Introduction: Making Space for Juris-Dictions

Nan Goodman

Juris—of the law—dictio—speech. I invoke the Latin etymology of this crucial legal concept to highlight the connection between two of the three terms that concern us in this special issue of ELN—language and the law. The law is made through and by language. The law is speech and, perhaps less obviously but no less undeniably, speech is law. Both sides of this equation have been at the heart of interdisciplinary studies of law and literature from the start. Indeed, the focus on discourse in both disciplines has formed the common thread between them from the early work of James Boyd White to the more recent exploration of the “inter-discipline” by Kieran Dolin and others.1

To begin with the etymology of the word “jurisdiction,” however, is to obscure the third and perhaps most important feature of jurisdiction—space—the area or territory over which the law prevails or a given court can rule. Indeed, there is no general definition of jurisdiction that does not depend on the concept of space.2 The Oxford English Dictionary gives as one of its primary definitions, “The extent or range of judicial or administrative power; the territory over which such power extends.” To the definition of jurisdiction as a site of law and language, then, we must add the concept of “space” (or place or territory), noting crucially that it is the recognition of a given space as distinct from others that gives the court its jurisdictional authority. Cornelia Vismann gives the complexity of this thought a compellingly concrete articulation. “The primordial scene of the nomos [or law],” she writes, “opens with a drawing of a line in the soil. This very act initiates a specific concept of law, which derives order from the notion of space.”3 At the same time, in the focus on nomos and the drawing of lines as acts of jurisdiction, she draws in my other two concepts. Space, law, and language—the three concepts are inextricably intertwined.

The new essays in this special issue on jurisdiction engage this description of legal order and to varying degrees the confluence of all three aspects of jurisdiction. In attempting to juggle all three terms at once, moreover, these essays depart from previous studies of jurisdiction that have tended to focus on one or another aspect of it. Shaun McVeigh’s Jurisprudence of Jurisdiction, for example, though innovative and wide ranging, focuses largely, as its title suggests, on the implications of jurisdiction for the law;4 conversely, Bradin Cormack’s brilliant and richly textured, The Power to Do Justice, tends to study jurisdiction from a literary point of view.5 The major purpose of bringing scholars together
from both the legal and literary fields is to blend the two visions of jurisdiction and to see how their diverse disciplinary concerns influence and alter each other. At the same time, the contributors to this volume do not simply come from the legal or literary fields; within these overarching rubrics, they represent a variety of field specific endeavors, including constitutional law, labor law, film studies, queer studies, legal geography, rhetoric, and political theory.

Furthermore, the bringing together of scholars from different fields does much more than increase the number of disciplinary lenses focused on jurisdiction. By virtue of their different concerns, the contributors to this volume raise important questions about the concept of jurisdiction that have simply not been raised in the same way before. From a group of four scholars, three of whom are explicitly interested and professionally trained in questions about literature, and the fourth in questions of collaborative authorship as a form of authorial labor, comes the first cluster of essays—**Space Authors**. In different ways, each of these essays addresses the question of authorship that is implicit in jurisdiction. More specifically, they explore the authority that comes from the convergence of law, language, and space as an exercise in authorship that is not necessarily sovereign, as most legal analyses would contend. These essays ask, do not all authors exert authority, no matter how culturally, racially, or ethnically marginal? Indeed, following the logic of the law and language nexus, isn’t language itself an exercise in authority, no matter whose it is? And if so, doesn’t authorial expression create a space of meaning and authority all its own?

In this cluster, we start appropriately enough with the most fundamental form of “speech”—the dictionary or primer offered by Marianne Constable, whose considerable work on the subject of language and silence in the law has already helped to reshape our notions of how words and their absence make meaning and exert authority. As a scholar of rhetoric, Constable invites us to consider the space created not by broad judicial decisions, statutes, or testimony, but by single words or phrases and their corresponding definitions. Each word in her primer is not only given its own graphical space, but appears outside of any non-lexical semantic context, an act clearly intended to make us wonder about the way words conjure their own jurisdictions before they are even deployed. Constable’s primer sets the stage for the rest of the volume in appearing authoritative (it provides definitions) and yet questioning its own authority (she calls it a “cheat sheet,” after all), revealing how space and language simultaneously interact in somber and playful ways.

The inseparable links among speaking, space, and authority that are conjured by Constable’s work are brought to bear in the next essay in this cluster by Catherine Fisk on an unusually compelling aspect of labor law—the ability of the Writers Guild of America to determine the “authorship” of a movie or TV production in a way that doesn’t always line up with the actual authors of the scripts in question. In laying out the intricacies of what often becomes a decentralized process of authorship and in teaching us about how credit for a given script is parceled out, Fisk draws on her considerable expertise in the field of labor law to demonstrate, among other things, the malleability of the concept of authority.
Similarly, Miriam Wallace's essay on the proliferation of venues for reform speech in England in the 1790s, a period of radical politics and heightened awareness of public discourse, calls our attention to two literary or language based realizations—that genres are "venues" in the spatial sense and that the use of old genres to say new things alters traditional jurisdictional patterns. Wallace's essay reveals how the use of new genres for political speech, including lexicons, grammars, and children's literature, functioned as literary equivalents for legal jurisdiction and thus took on an authority they had previously never possessed. The last essay in this section, by Doran Larson, is a sober reminder of how the authority inherent in the mapping out of space is often linked to a sovereignty that is produced through violence (a link made familiar to us by Robert Cover's work), but also extends to the work of prison writers during the Black Power movement of the 1970s, whose many memoirs, novels, tracts, and other writings from prison spoke in defiance of the sovereignty of the state and of the silence the jurisdiction of prison was intended to impose.6

Building on the first cluster and its focus on authorship and authority is a second group of essays that come under the heading of "Reality" Jurisdiction—a not so faint echo of "Reality TV." These essays take as their concern the lived experience of jurisdiction, an emphasis that comports with the humanities-inflected social science emphases of their authors. In The Production of Space, Henry Lefebvre notes that for the longest time the concept of space was thought to be purely geometrical, that is to say, not only Euclidean, but also empty.7 But what we learn from this cluster of essays is that most spaces are inhabited—in fact, that jurisdiction only matters when the jurisdictional space in question is peopled—and that when we interrogate jurisdiction through the eyes of an individual's lived experience, we find that its borders are often far from clear. Lived experience, in other words, suggests that jurisdictions may be more honored in the breach than in principle and that the actual people in them may view them not as satisfying constraints that give meaning to their lives but as nuisances that impede cross-border communication. Indeed, these essays by Andrew Elliott, David Delaney, Brook Thomas, Jamie Taylor, and Brant Torres examine textual or historical moments where the ritual of leaving one place and entering another is directly thematized. For Andrew Elliot, for example, whose disciplinary affiliation is human and environmental studies, bringing authority into dialogue with space and language invites us to look behind and before the law to the rituals of hospitality, which governed relations between Japan and the United States in the mid-nineteenth century, before formal law in this area took hold. For David Delaney, an eminent legal geographer who has written a great deal about jurisdiction, the focus of lived jurisdiction is the "home," where jurisdictional borders are crossed multiple times on a daily basis by guests, intruders, and the homeowners themselves. In the next essay in this group, Brook Thomas, one of the major voices in the field of law and literature, examines the contradictions experienced by people whose lives on the ground were affected by one of the most perplexing conceptual struggles within the area of jurisdiction, the struggle between federal and state jurisdiction before, during, and after the American Civil War. Here a battle usually treated from above as purely ideational is given an explicit empirical grounding. For Jamie Taylor, whose expert...
ise is both literary and historical, the sources for lived experience are the annals of daily life in the Middle Ages and in particular the stories of how “outlaws” were made and what kind of a culture developed around them. Finally, for Torres, a literary scholar with an interest in queer theory and sexuality, jurisdiction is played out in the area of intimacy and the human body, arguably the most inviolable jurisdictions of all.

Space and authority, law and language again converge in the third cluster of essays—Juris-Just-Dictions—where contributors who come from disciplines that are already interdisciplinary, like legal history, law and literature, and jurisprudence and social thought, ask questions about the justice of jurisdiction or, to coin a phrase that might help to shape future jurisdiction studies, “jurisdiction-reception.” Here in contrast to the first cluster of essays on authorship, the focus is on the audience or the interpretive authority of those on the receiving end of a jurisdictional decision. As Bradin Cormack explains, jurisdiction “merges the making of meaning with the creation of bounded space, . . . As a speaking of the law . . . jurisdiction thus grounds the activity of producing normative meaning.”

Cormack’s statement isolates a number of crucial criteria that are central to the essays in this section. Juris-Just-Dictions calls our attention to what kind of meaning jurisdiction creates, how it is heard and, crucially, whether what is heard by those within the jurisdiction is widely shared, as many in the law have long supposed. The authors in this section, many of whom have been at the forefront of law and humanities investigations, question the assumption that in creating meaning by drawing lines in “the primordial soil,” justice will be done. In the essays by Robert Ferguson and Austin Sarat and Martha Umphrey, for example, authors who have elsewhere helped to define this interdisciplinary field, we find that the lines drawn around a space for the purpose of pursuing the “common good” may more often than not hinder that very goal. In their analysis of the Orson Welles filmic masterpiece, A Touch of Evil, Umphrey and Sarat argue that the establishment of the border space between the United States and Mexico serves less to clarify than to blur the differences on either side of it—differences between Americans and Mexicans, residents and strangers, even law and crime.

In “The Curves of Justice,” Robert Ferguson continues this interrogation into jurisdiction and justice by challenging the accuracy and effectiveness of the metaphor of the scale through which justice is so often portrayed. For Ferguson, justice is far better represented not by the icon of a scale but by the metaphor of the curve, a metaphor taken from Cartesian space and used by the novelist, C. P. Snow, to talk about how justice actually feels to people within the legal system. Alicia Renfroe is also interested in the way justice is modeled in the logic of the law, but for her the dominant metaphor is one of contract. Renfroe reads William Dean Howells’s novel, A Modern Instance, as a critique of the ostensible connection between contract—a scale poised in a state of equilibrium—and justice. A slightly different feature of the ostensible ends of the law is taken up by Peter Goodrich and Adam Sitze in their reflections on the origins of jurisdiction in the ancient Greek, Roman, medieval, and early modern periods. Goodrich, who has written broadly and deeply about legal theory in
legal discourse, asks to what extent we can associate jurisdiction with justice without going outside the disciplinary “bounds” of the law, as it is popularly conceived, to a largely spiritual or honorific space that may not always comport with the bounded language of the law and that, by its very existence, may suggest that law does not reside in a jurisdiction all its own. Adam Sitze offers a rereading of jurisdiction that uncovers an alternative genealogy for the term, which reveals an always already imbricated nature of space, law, and literariness that complicates our sense of how the law makes justice by drawing lines and putting up fences.

The final cluster of essays, Jurisdiction: Memory, Poetry, and Mental Illness, brings us back to the question of space as a component of law on the one hand and of language on the other. Literature by some accounts deals exclusively with the imaginary world and law with the “real,” but when you overlay them as the authors in this section do, the space they occupy and the space they describe changes dramatically. In this section three literary scholars and one constitutional law scholar interrogate jurisdiction by taking narrative and its claims on the imagination seriously. The result is a sense of jurisdiction that is not necessarily mappable but is also not merely abstract. This jurisdiction addresses and orders those features of human life that are not biological in a strict sense, but sensual nonetheless—features like memory and imagination. Thus the constitutional law scholar Emily Calhoun looks at how certain Supreme Court jurists, the ultimate arbiters of the law and language “of the land,” erect an imaginary and—as in jurisdictions—extra-legal jurisdiction not by issuing orders from the bench but by carving out a new, self-marginalizing narrative space. This new space, within their decisions and yet set off from it by asterisks, allows them to say things that go, as Calhoun puts it, beyond “the jurisdictional pale.” Memory and experience also alter the shape of jurisdictions. In an attempt to tease this out, the literary critic Matthew Anderson asks: how can Baudelaire’s repeated visits to the Place du Carrousel, memorialized in his poem, “Le Cygne,” alter not just our perception of the place but also its actual relationship to the people who pass through it? Another literary scholar, Hollis Robbins, in an examination of a poem by Wordsworth, asks: should a census taker, who is in some sense an arm of the law, count a person as somehow present if that person is technically dead but lives on in someone’s imagination? Finally, the essay that concludes this section and the volume as a whole, Cathrine Frank’s close reading of another literary text, Robert Louis Stevenson’s Dr. Jekyll and Mr. Hyde, asks whether we need to take another look at our assumptions about the singularity of jurisdiction when we’re dealing with a character like Jekyll and Hyde, who by virtue of mental illness, drugs, or an excess of imagination, lives a double life. Her essay leads us to wonder not only whether “jurisdiction” should always be pluralized, but also whether jurisdictions, the speaking of the law, in places isn’t also a seeing, touching, and hearing of the law as well.

Nan Goodman
University of Colorado at Boulder
NOTES

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2 There has been some controversy over whether the word space or place should be used in any given context, but the general consensus is that “space” is the more abstract concept of the two and that “place” typically refers to a “space” that has been given human meaning. The idea of “social space,” however, has complicated even this difference, and so I make little distinction between them here. On this controversy, see, for example, Tim Cresswell, *Place: A Short Introduction* (Malden, MA: Blackwell Publishing, 2004); Yi-Fu Tuan, *Space and Place: The Perspective of Experience* (Minneapolis: University of Minnesota Press, 1977).


8 Cormack, 8.