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Dancing with wolves: Making legal territory in a more-than-human world

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ABSTRACT

As human codings of animals are often simultaneously legal and spatial, it may be useful to bring together the animal geographies literature and scholarship on legal geography. Through a case study set in southwest Finland, we explore the emergent and fraught entanglements of wolves, humans and sheep, characterizing the attempts at the regulation of the wolf as entailing tense biopolitical calculations between the contradictory legal imperatives of biodiversity and biosecurity. Under the former, the wolf must be made to live; under the latter, it may need to die. These are worked out in and productive of two territorial configurations: the everyday spaces of encounter (real or imagined) between wolf and human, and the propertied territories of sheep farming. While human imperatives and anxieties are clearly central to these spatializations, we also seek to give the wolf its due, noting its important role in the making of legal territories. The coproduction of law and space, we conclude, offers important ethical lessons for humans in their relations to the wolf, as well as directing us to the need for more capacious thinking regarding territory.

> "Legal geography is a lively and creative line of scholarship. But it could be livelier. . .."
>
> [Braverman et al. (2014, 12)]

1. Introduction: Dead foxes and the spaces of property

In 1805, Lodowick Post was pursuing a fox in Long Island, New York, with hounds. Jesse Pierson, aware that Post was in pursuit, intercepted the fox, killed it, and carried it away. Post sued Pierson. On appeal, the New York Supreme Court, relying on the doctrine of first possession, awarded title of the fox to Pierson. A dissenting judge, relying on Lockean labor theory, would have awarded the fox to Post.[1]

That the fox is available as an object to be possessed by either man depends on its legal coding according to Roman law as untamed nature (or *ferae naturae*), and as such, un-owned. This status, moreover, rested on a consequential spatial difference to domestic animals. Animals designated *ferae naturae* are those, according to Pufendorf, that 'take greater delight in enjoying their boundless liberty' while domestic animals, for Blackstone, are to be held as private property because they will not stray from the owner (quoted in Blackman, 2011: 427). The propertied status of the fox is also inseparable from its spatial location. It was killed on a beach in Long Island, designated by the court as 'unpossessed and waste land'.[2] Had it been killed on private land, it would have belonged to the landowner, whoever killed it.

How can we begin to think about the complex connections between property and space, and the way in which they express themselves in the relations between humans and nonhumans evident in this case, and the wider world? What role does law, including property, play in the mediation of human–nonhuman relations? How is property spatially mediated, and which agents play a role in the construction of law's spaces? We attempt a preliminary examination of these questions through a case study of recent wolf–human interactions in southwestern Western Finland. We do so in an attempt to help bring together the largely disparate literatures in legal geography, and animal geographies (see also Braverman, passim, Griffin, 2011). And unlike the case above, we do so in an attempt to treat the animal not merely as an object in legal space, but also as an agent of its production.

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[1] Pierson v Post 3 Cai R 175 (NY 1805).

[2] Though see Berger (2006), where it is argued that the dispute in part has to do with the contested status of the land as commons.

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2. More-than-human legal geographies

One crucial legal space is that of territory: a unit of bounded, meaningful space governed so as to organize and regulate access. There has been a resurgence of scholarly interest in territory in recent years, both through detailed genealogies (Elden, 2010, 2013) and creative re-theorizations (Painter, 2010). Yet, with a few exceptions (Brighenti, 2006), the tendency has been to relegate territory 'to questions about the workings of nation-states' (Delaney, 2005: 9). Territory, however, has a multifaceted and recursive relationship with law. Law helps constitute territory in particular ways: as law changes, so does territory (Blomley, 2007; Elden, 2013). Territory also serves as a legally consequential communicative marker, particularly through the meanings attached to the spatial boundary. As Sack (1983, 58) notes, the boundary 'may be the only symbolic form that combines direction in space and a statement about possession or exclusion'. Territory also serves as a powerfully encoded container, organizing and grounding legal identity in particular ways. Liberal-legal identities such as the citizen or sovereign, for example, are inseparable from sharply bounded, zero-sum territorial logics (Murphy, 2013). Territory, however, is no mere product of law, but serves as a crucial instrument in its realization (Sack, 1983).

As law is diverse, operating through varying logics, so territory takes different forms. Property law is one crucial site in which territory is made and put to work, although in complex and dynamic ways (Blomley, forthcoming). Property law seeks to regulate and distribute the complex relations of rights and duties that attach to it. Such relations are materialized in and enforced through a set of territorial relations that establish a particular 'economy of objects and places' (Brighenti, 2006: 75). Relations to others, for example, are partly communicated and enforced through a spatial distinction between an inside and an outside. But such relations are far from straightforward: property law structures territory in multiple ways. Trespass law, for example, governs the act of unlawful entry upon land in another's possession. Strikingly, trespass is actionable even though no actual damage is done: the mere act of boundary transgression is sufficient (Merrill and Smith, 2007). However, territory is not simply a space of exclusion: other domains of law, such as environmental law, may require that property's territory be laid partially open to oversight, access or inclusion (Singer, 2000).

The territory of property serves not only as a communicative marker, but also as a container that helps constitute particular legal identities. Within Western-liberal cultures, property – particularly private property – is frequently coded as a space of security and autonomy. Anglo-American common law culture, for example, frequently draws from the metaphor of the castle to characterize the space of the home. In Finland, from where we draw our case study, one hears the phrase '*Oma koti kullan kallis*': literally, one's home is as valuable as gold. The effect is to treat a propertied space as a defensive shield, protecting a valued interior from an external set of threats. While such metaphors do complex work, and draw from multiple sources, they draw a crucial connection between property, territory and identity (Nedelsky, 1990).

In discussing territory, the tendency is often to make a sharp distinction between animal (ethological) and human (social) territoriality. Similarly, property lawyers routinely define property as a relation between people in regards to a valued resource. The only players (at least, of significance) to the territories of property are humans, the makers of representations, engaged in a power relation that privileges a human namer and consumer (Freeman, 2011: 157). Nonhumans rarely figure, and then almost exclusively in anthropocentric terms. The fox in Pierson is present as a resource (an object of property, to be fought over), or as a problem (the dissenting judge refers to the fox as a "wild and noxious beast", suggesting that the decision should have in view "the greatest possible encouragement to the destruction of [this] animal" (quoted in Blackman, 2011: 424)). As such, law is a crucial means by which the distinction between nature and culture is actively produced, maintained, and complicated (Delaney, 2003). Braverman (2008: 39) observes that law makes, maintains, and reflects the distinction between words and things, *nomos* and *physis*. Through legal acts of naming and numbering, things/animals are reduced into abstractions and manageable objects. Property is one such resource for the production of nature (Graham, 2011).

The coding of animals, as noted, often entails acts of spatial distinction. Animal geographers note a powerful set of assumption concerning the appropriate space of the animal:

> '[Z]ones of human settlement ("the city") are envisaged as the province of pets or "companion animals" (such as cats and dogs), zones of agricultural activity ("the countryside") are envisaged as the province of livestock animals (such as sheep and cows), and zones of unoccupied lands beyond the margins of settlement and agriculture ("the wilderness") are envisaged as the province of wild animals (such as wolves and lions)'.
>
> [Philo and Wilbert, 2000 11]

As noted, legal codings also rely upon spatial categories, such as the connections between independent mobility and *ferae naturae*. Similarly, if territory is a device for the management of property relations, we can anticipate its work in relation to nature. Law constitutes territory, polices its borders, and frames its identities. Legal territory serves as a means for the containment of 'natural resources' (land, livestock), or the exclusion of that which may threaten those resources (e.g. pathogens and predators). As the regulation of nature is often a means for the policing of humans, so the governance of nature through territory may become a means by which human relations are organized and remade. The growing adoption of intensive farming in early seventeenth century England, for example, entailed a changing relationship to land and ecology. In turn, new forms of husbandry were pursued through attempts at the elimination of traditional forms of common property, predicated on very different spatial forms of use and access, and the installation of an individually territorialized logic of property and land (McRae, 1996). In part, this entailed the enrolment of plants, such as hawthorn, to create hedges designed to enforce new patterns of exclusive use (Blomley, 2008). Yet as Cragoe and McDonagh (2013) show for the eighteenth century, popular forms of hunting survived enclosure when mobilized in programs of 'vermin' control. Not only was the killing of animals legally coded as vermin (as opposed to 'game') sanctioned or even rewarded, but also border-crossing while in pursuit of certain animals was not regarded as trespass. The common law allowed those hunting 'ravenous beasts of prey', such as foxes, badgers, and wolves, access to the property of others, provided they did no damage.

It is tempting to stop there, and to simply note the role of legal spatialization in the production of the nature/culture divide. However, we wish to pursue the argument for an 'animal legal geography' further, beyond a view of human-animal relations as 'always pre-structured by normative human orderings/otherings (not the least being the most fundamental of all, that between human and non-human animal)' (Buller, 2014: 310). Most immediately, nature is not always so easily enrolled or corralled: 'Despite their subjugated legal position, animals are nevertheless active subjects embodying a form of agency in their ability to continue to challenge, disturb, and provoke humans' (Braverman, 2011: 1700). Plants, animal, winds and water behave in unpredictable ways, according to their own logics, complicating human