quantitative tools, for example, environmental criminology and crime mapping, even more so because it is still surprisingly difficult to find attempts to compare and combine legal geography with such currents (but see the brief remark by Benforado 2010, 832, footnote 24 on environmental criminology and legal geography). Obviously, not only the mere process of production of legal geographical knowledge can benefit from discussion on and application of quantitative research methods. The way this knowledge is presented – crime maps, in the context of both discussed articles – also deserves some careful reflection, especially in the light of such proposals as critical legal cartography (see Reiz, O’Lear and Tuininga 2018).

While all of the aforementioned articles try to fill some notable gaps in current legal geographical scholarship and also can be read as suggesting some new research avenues for it, they all seem to generally consider legal geography as a very promising, widely applicable enterprise. However, as already suggested above, not all papers in this volume are similarly positive and optimistic. The penultimate article seems to be more skeptical about the applicability of spatial problematization to the law. Rafał Mańko’s paper is devoted to discussion of the adequacy of interpretations of important Viking and Laval cases, tried by the European Court of Justice. He juxtaposes the spatially-indifferent interpretation according to which these cases are ultimately about basic, even universal economic antagonism between workers and businesses with a spatially-oriented outlook that argues in favor of geographical, regional antagonism underlying Viking and Laval. In light of this second interpretation, the cases in question are in fact concerned with conflict between the center and periphery of Europe – Western and Central Europe, respectively. Mańko carefully argues in favor of the spatially-indifferent view and rejects the spatially-oriented one. In the conclusion of his article, Mańko advocates the need to be very careful in trying to conduct spatial analyses of law, which can be read as a suggestion that not every part or aspect of law is suitable for “spatialization.” If this interpretation is correct, then one can say that Mańko proposes a significant counterpoint to all those who argue that literally everything in/of law is spatial (see, recently, Layard 2020, 237). This then should provoke a discussion on who is right: those like Antonia Layard or those like Mańko? If the latter would win such a competition, then a fundamental research avenue emerges – what boundary conditions should be met by various legal acts, decisions, or phenomena so that their legal-geographical analyses would be justified? Without prejudging who is right in our opinion, we firmly believe that those identifying with legal geography should engage in discussion on its limits or limitlessness (with respect to law), especially in light of some other reflections and comments on this field of research and its underlying assumptions (see, for instance, Orzeck and Hae 2020).

The seventh and last paper in the volume can be read as a suggestion of what exactly should be considered in such a discussion, especially one that tackles the aforementioned issue of boundary conditions for legal-geographical analyses. In his piece, Hubert Izdebski provides a concise commentary – conducted mostly from the perspective of legal history and comparative law – on personal law, that is, rules that are applied under the condition of people’s affiliation to a given group (mostly ethnic or religious). Obviously, personal law can be seen as in opposition to territorial law – applying given law to particular situations, when they happen in a specific territory (mostly within the borders of a given country). In short, in the personal-territorial law opposition what can be regarded as at stake is the issue of the most basic site of law: is it a person or is it a territory? Obviously, Izdebski shows quite clearly that legal reality is not so clear-cut. Namely, he raises an interesting issue of territorialization of personal laws: a situation where national jurisdiction recognizes some personal laws of specific groups that reside within the country’s borders. Leaving this and other threads from his piece aside, more important in the context of our commentary here is Izdebski’s introductory suggestion that personal law is simply unfit for legal geography. If we are not misinterpreting, then this suggestion, and its obvious implication that only territorial law is adequate for legal-geographical studies, are in fact fundamental points to discuss by legal geographers. Of course, this is not to say that the issues of territorial and personal law are completely absent in the literature on the spatial problematization of law (see, for instance, Raustiala 2005). However, it seems safe to say that this opposition has not been discussed in the context of the most basic assumptions underlying legal geography that determine the scope of objects suitable to be analyzed within this field of research.

Having provided our subjective commentary on the articles in the presented volume, there is not much more to say than the following. We not only hope that readers will find the collected papers interesting and inspiring, but also hope that all of the presented findings and suggested research avenues will be deepened and taken up, respectively, not only by the articles’ authors, but also by all those who consider complex entanglements of law and space a fascinating area of research.

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