

Spatial justice: law and the geography of withdrawal

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Abstract

While spatial justice could be the most radical offspring of law's recent spatial turn, it remains instead a geographically informed version of social justice. The majority of the existing literature on the subject has made some politically facile assumptions about space, justice and law, thereby subsuming the potentially radical into the banal. In this article, I suggest that the concept of spatial justice is the most promising platform on which to redefine, not only the connection between law and geography, but more importantly, the conceptual foundations of both law and space. More concretely, the article attempts two things: first, a radical understanding of legal spatiality. Space is not just another parameter for law, a background against which law takes place, or a process that the law needs to take into consideration. Space is intertwined with normative production in ways that law often fails to acknowledge, and part of this article is a re-articulation of the connection. Second, to suggest a conception of spatial justice that derives from a spatial law. Such a conception cannot rely on given concepts of distributive or social justice. Instead, the concept of spatial justice put forth here is informed by post-structural, feminist, post-ecological and other radical understandings of emplacement and justice, as well as arguably the most spatial of philosophical discourses, that of Deleuze–Guattari and the prescribed possibilities of space as manifold.

Introduction

The concept of spatial justice needs to be recast. Spatial justice could be the most radical offspring of law's infamous 'spatial turn' (Blomley, Delaney and Ford, 2001). Instead, it remains a geographically informed version of social justice.¹ But should spatial justice really be seen as social justice with space as 'add-and-stir', namely without any fundamental difference to the generic concept of social? And does this mean that (social) justice can afford *not* to be emplaced and geographically informed? Or could it be the case that the majority of the existing literature on the subject has made some politically facile assumptions about space, justice and law, thereby subsuming the potentially radical into the banal? In this article, I suggest that the concept of spatial justice is the most promising platform on which to redefine, not only the connection between law and geography, but more importantly, the conceptual foundations of both law and space.

It is impossible to attempt a definition of spatial justice that goes beyond the existing parameters without a radical definition of the role of space in law. Such a definition would address questions of both *what* and *how* in terms of space, namely, both ontological and epistemological queries, thereby constructing a new functionality of spatial considerations for law. Doreen Massey (2005) has suggested a number of convincing answers to the question of definition of space in its political

¹ Namely, a branch of justice that refers to the distribution of benefits and burdens in society, organised by social institutions such as property, state, organisations, etc. For a classic discussion see Miller (1979) who, however, distinguishes between legal and social justice, whereby the former is defined in the positivist way of punishments and restitution.

dimension. The present text takes advantage of this renewed interest in definitional matters, and attempts to move the discussion by linking space not just to politics but also to law.

The direct consequence of such a link can be best seen in the conceptualisation of spatial justice proposed in this article. It is obvious that from a manifold legal space, spatial justice cannot remain the lukewarm hybrid of socially 'just' spectres, distributive justice wish lists, neoliberal articulations of participation, parochial territorialism and geopolitical analyses. As a product of law's novel spatial interest, spatial justice incorporates the characteristics of the former and pushes them to the extremes of an embodied ethics, all the more challenging because of its claims to possibility and applicability. Indeed, the kind of spatial justice put forth here relates to the irreducibility of one's corporeal emplacement in space. This means that spatial justice is the ultimate expression of the claim to one's unique spatial position which by necessity excludes all others: the fact that only one body can occupy a specific space at any specific moment is the phenomenological basis of spatial conflicts. The dispute between my and your claim to 'here' rises above the law while relying on it: the law defines who is at any point to be here, and only to a very basic extent who can claim to be here. The law emplaces the spatial desire to be here and translates it into legal claims, argumentation, decisions (themselves structured according to a certain understanding of power). But this is not justice and certainly not spatial justice. Spatial justice is an exigent ethical exercise that demands a radical gesture of *withdrawal*: to withdraw before the claim of the other is what spatial justice demands. Likewise, this is the only way in which the law can produce justice: by withdrawing before the demands of justice. This geography of withdrawal is not metaphorical: it is only by understanding a unique corporeal emplacement that spatial justice can be adequately sketched.

Thus, this article attempts two things: the focal point is to suggest a conception of spatial justice that derives from a spatialised law. Such a conception cannot rely on given concepts of distributive or social justice, since it can no longer be constructed on processes of consensus, rational dialogue, renegotiation of territory, demos, agency or even identity formation. Instead, the concept of spatial justice put forth here is informed by post-structural, feminist, post-ecological and other radical understandings of emplacement and justice, as well as arguably the most spatial of philosophical discourses, that of Deleuze–Guattari and the prescribed possibilities of space as *manifold*. Before this, however, a radical understanding of legal spatiality is needed. Thus, space will not be just another parameter for law, nor a background against which law takes place, nor even a process that the law needs to take into consideration. A post-structural understanding of legal space demands a philosophical re-articulation of law itself; but this can only happen in connection to law's other: justice. The argument comes full circle, but in its fold, the disjunctures of spatiality are interdigitated.

An aspatial spatial justice

Spatial justice, both in name and inference, has been widely employed in the recent literature that attempts to deal with concepts and practices of justice from a geographical perspective. This engagement is in fact a predominant feature of the much hailed 'spatial turn' in disciplines as widely varied as politics, theology, history, law, art and so on (Warf and Arias, 2009). The spatial turn is often seen as a reaction to the textual turn that deconstruction established and an emphatic focus on material rather than linguistic processes. This, however, may not be so straightforward, since it is indeed within or at least following an all-embracing, all-destroying textual turn that a spatial/material/corporeal turn could be fully felt (Doel, 1999). It is to a large extent, therefore, within the ambits of the prior textual turn that the following dealings with spatial justice are both to be read and possibly critiqued. From a wide array of cameos, I have chosen to focus on only a handful of perhaps the most representative dealings with spatial justice, which will serve as a brief contextualisation of my attempt to define the concept on a more philosophical ground.

Perhaps most promisingly, David Harvey's (1973) pivotal work on justice and space augured a new way of conceptualising geography's dealings with justice. Along with Lefebvre, Harvey brought justice home by radically rereading Marx's spatial credentials and by linking them to urbanisation. He begins by focusing on the futility of defining space in any a priori fashion since 'space becomes whatever we make of it during the process of analysis rather than prior to it' (Harvey, 1973, p. 13). When he engages with space's definitional parameters, Harvey distinguishes between the 'complex, non-homogeneous, perhaps discontinuous' *social* space, and the *physical* space in which, as he says, the engineer and the planner typically work. Harvey (1996) posits what he calls the *pattern* as a bridge between these two spaces, or more specifically the *production* of the pattern by the social space and its superposition on nature (the physical space). This pattern, however, is resolutely described as human (whether in its capitalist or utopian collective manifestation), thereby ignoring ecological, technological and other production processes that eschew the 'social' in its narrow, anthropocentric description. Likewise, the direction in which this pattern is imposed is unilateral, namely there is no exchange of processes, no mutual constitution. There is, in short, a double and parallel focus on the human process of analysis on the one hand, and the social/physical distinction on the other. This human-oriented focus is characteristic of the whole work, and, I think, the breeding ground of problems with regard to the role of space in the discussion. The main consequence of such a division is a deprioritisation of physical spatiality in preference to a processual, social, human (but not phenomenological) understanding of space. This becomes particularly obvious in the discussion on urbanism, where cities are emphatically not seen just as 'a set of objects arranged according to some pattern in space' (Harvey, 1973, p. 302). While no one would disagree with this, the case remains that there is only a marginal role reserved for those objects or indeed for that space in Harvey's analysis. Something, for example, that has eschewed Harvey's attention is that not only social space but also physical space can be described as 'complex, non-homogeneous, perhaps discontinuous', and as such the locus of processes that are produced outside the narrowly defined social confines. Indeed, this way of manifold thinking, to some extent suggested by authors such as Marcus Doel (1999), Steven Pile (1996) or Ash Amin and Nigel Thrift (2002), banalises the distinction between social and physical space.

The discussion is further removed from spatiality when the concept of spatial justice is dealt with – indeed, not as *spatial* but as territorial distributive justice. This not-so-subtle difference has been traditionally ignored by the ensuing literature that carries on seeing Harvey's work as central to the notion of spatial justice (see Hay, 1995; Dikeç, 2001). The difference between spatial and territorial is not straightforward (Brighenti, 2006), but it is safe to say that territorial is not just spatial. Which means that territorial justice is spatial only to some extent. When coupled with the adjective 'distributive', even if decoupled from Rawlsian references (as Harvey makes clear in his critique of Rawls's justice), territorial justice becomes less physical and more processual, less spatial and more social. Thus, faithful to its title, Harvey's book does not profess to offer a conceptualisation of spatial justice, but a spatial perspective on social justice.

Edward Soja, on the other hand, has consistently taken to the term in earnest (see Soja, 2009). In *Postmetropolis*, Soja explicitly and repeatedly refers to 'spatial justice and regional democracy', very rarely dealing with either of them separately and hardly ever distinguishing or defining them. The book came out in 2000, and one would be forgiven for assuming that by then the term was clear beyond doubt. Despite such an impression, there has never been a systematic discussion on the concept and Soja's book has not done much to address this gap. What is clear instead is that he too is dealing with social justice from a spatial perspective. Thus Soja: 'I do not mean to substitute spatial justice for the more familiar notion of social justice, but rather to bring out more clearly the potentially powerful yet often obscured spatiality of all aspects of social life' (2000, p. 352). This is an exercise in degrees of spatial involvement then, a bringing into light of the spaces in which social (in)justice can be located while conceptualising itself and the world. There is nothing radically new

here, nothing that enters a new dialogue between what is space, what is justice and what is the thing that can be brought out of their obscure communion.

A more valiant attempt at defining the term, or at least at engaging with the problems of definition, comes from Pirie in his article 'On Spatial Justice' (1983). He begins with what he calls 'formal juridical notions of justice', which he summarily leaves aside in order to focus on 'less legalistic specifications of justice, that is, in social or distributive justice' (1983, p. 465). In fairness, however, he engages in a brief yet thorough, consistently amusing and sporadically scathing overview of conceptions of justice, from Rawls's 'three lexically ordered principles of justice' to theories of subjective justice 'so as to sidestep high theory' (1983, p. 467), without, however, at the same time sidestepping some well-documented reservations about the value of conferring to justice the role of 'the supreme arbiter of distributions' (1983, p. 468; e.g. Kamenka and Tay, 1980). He infers out of this 'intractable literature on justice' that 'the burning issue to be confronted in presenting a case for a concept of *spatial* justice is whether the kinds of question posed can be answered without recourse to objective or subjective criteria of *social* justice' (1983, p. 471). Indeed, Pirie suggests, not without a certain disenchantment, that 'the term "spatial justice" once again appears as shorthand for the phrase "social justice in space"' (p. 471). This is another manifestation of the vacuous transdisciplinary exercise in 'add space and stir' (Ellem and Shields, 1999).

Pirie put forth a challenge for a formulation of spatial justice that will rely on 'an alternative conception of space itself' (1983, p. 471). Mustafa Dikeç's relatively recent work on spatial justice (2001) explicitly addresses this very challenge.² His analysis, however, does not employ an alternative conception of space but Balibar's concept of *égaliberté*, namely a universal, transindividual politics of emancipation. This relies on a practice of collective struggle whose presence remains unquestioned both by Balibar and Dikeç. The problems with such grand assumptions aside for the moment, Dikeç's use of space remains lacking in terms of theorisation in an otherwise engaging analysis of spatial politics, with the risk of misaddressing the challenge of spatial justice.

The problem with the above analyses – and in full awareness of an arguably unjust generalisation – is that the spatial remains an adjectival context, a background against which considerations of the surrounding space are thrown into relief along with the 'obscured spatiality of all aspects of social life' (Soja, 2000, p. 352). Society is reinstated in its primacy, the human subject never abandons his enlightened perspective, and the usual rationalising political processes are applied even if presented in their revolutionary variation. However valiant and necessary in view of their spatial openings such endeavours may be, they lack some fundamental attributes: first, they lack a radical vision that would responsibly mirror the current societal conditions and state of thinking. Thus, harping on relics of modernity such as the fixed spectres of identity, community, demos, popular will and consensus, purposefully ignores the discrediting of such fictions (one look at electoral procedures would be convincing enough) and perpetuates without questioning their supposed relevance. Second, by insisting upon an anthropocentric specificity of resource distribution, the existing spatial justice discourses constitute a blatant marginalisation of the current radical thinking on the fluidity of the boundary between human and natural/artificial/technological. In a typical sidestepping of what has originated and further developed in feminist thinking, spatial justice reasserts itself as a human (namely, masculine) need. Third, whenever a theorisation of the concept of spatial justice appears, it does not deal with the spatiality of space, those characteristics of space that render space the awkward, angular, unmappable, unpredictable factor that it is; on the contrary, there is a constant and unsurprising double retention. On the one hand, the retention of the relevance of time. At best, time is thinly dissimulated as the supposedly spatial metaphor of a line on which justice eventually arrives: but the linearity of the metaphor betrays the lack of its spatial credentials.

2 See also his 'Police, Politics, and the Right to the City' (2002), which sketches a spatial praxis with regard to Parisian suburbs.

As I show below, space is not a line defined by two points, but a manifold plane of disorientation and lack of direction. In that sense, no dealing of spatial justice has managed to disengage itself from the given priority of time, the concept of struggle towards a better and fairer future horizon conditioned by an interminable waiting. On the other hand, there is a retention of a conceptualisation of space as a measured and measurable factor, given to Euclidean properties and legal appropriation. In other words, this is the idiom of a spatial turn that is turning away from its spatiality and deeper into what I would simply call a geographical dimension. The term 'geographical' in this context denotes the description, the *graphein* of the earth, the dealings with representation rather than the violence of an affective event (Delaney, 2002). Fourth, current discussions on spatial justice are moralising. They claim universality through their particular emplacement, they talk in the name of the deprived and the dispossessed, they essentialise individual needs. In the usual schizophrenia of the utopists who claim to be realists (and take offence if they are thought of as utopists), propagators of spatial justice claim to have a solution to the problem.

Finally, from an epistemic point of view, spatial justice seems to be a battle for geography to assert the centrality of space – and while this is laudable, it sadly stops there. Once asserted, geography and geographers carry on the way they began, without an observable transdisciplinary leap and without the kind of theoretical enrichment that one coming from the discipline of law would expect. This by no means implies that law is theoretically richer. It is simply an observation on the missed chance of a new locus of transdisciplinary encounter between law and geography which has the potential of being theoretically fecund but which seems to have left geography with only another catch phrase, vacuous and repeating of already well-articulated thinking. But at least geography did take up the challenge of flirting en masse with justice, a concept which, however summarily, is acknowledged as a partly legal concept. Law has hardly deigned to experiment with its spatiality in any way as extensive as this.³

The concept of spatial justice suggested here attempts to address the above shortcomings. Thus, it specifically posits itself as non-anthropocentric, spatial rather than crypto-temporal, and fundamentally amoral (but ethical instead). It also attempts to be transdisciplinary, aiming at that fleeting space between law and geography. At the same time, however, the concept is aware of its limitations. Epistemologically, it can never transgress the incommunicability between epistemes. Ontologically, and in the same vein, it can never be seen as the solution. Spatial justice cannot bring about better identities, more organised popular will, broader consensus, healthier or richer developing countries. Nor can it do away with time and its fundamental role in the conceptualisations of justice. In fact, it specifically does not attempt to do the latter. Instead, it simply posits a shift of emphasis, and a temporary one at that. The best it can hope to do is delineate the problem, initiate a discussion on the conditions, acknowledge the hitherto invisibilised spatial factor: in short, while acknowledging and working through the impossibility of a solution, spatial justice brings forth the conditions of such an impossibility, thereby allowing a flicker of possibility to stream through.

Towards justice via legal spatiality

Justice cannot afford not to be spatial. At its most basal, the adjective refers to the emplaced, geographically specific conditions in which justice is to be considered, planned for, constructed, imagined. In its turn, this merely points to the need for considering the particular when legal justice is administered. This is what Goodrich, Douzinas and Hachamovitch (1994, p. 22) mean when, in one of the founding texts of critical legal theory, they write 'the justice of judgment will depend on law's answer to the unique and singular demands of the person who *comes* to the law'. There is a movement

3 All writings on spatial justice come from geography. There is a minimal engagement with the concept from law – see indicatively Davoudi (2005); Béland and Lecours (2005).

to the law, an embodied displacement of ‘the person who *comes* to the law’ in order to find justice that must be taken into consideration by law. The movement is specific, spatially inscribed, bodily demanding, and expresses a ‘here’ that deserves to be heard at least as loudly as ‘now’. Justice cannot be just if it is not spatially circumscribed. This does not deny the certain universal appeal of the concept, or its potential universal application. Being spatially emplaced does not exclude the universal. On the contrary, it reinforces it by grounding it on the particularity of the monad: for how else can the universal be if not by resonating in every particularity? At the same time, however, there is a danger of intense provincialism, what I have elsewhere (2010a) called the *parochial* (as opposed to the *spatial*) turn. The former is characterised by an insistence on the specificity of geography, not as an avenue for the spatialisation of judgment but simply as a reinforcement of a local cause. Locality, however, is not the same as spatiality. No doubt the latter includes the former. But it does not stop there. As I have already said, emplacing justice, making it local and particular, is not more or less than doing justice to justice, as it were. Justice is local (and as such, it can resonate in the universal). But spatial justice is more than just that.

As I show below, contemporary thinking has developed radical ways in which to conceptualise space. A concept of spatial justice that chooses to ignore these developments can only be inscribed within a narrow epistemic opening – from law to geography and vice versa. This opening, however daring and indispensable, is not enough for a radical semiologisation of spatial justice. It is enough for a renewed interest in understanding local conditions in the sense of contextualising difference, forming legal subjectivities and even achieving a clearer practical understanding of fair distribution of land and resources. However important, these understandings can already be achieved through the existing vocabulary of either law or geography. In other words, the space in which such a conception of justice is to be located is already found, explored, colonised. The quest now is for a different kind of space conceptualisation that will allow itself to be folded in an understanding of justice and thus radically alter the latter from within.

Contemporary thinking on spatiality shows that space can no longer be considered just a measurable object of geography (Amin and Thrift, 2002). The recent ‘relational’ revolution in human geography that has followed to some extent from Henri Lefebvre’s work has elevated space to a product and a producer of relations (see the classic Gregory, Martin and Smith, 1994). Space is clearly no longer the context or the background, but an active factor in constructing subjectivity and societal presence. At the same time, there has been a move towards a more conceptual understanding of space, still relational yet at the same time abstracted. One could say that the old attempt at discovering the ‘essential’ qualities of space has been revived, albeit in a distinctly post-structural way, where essence is replaced by void. Thus, the chancy and unpredictable nature of space has been consistently emphasised, as a retort to the previous understanding of space as stable, finite and programmable (especially as opposed to time’s traditionally conceived unpredictability; Massey, 2005). Epigrammatically, spatial contingency is reflected in two ways in contemporary theory. The first is, following Derrida (1972), that space is always ‘spacing’, namely a process rather than a fact, becoming rather than being. *Spacing* is what language necessarily entails, namely the process of creating an interval, of opening up a space between the text and its producer. Spacing is the break of presence, the discontinuity between utterance and understanding, being here and listening to you over there. Thus, space is always spacing: always the process of producing discontinuity, difference, *différance*: not just interruption but also reinscription, the difference that space makes which is not just different but deferred and hence connected through this trail of interruption and reinscribed as a stuttering text that fights to reach across.⁴

4 The lack of connecting presence is a frequent criticism against deconstruction. See also Massey (2005) for her thorough dealing of Derridean spatiality. It seems to me, however, that a more faithful description of deconstruction can be found in Doel (1999) and his ‘reversal–reinscription’ chiasm.

The other way in which spatial contingency is reflected in post-structural thought is through the multiplicity and simultaneity of spatial positionings. Space is now seen as the plane of a multiple difference (Massey, 2005), where lines of orientation run simultaneously in a horizontal vertigo of disorientation. Space does not offer a direction but the openness of being lost. Space is not linear but labyrinthine. As Deleuze (1993a, p. 18) writes, 'a continuous labyrinth is not a line dissolving into independent points, as flowing sand might dissolve into grains, but resembles a sheet of paper divided into infinite folds or separated into bending movements, each one determined by the consistent or conspiring surrounding'. For Deleuze, the minimum element is not the point but the *fold* (see also Deleuze, 1993b). Through folding, subjectivity is formed and at the same time multiplied, folded outwards. The self is always folded between an inside and the outside. This schizophrenic dialectics, however, does not entail an oscillation between inside and outside but an ingestion that produces the excess of *becoming*. Thus, not only is the fold the space of becoming but also that of becoming-other: the fold between interiority and exteriority produces an excess of difference that cannot be contained by the usual ping-pong between self and other. This excess is constantly deferred, naggingly present whatever the folding may be, only to be passed on to further foldings, and foldings within foldings, interfolded in a plasmatic depth but always ready to resurface on that plane of contiguous, interdigitated space of folds.

This *manifold* space keeps on spreading by folding itself like a boundless origami. In its gurgling, it makes any multitude explode, splayed out. In that sense, space is not different to body, thought, individual, collectivity, animal, human; it is instead the curling surrounding that is folded within, ingesting the outside inside and simultaneously unfolding the inside on a plane of what Deleuze and Guattari call *consistency*, namely 'the "holding together" of heterogeneous elements' (Deleuze and Guattari, 1988, p. 323). But this is not a closed totality. On the contrary, it is an immanent totality open to its own boundlessness. In Deleuze and Guattari's thought, there is an omnipresent geographical 'holding together' (Stivale, 1984) of an enlivened, vibrating space on whose surface the universal and the particular encounter each other. This is what Marcus Doel means when he repeatedly announces in his seminal work *Poststructuralist Geographies* that 'space takes place' (1999, p. 10). Space, just as thought, is encountered in its immanence as *a* thought, *a* space. There is repetition but it produces difference, not sameness. Space is the repeated taking-place, again and again, simultaneously rather than additively, horizontally rather than vertically, repeatedly yet with every time as the first time, every time once, unpredictably, contingently, defined internally and by itself, not as part of a uniform globality or a transcendental exteriority but through its very internalised, interfolded exteriority, itself the open totality.

So, in one sentence, space is the process of repetition of immanent difference. Space itself is folded in the event and provides for what can be called the context – but, alas, this context is the event itself, the very *text* that surrounds and is surrounded by its *context*. To quote Doel again, 'context is never closed in on itself . . . context is untimely . . . Were there to be a law of space and spacing, it would have to be a law of context – and a non-saturable context at that. This is why it is a *harsh* law of space.' And further on, 'such is the harsh law of spacing: everything is disadjusted and dis-located; everything is (s)played out according to the contingent folding, unfolding, and refolding' (Doel, 1999, pp. 114, 123, 131).

At this point, one encounters the friction between law and space. Law, and specifically the law that Deleuze and Guattari have in mind, the Oedipal law, the law of the Father, traditionally fixes space, turns it into points, tight measurements of distance and propinquity, normative geometries, lines of connection that do not allow any excess to surface. Space is terminally unfolded by law, opened up as a canvas on which legal operations take place. Law reduces space into law's saturable, controlled context while refusing to (admit that they) operate together in a folded becoming. In other words, law is spacing itself away from space – it turns against its own turning, brutally returning to the banality of the locality, the incantation of the particular and the hasty concealment of a certain

fear of space and its manifold, uncontrollable, unpredictable folding. Or, it recoils to the well-rehearsed fantasies of waiting, of the temporality whose finality brings redemption, or even the 'now' of revolution. And this is just critical (socio)legal thinking – perhaps the most radical form of legal thinking that there can be encountered – which, with few exceptions, fails to grapple with the demanding but unavoidable absurdity of space (while, paradoxically, being well attuned to its presence and its repercussions for the law as other contextualisations show⁵). Anything less critical than this strand of legal thinking would simply shrug at even the by now standard sociolegal inclusion of geographical considerations in law.

It is obvious that a radical rethinking of law in terms of its spatiality is needed. Law is often the grand manqué from most geographical discussions on spatiality and even, surprisingly, on spatial justice (at least the ones that are not specifically structured as law and geography discussions), with politics somehow representing and including law. This, however, is neither precise nor adequate. From the point of view of geography, law is often quickly dismissed as a legalistic realm of norms. The kind of justice that comes out of this description of the law is, perhaps understandably, of limited value and certainly of lesser appeal than the all-embracing *social* justice (a prime example is Harvey, 1973).

From the point of view of law, things are a little more complex. Law may often be understood as political (especially by critical geographers); but law is both more and less than politics. Law is as political as it is economic, historical, social, gendered, queered, aesthetic, textual, corporeal. In other words, the primacy of the political can only with great difficulty escape the obviousness of grand-narrative aspirations. At the same time, law is law. Law constructs itself on the basis of this tautological identity: law consists of legal norms, legal documents, legal decisions. This is not just a reflection of a rather mainstream legal theorising, namely positivist legal closure. It would seem that law is in need of the construction of an identity figment that conserves law's perceived social function – that of legal certainty. While I have dealt with these issues elsewhere (2009; 2003), at this point it would suffice to make a distinction between law's *description* (as political, economic or whatever perspective one cares to describe law from) and law's *self-description* (law as law, itself as impossible as it is inevitable). In the context of this distinction I suggest that law's spatiality is not merely a matter of description, namely simply another dimension that can be added to the list of transdisciplinary legal studies; rather, law's spatiality is a matter of law's *self-description*, and as such it refers to the way in which the law is increasingly describing itself. This spatially grounded self-description renders law aware of its contingent, simultaneous, disoriented, variegated, manifold presence, and opens up the way in which (legal) justice can be seen in its spatialised dimension.

Thus, law has already begun ingesting its uncertain location, its constantly moving social position. It is hesitantly coming round to the realisation that it can no longer be considered a grand bastion of certainty but merely one process running along other processes on a space of fleeting, fragile, almost imaginary consistency – indeed, this is the definition of society according to Niklas Luhmann (1997). Law is progressively locating itself in a material archipelago, in a multiplicity that 'never allows itself to be overcoded, never has available a supplementary dimension over and above its number of lines' (Deleuze and Guattari, 1988, p. 8). The expected legal certainty is interfolded with its surrounding space and produces a hybrid form of simultaneous trust and mistrust to the law (and, significantly, by the law). Spacing produces the interval of judging the judgment, of critique, the distance between law's self-projected image and its traumatic moment of betrayal. And while more or less mistrust towards the law has always been around

5 See, for example, the general concept of culture which brings into the law a comparable amount of uncertainty and contingency as space, yet it does not acknowledge its spatial dimensions and their relatively considerable role in the production of cultural contingency; see Banakar (2008).

(think of Peter Goodrich's, 1995, schizophrenic lawyer), the difference is that now the law finds itself responding to it in ways previously unseen.⁶ To put it plainly, space forces law to question its ethics (Stramignoni, 2004). 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, the desire to move and/or to resist, shakes law's judgement, the certainty of legal decisions, the irreversibility of judgement, the causal link on which a judge relies. Space is not codable and navigable but a field of rapidities and slownesses amidst which one's movement determines and is determined by it (this is the mathematical definition of a manifold; see DeLanda, 2002). In that sense, space does not impose a moral stance on the law but an ethical question: this is the difference between an all-ingesting crusade and an all-questioning self-limitation. No position is safe for ever, no decision can resist the disorientating effect of spatial comparison, no law can be transplanted anywhere else but its very own topology of self-limitation. This is what space brings to law. Space is not just the question 'how would this judgment/legal text/legal act be formed over there?', but significantly, 'why is the judgment/legal text/legal act 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.*

But there is something peculiar about the law of law, itself harsher than the law of space. For, while space is all there is (a totality in full openness, as Deleuze and Guattari would have it), the law has its outside. I have elsewhere (2007) defined justice as the utopia of the law, the dream that visits the law once the latter is asleep. Justice rises when law withdraws, but then justice can only arise through law. Justice *through* and *despite* the law, in the form of an exteriority well imbricated in the legal interiority: these two are folded into an embrace of a depthless dream like Pavic's lovers who never meet except in the empty blue page in the centre of the book (1993). And the return returns – for the only way in which the law can be rethought in its spatiality is through (and despite) spatial justice. This means that after justice, there is law. Not to maintain justice (supposing that justice could ever be achieved), but significantly to allow justice to return. For as soon as justice is thought to be achieved, and simultaneously law to have withdrawn, justice withdraws. This is merely because justice is unable to retain the moralising total-position of certainty of decision, and always returns to the ethical particularity of the ever-changing position. The circularity between law and justice produces excessive spectral apparitions that cannot be contained within the exchange between law and justice. Instead, they roam the manifold space of politics, economy, ecology, the earth, the artificial, the human, the animal – in short, everything that is becoming-other, and further, any distinction that momentarily freezes their becoming-other into a becoming-each-other. In what follows, I would like to focus on the peculiar characteristics of spatial justice that follow from the above understanding of space as a process of immanent and perpetually deferred difference.

Spatial justice

Spatial justice begins in the middle. Justice is itself a plateau, and 'a plateau is always in the middle' (Deleuze and Guattari, 1988, p. 24). There is no ordinary starting point to set it off, nor destination to direct the process. Spatial justice is located amid spatial simultaneity, which for Deleuze is given in

6 See, for example, the increase in what Luhmann has called 'cognitive expectations', namely the ones that change and adapt to the conditions, rather than law's traditional preference for 'normative expectations', that is the ones that do not change in the face of disappointment; see Luhmann (2004).

the horizontality of lines crossing each other while flying away.⁷ The simultaneity of space is produced in ‘the delicate milieus of overlapping perspectives, of communicating distances, divergences and disparities, of heterogeneous potentials and intensities’ (Deleuze, 1997, p. 50). As already mentioned, in such a space, one no longer has a destination, a direction, an orientation – only a desire. Thus, it all begins with a betraying simple phenomenological dualism: one body and another body. And then, right in the middle of this, the desire of movement: I want to be where you are, exactly *there*, exactly *then*. The motives (greed, attraction, possessiveness, territorialism, reterritorialisation) can be put aside for the time being, for what is important is the desire of justice as Deleuze and Guattari would have it, the act of moving, of passing, of being deterritorialized by the spatial position of the other – that is by allowing the position of the other to make her territory out of my position.

Space both conditions and is conditioned by the desire to move, and move constantly. According to Ian Buchanan, this movement is partly facilitated by what Deleuze and Guattari have famously called *smooth* (as opposed to *striated*) space, namely the space of the nomad as opposed to that of the state. Buchanan (2005) has exposed the nostalgia for coded space (as well as the space of certainty, positionality, law): ‘if it is finally true that space has transcended our capacity to get our bearings in it then that is because we have taken the logic of passing through to its logical extreme and created smooth, frictionless spaces that hurry the postmodern subject onward like a slippery slope’. However, one must consider carefully these terms in order to avoid facile parallelisms. Both smooth/striated and nomad/movement can be easily misunderstood. To start with the first: striated space is the organised ‘space of *pillars*’ and of homogeneity (Deleuze and Guattari, 1988, p. 408), ‘striated by walls, enclosures, and roads between enclosures’ (p. 420). Smooth space, on the other hand, is a variable open boundless space characterised by a ‘polyvocality of directions’ (p. 421). Striation and smoothness are two values which, however, are never encountered in isolation but always interfolded (thus, ‘smooth or nomad space lies between two striated spaces’; p. 424). In that sense, lack of orientation does not only apply to nomad space but to their reciprocal bleeding into each other. Furthermore, this distinction is connected to another distinction, that of law/*nomos*. Striation is the space of the ‘legal model’, of *logos* and sovereign morality, as opposed to smooth space which is not a visual ‘like Euclid’s striated space’ (p. 409) but a haptic space that is ‘wedded to a very particular type of multiplicity: nonmetric, acentered, rhizomatic multiplicities that occupy space without “counting” it and can “be explored only by legwork”’. While striated space is the space of the law of the *polis* characterised by points, boundaries and zones, smooth space is that of uncountable, uncalculable *nomos*: ‘the *nomos* came to designate the law, but that was originally because it was distribution... one without division into shares, in a space without borders or enclosure’ (p. 420).

The nomad then moves constantly. Or does she? As the authors say very explicitly, ‘it is false to define the nomad by movement’ (Deleuze and Guattari, 1988, p. 420). It may be the case that the nomad moves from point to point, but the points are there by necessity. The nomad always moves along paths or trajectories that simply happen to include points. In that sense, the nomadic movement is, as the authors write while referring to Heinrich von Kleist, ‘immobility and speed, catatonia and rush, a “stationary process,” station as process’ (p. 420). The nomadic movement is the ‘absolute movement’, or the speed in which the body ‘in the manner of a vortex’ swirls in palpitating stasis. In that sense, the body carries the smoothness within, as it were, and moves between various positions in striated space.

7 ‘The middle is by no means an average; on the contrary, it is where things pick up speed. *Between things* does not designate a localizable relation going from one thing to the other and back again, but a perpendicular direction, a transversal moment that sweeps one and the other away, a stream without beginning or end that undermines its banks and picks up speed in the middle’ (Deleuze and Guattari, 1988: p. 28).

As I discussed earlier, the law regulates this movement by determining its channels, its conduits, its points. Amidst this parcelled out jungle of property and propriety, the body (human, animal, plant, technological, hybrid) extends its contour, spreads its boundaries, feels upon other bodies, and inevitably desires. Sometimes striated, sometimes smooth (that is, sometimes within and sometimes outside the law), the body itself takes up its own space and moves towards another body and another space. Or space itself, folded with the body, enables the body to slide or to get boxed in, to move in glissando or in convulsions. This can be the necessary static movement of the nomad or the striated, pillared movement of the state. As Deleuze and Guattari (1988, p. 389) put it, the difference is not unlike that between a game of chess and a game of Go: 'in chess it is a question of arranging a closed space for oneself, thus of going from one point to another . . . In Go, it is a question of arraying oneself in an open space, of holding space, of maintaining the possibility of springing up at any point . . . The "smooth" space of Go as opposed to the "striated" space of chess. The *nomos* of Go against the State of chess.' In both games, the board folds in around the piece and determines individual will and freedom (which, in turn, is behind the choice of the board, which is behind the board itself, *ad infinitum*). Static or spreading, reterritorialising or colonising, movement is desired. On paths or points, movement is performed. There is no value judgement here – either movement is on the plane of spatial horizontality. What is important is that it moves: *eppur si muove!* as Galileo whispered, gravitationally forced to remain within the confines of the centre. But here, the centre is in orbit, folded with its bodies, celestial or otherwise. This is the beginning of spatial justice then, right in the middle between striated and smooth, as a movement that remains when bodies claim each other's space. To put it differently, spatial justice arises when one body wants to occupy the exact same space at the exact same time as another. Whether within or outside the law, whether in the name of *nomos* or the law of *polis*, the movement from here to there is firmly inscribed within the interplay between smooth and striated, while vertiginously crossing it. It is at this point of tremor on the boundary between crossing over and staying put that spatial justice arises, as a command to withdraw yet remain.

The need for justice arises as soon as the law distributes space. Space then becomes an interplay of legal striation and smoothness, as well as extra-legal striation and smoothness. An example may help: duties and rights are of the first category, political decisions not based on law and guerrilla wars are of the second. Nowhere is there necessarily an opposition, a conflict – but conflict can potentially spring up everywhere. Law's fight with itself over its own space as well as with that of its exteriority,⁸ produces lines on which bodies are or are not allowed to move – yet they move. This movement, positively or negatively inscribed in the law, cannot be stopped. On the contrary: in the first case it is often encouraged, directly instigated and controlled by law. When the lines conflict and the bodies clash, when a geopolitical presence is not tolerated, when two peoples are forced to 'share' the same space at the same time, when the industry moves into the forest, when the ship moves into the fish stock: there is conflict. Spatial justice is the movement out of this conflict while delving deeper into it. It is the excess whose line of flight returns in the middle, right where it began, in the thick of law/*nomos*.

In their own way, both law and *nomos* attempt to trace movement. Striated movement is controlled, but always contains resistance, revolt, indifference, other routes. Smooth, nomic movement is not controlled by the state but by its own stasis, its own *non*-movement, its swirl. Thus, when Deleuze and Guattari (1988, p. 419) explicitly equate the nomad with the in-between (the 'intermezzo'), they seem to encourage the location of justice on precisely this nomadic in-between, the nomad herself. However, I would suggest that the in-between of relevance here is precisely the in-between of the in-between as it were, the *inter-* in the intermezzo: rather than just of the nomad,

8 A clarification: this exteriority remains immanent, internal, always of the law. There is no transcendence in spatial law; see my (2010b) contribution to the issue.

the space of justice is located in the fold between smooth and striated, nomad and state, *nomos* and law. Justice needs the calculation of the law and the there-inscribed possibility of transcending it and crossing over to the smoothness of *nomos*. Justice relies on law's calculability (Derrida, 1992), as it would rely on a trampoline which enables one to jump higher but on the understanding that one will return to the trampoline (only to jump again, and so on). The trampoline is pulsating with its own limitation: this is what Deleuze and Guattari call the plane of immanence. In the same way, spatial justice is in-between the two bodies, the one that moves into the space of the other and the other whose space is moved into. Again, there can be no moral judgement here: judgement belongs to time, historical responsibility, confirmed causalities. Spatial movement cannot contain judgement because there is no depth in its haptic horizontality, no visible horizon on which the origin or the destination can be carved. We find ourselves here, human bodies and ethnic groups and animals and industry and deserts and cyborgs, and in that simultaneous horizontality, one always moves.

It is perhaps necessary to return first to the way the basic movement between emplacements develops. For this, Maurice Merleau-Ponty's phenomenology of the body can be relevant. For Merleau-Ponty, the world and the body, the other and the self, are contiguous.⁹ The philosopher developed this in his unfinished final book *The Visible and the Invisible* (1968),¹⁰ as his eventual reply to Cartesian dualism. It is worth quoting at some length from his working notes on the book:

'Position, negation, negation of negation: this side, the other, the other than the other. What do I bring to the problem of the same and the other? This: that the same be the other than the other, and identity difference of difference – this 1. does not realize a surpassing, a dialectic in the Hegelian sense; 2. is realized on the spot, by encroachment, thickness, *spatiality*.'

(1968, p. 264, original emphasis)

The paradox of position and negation of position (identity and difference, self and world) can never be resolved through a tidy synthesis but through a continuation of the ambiguity that is 'realized on the spot, by . . . *spatiality*', namely a superposition of desire onto itself in a spatiality that contains the impossibility of simultaneous emplacement of same and other. Thus, spatiality is the locus of resolving the paradoxical ambiguity between self and other (and equally, law and justice, my and your here). Nevertheless, this resolution is nothing but a continuation of difference that, rather than being subsumed to a Hegelian totality, escapes the oscillation and moves away on a line of flight of 'the other than the other'. Let me cite another passage that exemplifies what Gail Weiss (2008) calls Merleau-Ponty's ambiguity, but here in its excess:

'[I]t is a reversibility always imminent and never realized in fact. My left hand is always on the verge of touching my right hand touching the things, but I never reach coincidence; the coincidence eclipses at the moment of realization, and one of two things always occurs: either my right hand really passes over to the rank of touched, but then its hold on the world is interrupted; or it retains its hold on the world, but then I do not really touch *it* . . . But this incessant escaping, this impotency to superpose exactly . . . is not a failure . . . This hiatus between my right hand touched and my right hand touching . . . is not an ontological void: it is spanned by the total being of my body and that of the world.'

(1968, p. 148)

So, it is either touching the hand and missing the world, or holding the world and not really touching the hand. This chiasmatic form of 'non-failure', always imminent but never realised, takes the form of an 'incessant escaping', an excess that cannot be contained. Precisely because of this, the

9 This is the concept of *flesh*, namely the chiasmatic, reversible and, importantly, always elusive folding between self and other.

10 For an application of flesh to law and geography, see Trigg (2008).

reversibility is possible. As Derrida would say, it is its impossibility that makes it possible. The escape reveals the other (hand, body, space, fold), an escape from wanting to touch but failing, an escaping of the world or the other from me. It is a withdrawal from touching, or a touching but in a different direction, touching the world rather than the self, or more accurately, touching the absence of the world, spreading one's body onto the void – grass rather than tree, as Deleuze and Guattari put it. In this simultaneous, all-radiating multiplicity of movement, justice finds its space in the movement of escape, of *withdrawal*: withdrawing from judgement, from justice itself, from one's own justice, and away from the space of the other's claim. *Spatial justice is the movement of taking leave*. Deleuze and Guattari consider taking leave a rare ability, reserved for their favourite figure, the Nietzschean schizo: 'the schizo knows how to leave: he has made departure into something as simple as being born or dying . . . These men of desire – or do they not yet exist? – . . . must reinvent each gesture. But such a man produces himself as a free man, irresponsible, solitary, and joyous' (Deleuze and Guattari, 1983, p. 131; see also Arsic, 2005, for a fascinating Deleuzian reading of Thoreau). This celebration of justice irrespective of judgement is no doubt violent:

[A]schizorevolutionary type or pole that follows the *lines of escape* of desire; breaches the wall and causes flows to move; . . . good people say that we must not flee, that to escape is not good, that it isn't effective, and that one must work for reforms. But the revolutionary knows that escape is revolutionary – *withdrawal, freaks* – provided one sweeps away the social cover on leaving, or causes a piece of the system to get lost in the shuffle. What matters is to break through the wall.' (Deleuze and Guattari, 1983, p. 277)

Wall-breaching, piece-losing, flow-moving withdrawal that embodies the violence of justice. A double violence: I withdraw from the space on which I am and from my desire to your space: I lay myself naked, unarmed, exposed. From this space of fragility, I demand a reciprocation of justice, of the violence of your simultaneous nakedness. This reciprocation is simultaneous, horizontal, in defiance of hierarchy and power imbalance. It is exposed as it is exposing. It reveals the stronger and demands a differentiated but horizontal responsibility. And then, the second violence: I move on a plane of simultaneity not on *terra nullius*. My withdrawing displaces others around me, behind me, undesired, unplanned, invisible. And they in their turn continuously displace others and others than the others. The excess ripples through the plane but never dissipates, never truly escapes. An immanent withdrawal that does not move but rushes through – a stasis in the double sense of the word as both pause and revolt. Deleuze and Guattari (1983, p. 131) again on the schizo who knows how to leave 'but at the same time his journey is stationary, in place'. This static, immanent withdrawal is the gesture of a fully immanent justice. Its beginning, if there were to be such a thing in a continuous movement, is always in the middle, in the inner folding between, on the one hand the incalculability of the plane,¹¹ and on the other, the calculability of law, the pillars of striation. Spatial justice in between emplacements but away from them, in the fold between smoothness and striation yet in unfolding excess.

The same occurs on a basic, epistemic level. Spatial justice is interfolded in law's attempt to internalise space without imploding – a difficult calculation that requires a certain spatial manoeuvring. If law is found together with space in a fold of doubt and self-limitation, then justice is precisely this going-against yet through the law in attempting to cross the line of law's normative geometry while being inscribed within it. Spatial justice comes through and despite the law, riding on law's spatial ingestion yet escaping it, withdrawing from it in an immanent violence. The law must be killed, its proud edifice razed to the ground for justice to arise – but then again, only by climbing up the steps, the folded staircase of law's interiority and exteriority, can justice escape the

11 See also Levinas (1978) and his spatial treatment of justice in terms of those nearby and far off; on this, Manderson (2005).

calculated legal difference between smoothness and striation. A law traumatised in its vertiginous spatial turn can produce the process in which justice can be located, folded in the calculating fissures of the legal pronouncements.¹² Thus law and justice in a chiasmatic space where one depends on the withdrawal of the other.

What does this understanding of the concept of spatial justice bring to the discussion? To start with, it forcefully and unapologetically rushes space in. Space and its conceptualisations have greatly changed, and law, both as a discipline and as a social function, must keep up with it. Space is no longer the local background but the radically disorienting factor of law's self-description. Second, the discussion achieves the much delayed link between justice and law in their spatiality. Justice is closer to law for the latter's spatial distribution but also at a distance from law in terms of their reciprocal withdrawal, once again precisely because of law's distribution. This schizophrenic connection which I described as 'justice through and despite of the law', must be fleshed out rather than quietly subsumed in a political setting. Third, the kind of spatial justice discussed here moves away from the unyielding concepts of anthropocentrism and moral necessity. In what has been distinctly inspired by Deleuze–Guattari, the body and its spatial movement is not human-specific but potentially and simultaneously everything. In that sense, no moral judgement can withstand the constant fluctuation that ensues a description of a space of folds, itself interfolded with itself. Finally, although the focus has been exclusively on spatial considerations for emphatic reasons of balance redressing, there is no denying that time must be taken into account in an equally radical manner. Doreen Massey has performed this balancing act admirably, but I find that, at least in law, there is a greater need for a strong statement on spatial relevance and a temporary withdrawal of time from the scene, just until space manages to present its case. This, however, does not discount the temporal arguments, especially with regard to justice. It is just that they will have to wait for a little while.

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¹² For Derrida (1992), law is calculation while justice remains the incalculable that, however, is produced through the calculation of law.

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