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Restructuring legal geography

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Abstract

We argue that legal geography's ability to produce holistic knowledge about law and legal relations is hampered by the qualified dominance in the field of what we refer to as a contingency orientation. This phrase refers to both the belief that law, legal relations, and legal outcomes are more open and contingent than they appear to be, and to an empirical interest in bringing to light moments when law, legal relations, and legal outcomes appear to depart from dominant representations of these as closed, determinate, aspatial, and wholly formal. Because holistic accounts of the social world require attention to both agency and structure, both contingency and determination, we call for a stream of scholarship within legal geography the purpose of which is to give more explicit and concerted attention to structure and determination than there has heretofore been in the field, and to produce research-based theoretical knowledge that can thus improve the holism of our collective understanding of the law.

Keywords

agency, law, legal geography, Marxism, structure

I Introduction: Assessing progress in legal geography

In a recent progress report, David Delaney raises the question of whether legal geography is a coherent enough body of scholarship for progress in it to be assessed. Among other things, he notes the field's remarkable thematic breadth and its lack of internal debate (2016: 267; see also Blomley, 2008a, 2009; Delaney, 2010, 2015; Sivak, 2010; Braverman et al., 2014). A related feature of the field also bears mentioning in this regard: the fact that scholars participate in it to very different degrees. As Braverman et al. (2014: 1) note, while some practitioners of legal geography identify as legal geographers, 'the majority are more casual or itinerant participants whose primary intellectual concerns are elsewhere' (2014: 1; see also Blomley, 2008a; Delaney, 2010). As Nicholas Blomley has put it, legal geography's boundaries are vague, and its population is 'diverse and unconsolidated' (2008a: 155). It is no wonder that the field has, as Delaney has noted elsewhere, 'an archipelagic feel to it' (2010: 12).

Assessing progress in such a field cannot but be challenging. The scholar charged with this task must select what to examine from within a vast constellation of interventions. That there are so few already-existing clusters of interventions – pulled together by theoretical debates, say, or by thematic overlaps – makes this task all the more difficult. So too does the fact that there are few intramural discussions about the purpose or goal of scholarship in the field. Ideas about the purpose of scholarship in a particular field, whether they are implicit or explicit, collectively agreed-upon or individually held, are necessary for assessments of academic progress: we cannot assess whether the field is advancing, as opposed to just moving, unless we have some sense of the direction in which it ought to be going. A reviewer's task is made easier, and their review is made at least potentially more impactful, if they can assess the field's progress towards collectively agreed-upon goals.[1]

In this paper, we propose a goal for legal geographical scholarship and assess the progress of the field so far towards that goal. We propose that the goal of legal geography as a field should be the production of holistic knowledge about the place and function of law in contemporary (and historical) societies. By holistic knowledge, we mean knowledge that takes into account both human agency and the structural conditions within which that agency operates. We follow the arguments of others who have suggested that one of the purposes of critical or radical scholarship is to help us understand what sites and scales, at what moments, are ripe for what kinds of struggles and strategies, and who insist that the production of this type of knowledge requires attention to both agency and structure (Hall, 1980; Glassman, 2003; Mitchell, 2008). A holistic account of law can help us to understand when and how it is likely to serve particular powerful interests, and under what circumstances it has been and can be used to advance the interests of marginalized groups and to enable progressive social change, including change that improves the conditions for extra-legal social transformations.

In the pages that follow, we argue that legal geography's ability to represent the law holistically is hampered by the qualified dominance in the field of what we refer to as a contingency orientation. We use this phrase to refer to both the belief that law, legal relations, and legal outcomes are more open and contingent than they appear and than some scholars and legal practitioners have maintained, and

relatedly, to an empirical interest in bringing to light moments when the law, legal relations, and legal outcomes appear to depart from representations of these as closed, determinate, aspatial, and wholly formal. Because we believe that holistic accounts of the social world require attention to both agency and structure, both contingency and determination, we use this paper to call for a stream of scholarship within legal geography the purpose of which is to give more explicit and concerted attention to structure and determination than there has heretofore been in the field, and to produce research-based theoretical knowledge that can thus improve the holism of our collective understanding of the law.

In the next section, we clarify what we mean by the terms determination, contingency, structure, and agency. We then discuss the emergence and evolution of the contingency orientation within the field of legal geography. We argue that while legal geography has changed in several ways since its emergence in the 1980s, the contingency orientation that characterized the field's beginnings still enjoys a default dominance. This dominance can be seen in both the continued importance within the field of some of the contingency-emphasizing arguments that emerged during the field's early years, and in the absence of a body of scholarship within the field that is self-consciously devoted to developing our understanding of structure and determination as these relate to law. In the penultimate section of the paper, we explain why attention to structure and determination makes accounts of the social world – and law within it – more holistic and thus more politically powerful, and we discuss how we might go about developing what we call a weak determinist stream of scholarship within legal geography. We conclude by expressing the hope that there will be further debate about what should be the goals of legal geography and how we might achieve them.

II Determination, contingency, structure and agency

We use the terms 'contingency' and 'determination' in this paper to refer to different ways that social scientists, humanists, and others make sense of the social world. While there are many points along the contingency-determination spectrum, we speak schematically in this paper of four: strong determination theses, weak determination theses, strong contingency theses, and weak contingency theses.[2]

For someone who adheres to a strong determination thesis, all is foreordained. And indeed, as Raymond Williams reminds us, Marx's famous statement that 'life determines consciousness' is a deliberate inversion of the theological language that perhaps best exemplifies the strong sense of determinism: 'the notion of an external cause which totally predicts or prefigures, indeed totally controls a subsequent activity' (2014 [1973]: 120). Today, few scholars insist that social life is entirely determined – that the world is unfolding according to an internal dialectic, or that an economic 'base' irrevocably and exhaustively determines a 'superstructure' of culture, law, and politics. Most scholars today who accept the reality of determination subscribe to a weak rather than a strong version of the thesis: all of social life may not be foreordained, but some of what we see around us has been shaped or conditioned by structures that are not immediately perceptible. We may make our own history, but we do not do so under conditions of our own choosing.

Just as there are stronger and weaker versions of the argument that social life is determined, so too are there stronger and weaker versions of the argument that social life is contingent. Those who subscribe to a strong version of this thesis insist that everything in social life is contingent – that everything we see could have been otherwise, that nothing is determined by anything else. This way of seeing the world has been described by Raymond Williams as 'a kind of madness' (1983: 98; quoted in Marks, 2009: 8), but especially in the 1980s and 1990s, when many scholars were seeking to distance themselves from the determinism that was thought to have dominated leftist scholarship in prior decades, it was possible to see versions of this argument being made. The contingency thesis more commonly subscribed to today, however, is a weak rather than a strong one: all of social life may not be contingent but there are aspects of the social world that are the result of accident and agency.

While contingency and determination have come to be terms through which scholars signal and debate their understandings of the social world (see, for example, Blencowe, 2011; Marks, 2009), the terms are not always conceived of as a pair, and for reasons that will help us to explain two related terms: structure and agency. 'Contingency' does not in fact mean that something is uncaused; it means that that something is uncaused by some other particular thing (or, for some, that it is neither necessary nor impossible with respect to that other thing). For example, a firm's decision to invest in automation or artificial intelligence so as to lower labor costs is that firm's *contingent* response to the *necessary* (according to many Marxist theorists) tendency of the rate of profit to fall under capitalism. That decision is contingent because the firm might have chosen a different strategy: it could have petitioned relevant political bodies for tax breaks, for example, or contracted out the labor for services like shop cleaning. Because the term contingent refers to a relationship rather than an object, it actually does not make sense, as Andrew Sayer has pointed out, to argue that something is contingent 'if it is not also clear what is contingently related to what' (1991: 292). As readers will know, however, the term is in fact very regularly used without its users specifying to what other thing something is contingently related. This is perhaps because there is a widespread (though probably not universal) understanding in the social sciences and the humanities – one rooted in decades-old debates – that to speak of something as contingent is to speak of it as contingently related to one or more *structures*. Thus, when a scholar says that something is contingent they are generally saying that that thing (e.g. the law) is not determined by any or by a particular structure (e.g. the economy).

What, then, do we mean by structure, and by its opposite, agency? As Marxist anthropologist Maurice Godelier puts it, structures are 'levels of reality that exist beyond man's visible relations and whose functioning constitutes the deeper logic of a social system' (1977: 45). For those who subscribe to weak determination theses, structures do not lead directly or inexorably to particular outcomes. Rather, they create the conditions for some rather than other outcomes through the 'setting of limits, the establishment of parameters, the defining of the space of operations, the concrete conditions of existence, the "givenness" of social practices' (Hall, 1996: 44). While it is tempting to refer to structures as 'forces' because of their apparent power and their degree of entrenchment in social life, this is a misleading term for those not meaning to speak of structures as strongly determining, and one likely to

create the impression that structures are somehow extra-human laws or processes that get rolled out onto people and places. For those who subscribe to weak determination theses, structures are often better understood, as Jim Glassman puts it, as social relations in which people must participate even when they would rather not or when they are unaware of doing so (2003: 681). (Though this does not mean that there are not sometimes class or group representatives that play outsized and/or self-aware roles in shaping the law or the social world in ways that serve the interests of the class or group that they represent.)

What counts as a structure, what the powers and limitations of various structures are, and how structures interact with one another are all subjects of debate (see, inter alia, Eisenstein, 1978; Hall et al., 1978; Walby, 1991; Robinson, 2000 [1983]; Sayer, 2000; Fraser, 2018).

Agency, when ascribed to humans,[3] refers to our ability to act within our social contexts. How many of our apparently 'free' actions are instances of true agency is a subject of debate – especially since many scholars today think of things like language and discourse as structures – as is what kinds of agency are required for social change (see, inter alia, Anderson, 1980; Abu-Lughod, 1990; Mahmood, 2005; Singh, 2015). The degree of optimism that a scholar brings to that discussion will be influenced by both the particular structure that they have in mind to change and the intellectual tradition of which they are a part. Feminists could 'have a revolution now', as J.K. Gibson-Graham memorably put it, 'while Marxists have to wait' (1996: 252), because while patriarchy has sometimes been seen as a structure that can be dismantled incrementally and piecemeal through large and small actions, capitalism has generally been understood to be a structure whose destruction requires large-scale, collective, punctual action (i.e. revolution). Gibson-Graham, of course, lamented this way-of-seeing and sought to bring to light both the weaknesses of capitalism and the previously unacknowledged power of small-scale extra- or counter-capitalist actions. They sought to apply, in other words, a perspective on agency and structure gleaned from one intellectual tradition (post-structuralist feminism) and with respect to one structure (patriarchy), to another tradition (Marxism) and structure (capitalism).[4]

While there are scholars involved in debating the relationship between agency and particular structures, it is important to note that there are also scholars who do not explicitly involve themselves in these theoretical debates but whose scholarship tends to illuminate one side of the structure-agency divide more than the other. For example, Paul Willis has noted that, as a result of anthropology's focus on information gathered in the field, we 'get from anthropologists rather more agency' than we get 'historically given conditions and intractable discursive and symbolic material'; and we get 'rather more human control and centredness over the use of those things', than we get understanding of

> the connected nature of those conditions which help to structure a particular field, and those conditions which decentre aspects of human agency, by which I mean precisely those things which you can't discover directly in the field: the history, political economy and context which determine a lot of behaviour in a particular site, as well as the discursive forms. (1997: 184; see Abu-Lughod, 1990, for a related critique)

By contrast, Gellert and Shefner argue that because world-systems research is dominated by 'quantitative and historical approaches' that bring to light 'cross-national and world-systemic structures', important insights are precluded, in particular 'the kind of insights that field-based research provides' (2009: 197–8) – not only the 'meanings of social life to individuals' but also, when conducted with structures in mind, the 'real dynamics and processes of power' – how it 'is exercised and resisted, accommodated or facilitated, made covert or kept hidden' (p. 211).

As these statements suggest, whether it is structure or agency that is foregrounded in a work of scholarship often depends on the particular methods and research questions that the scholar uses, and these last can be strongly shaped by the conventions of particular disciplines, fields, and schools of thought. In the section that follows, we discuss legal geography's development into a field with a tendency to shine a brighter light on agency and contingency than on structure and determination.

III Legal geography's contingency orientation: Emergence and evolution

1 Emergence

Although it is difficult to point with absolute certainty to the founding moment of legal geography, it seems to have been called into being as a field for the first time by Gordon Clark and Nicholas Blomley in the late 1980s. Geographers had given some attention to law prior to this, but Clark and Blomley were the first to suggest that the work on law in geography, along with the work that was emerging on the topics of space and place within legal studies, should constitute a distinct subdiscipline or field of inquiry. And they were the first to suggest what shape scholarship in that field should take going forward (Blomley, 1989; Blomley and Clark, 1990). Given the ascendance of critiques of Marxism in the discipline of geography and in academia more generally at this time, and given the rise of the broadly post-structuralist Critical Legal Studies (CLS) movement among scholars of law, it is no surprise that the way forward for which Blomley and Clark advocated took the form of an 'interpretive' approach (sometimes also called a 'hermeneutic' or 'critical hermeneutic' approach) that emphasized the contingency and openness of law, legal relations, and legal outcomes (see Chouinard, 1994; Blomley, 2008a; Butler, 2009; and Forest, 2000, for accounts that situate early legal geography within the intellectual times of its emergence).

According to its early proponents, the interpretive approach to law and geography would help scholars avoid the flaws of two existing approaches to law, both of which they saw as determinist, though in different ways. The first flawed approach posited law, space, and society as separate from and acting upon one another. This approach was, according to those criticizing it, common in several different types of scholarship: impact analysis scholarship, for example, which considered the impact of laws on particular places; and what Blomley and Clark referred to as social scientific scholarship on law and society – a category that included Marxist approaches to law – in which law was seen as the passive outcome of structures in the sense referred to by Godelier above. As Blomley and Clark wrote, 'to the extent that social science has theorized the relation between law and society, it has normally identified

economic structure or social structure as the underlying logic which "explains" law' (1990: 436). Rather than acknowledging 'contingent or contextual variables', they went on, 'social science values foundational derived causal networks perhaps only modified by their latent empirical expressions' (1990: 437–8). Two remedies were offered to help scholars in the emerging field of legal geography avoid the flaws of seeing law, space, and society as distinct from and acting upon one another: (i) the replacement of uni-directional causal explanations such as those associated with impact analysis and social scientific scholarship in favour of accounts that asserted the 'mutually imbricated' nature of law and space, or law, space, and society (Blomley and Clark, 1990: 434; Blomley, 1994: 28); and (ii) a research agenda that focused on how different local contexts lead to different laws, different interpretations of laws (hence the 'interpretive' approach), and/or different socio-legal relations (Clark, 1985; Blomley, 1994). The resulting evidence of the law's spatial diversity could help to disprove the notion that invisible structures exhaustively and uniformly determine the legal (Blomley and Clark, 1990).

The second determinist approach to the law that the interpretive approach to law and geography was poised to help scholars correct, according to its proponents, was one which took for granted the law's self-presentation as closed, determinate, aspatial, and wholly formal – the law's status, essentially, as a kind of structure itself, dispensing decisions in accordance with its own internal rules, independent of social or spatial context (Clark, 1985, 1989a, 1989b; Blomley, 1989, 1994; Blomley and Clark, 1990; Pue, 1990). Proponents of the interpretive approach ascribed this representation of law to the law itself or to legal practitioners, or simply talked about this representation as part of the mainstream understanding of law. Two remedies again were seen as addressing the problems associated with this approach: (i) a research agenda that focused on law 'on the ground' – sometimes thematized as 'lived law' – rather than formal law or law 'on the books'; and (ii) a research agenda that focused, as above, on how local contexts shape the law, legal interpretations, and socio-legal relations. These research agendas could reveal the actual messiness of law and the extent to which it extends beyond its formal self, as well as the law's actual openness to the differences that exist in different social and spatial contexts.

Importantly, revealing the contingency of legal outcomes and legal relations was valued not only for the nuance it would bring to scholarly analyses of law, but for its potential to unsettle ideological representations of the world. The 'assumed uniformity of legal norms and the aspatiality of legal knowledge', Blomley wrote, for example, erases the 'spatial diversity of legal possibilities and meanings' (1994: 53). Exposing the law's diversity and contingency could remind people that things need not be as they are, and could provide them with examples of alternative, more progressive, legal arrangements and ways-of-being (see Blomley, 1994: 227).

In developing these critiques and proposals, proponents of the interpretive approach to legal geography were influenced by the CLS movement. Legal geographers' interest in exposing the diversity of law across space was influenced by the interest among CLS scholars in exposing both the diversity of law over time and the existence of competing legal systems in particular places and at particular scales (see Santos, 1987; Butler, 2009; Valverde, 2009, for discussions of legal pluralism and inter-legality).

Similarly, legal geographers' interest in revealing instances when law and legal relations appeared contingent rather than determined was influenced by, among other things, CLS arguments about the 'indeterminacy' of law – the notion that legal decisions are not determined in advance by the law itself in any clear way, but are rather 'fraught with…contingency (of evidence, precedent, and related cases) and suppression of counter-claims (alternative interpretations)' (Blomley and Clark, 1990: 440).

The interpretive approach to legal geography met with only one major critique of which we are aware: a 1994 article by Vera Chouinard in this journal. In terms of form, she argued that proponents of the interpretive approach made their case for it poorly: 'negative representations of rival radical perspectives', she argued, noting their critiques of Marxism in particular, stood in for what should have been 'substantive arguments about the merits of [their] approach' (1994: 425). In terms of content, Chouinard saw the interpretive approach as an instance of postmodern/post-structural approaches to the social world, and suggested that it possessed both the virtues and the limitations of these. She applauded studies conducted in the post-structuralist spirit for the reminder that 'law-making and implementation are ongoing, tentative and open-ended processes' and ones in which abstract principles of justice 'mesh or clash with such facets of "local context" as political and legal traditions, and struggles against the abstract "rule of law" in matters of daily life' (1994: 419). Among the limitations of this approach that she noted, however, were a 'relatively uncritical faith in radical inquiry as a central means of contesting oppression' (p. 418), and an over-emphasis on discourse that could result in blindness towards the material bases of inequality and injustice (p. 419). Chouinard ultimately argued that post-structuralist scholarship's strong emphasis on discourse, interpretation, textuality, and context sidelined two crucial pursuits: that of understanding the complexity of actually lived material relations, and that of explaining how particular legal relations emerge and evolve. She concluded by calling for a Marxist-feminist approach to law and legal struggles informed by postmodern or post-structural insights.

2 Evolution

Chouinard's critical appraisal of the interpretive approach received no direct response of which we are aware. In spite of this, in the ensuing decades, scholars have departed in several ways from the arguments and rhetoric that were part of the early calls for an interpretive approach to legal geography. Legal geographers no longer explicitly deride schools of thought associated with some degree of determinism such as Marxism or the social sciences. Nor do they deny any longer the value of looking at structures to explain social phenomena; indeed, to greater and lesser degrees, most legal geographers touch on structures – or things that many scholars think of as structures, like capitalism and racism – in their work. These changes are in part a function of the softened positions of those who have been a part of the field from the start and in part a function of the many newcomers to the field who were not party to the early calls for an interpretive approach.

But if legal geography has moved away from some of the arguments expressed at its founding, a contingency orientation still enjoys, we think, a default dominance in the field. We get a sense of this when we consider the fact that there have been several critiques recently about the field's lack of

attention to political economy (Jepson, 2012; Andrews and McCarthy, 2014; Kay, 2016). In some ways this is surprising given that, as we have just noted, many scholars discuss things like capitalism (or neoliberalism) in their work. And while some scholars mention these things without discussing their relationship to law in much depth, others *do* make this relationship the focus of their interventions. We see this especially though not exclusively among those who are occasional rather than regular contributors to the field. For example, some scholars have examined the constitutive role that the law has played in the rolling out of neoliberalism and other conservative political-economic agendas, and in the fighting back against them (Boyer, 2006; Weller, 2007; Hubbard et al., 2009; Carr, 2010; Pendras, 2011; Hae, 2012; Martin and Pierce, 2013; Rutherford, 2013; Andrews and McCarthy, 2014; Niedt and Christophers, 2016; Doucette and Kang, 2017; Cullen et al., 2018). And others have explored the role of law in the management of the economic and social marginalization that has followed from these agendas (Mitchell, 1997, 1998; Herbert and Brown, 2006; Belina, 2007; Mitchell and Heynen, 2009; D. Martin 2013; L. Martin, 2013; Herbert and Beckett, 2017; Freeman, 2017; Villanueva, 2017b).

What, then, are Jepson, Andrews and McCarthy, and Kay seeing when they point to a lack of attention to political economy in legal geography? They may be seeing the two things that lead us to argue that the contingency orientation still enjoys a default dominance in the field: first, the continued centrality of some of the arguments that emerged in legal geography's contingency-focused early years, especially in the scholarship of some of the field's most prominent and prolific scholars; and second, the absence of a body of scholarship that is self-consciously oriented towards the production and refining of knowledge about law and structures, including the structure of capitalism. We discuss each of these in turn.

The ideas associated with legal geography's contingency-oriented beginnings that have proven most tenacious are: (i) the notion of the mutual imbrication of law, space, and society; (ii) the notion of law, legal relations, and legal outcomes as more contingent than mainstream representations of these suggest; and (iii) the notion that there is political power in both the reality and the revelation of this contingency.

The idea of law and space as mutually imbricated – an idea that emerged out of early legal geographers' rejection of unidirectionally determinist approaches to law, space, and society – is today perhaps the most important axiom in the field of legal geography. It is, as Bennett and Layard note, an enduring 'leitmotif of legal geography' (2015: 408, 409; see also Bartel et al., 2013). In Blomley's survey of the field for *The Dictionary of Human Geography*, he suggests that 'the distinguishing feature' of critical legal geography 'is its refusal to accept either law or space as pre-political or as the unproblematic outcome of external forces' (2009: 414). Similarly, David Delaney argues in one of his progress reports that a key assumption of the field is the 'mutual constitutivity of the legal and the spatial' (2015: 98). Moreover, Blomley's notion of splicing (2003b) and Delaney's notion of the nomosphere (2010) were both developed to provide legal geographers with a language through which to talk about law, space, and society without privileging any particular element over another: Delaney

defines the nomosphere as 'the cultural–material environs that are constituted by the reciprocal materialization of "the legal", and the legal signification of the "socio-spatial"' (2010: 25); and Blomley suggests 'splice' as a 'conceptual language that allows us to think beyond binary categories such as "space" and "law"' (2003a: 29–30). These terms have been adopted by many scholars, and the scholars who have adopted them do not exhaust the list of scholars who affirm the mutual imbrication argument (splicing: Forest, 2008; Rutherford, 2013; Bennett and Layard, 2015; nomosphere: Turton, 2015; Bennett and Layard, 2015; Benson, 2014; Villanueva, 2017b).

The idea that law, legal relations, and legal outcomes are more contingent than mainstream representations of these suggest is another motif with roots in the field's interpretive origins that endures today. There is, in legal geography, Delaney writes in his assessment of the field, a 'pronounced suspension of belief in "The Law" as such and in its self-authorizing claims of unity and coherence' (2015: 97), and legal geographers do not tend to assume 'that a given legal event…will automatically result in the intended effects in the world' (2015: 100). In Delaney's own scholarship he has argued that the 'nomospheric constitutions of our worlds' are 'fluid, ambiguous, always revisable' (2010: 194). Similarly, in much of Blomley's work, he is interested in exposing the flawed and incomplete representations of law and legal relations with which we work. He suggests that there is power in revelations of the actual diversity and messiness of things we may have taken for stable and settled. Blomley has devoted a lot of energy in particular to challenging the accuracy of the ownership model of property, for example – a model which proposes, among other things, that property is either public or private, and is always held by a single identifiable owner (see, for example, Blomley, 2004a, 2004b, 2004c, 2005a, 2005b, 2013). The reality of property, he writes, 'may be considerably more diverse than a fixation upon the ownership model may suggest' (2013: 34). In a related vein, other scholars have pushed back against notions of the law as formal and closed by emphasizing the openness of the law to what lies beyond it (Jeffrey, 2011; Blomley, 2014b, 2015), including to social ideas about particular places, peoples, and things (Delaney, 1998; 2001; Forest, 2004; Mitchell, 2005, 2006; Herbert and Brown, 2006; Collins, 2007; Pruitt, 2014; Gorman, 2017). They have highlighted the messy reality of legal pluralism, inter-legality, competing legal ontologies, and unclear or disputed legal scales and jurisdictions (Valverde, 2009; Collis, 2009, 2010; Benson, 2012; Lepawsky, 2012; Blomley, 2008b, 2014b, 2015; Fudge and Strauss, 2014; Herbert, 2014; Hoogeveen, 2015; Freeman, 2017; Strauss, 2017; Hubbard and Prior, 2018). And they have drawn attention to the unexpected things that can result from the legal process itself (Jepson, 2012; Benson, 2014; Martin et al., 2010).

The final enduring idea within the field, though one with perhaps a smaller footprint, is the notion that there is something politically promising about both legal contingency itself and revelations thereof (Delaney, 2010; Blomley, 2004b, 2004c, 2005b, 2013). For Blomley, for example, there is 'radical potential' in the fact that property 'is a more diverse category, both empirically and politically, than we often suppose' (2004b: 615). As he notes elsewhere, 'recognizing the commons in our midst' can be a 'crucial political task through which alternative possibilities can be discerned and revalorized' (2013: 47).[5]

Although these ideas have their roots in legal geography's early years, it is probably safe to assume that the geographers who make or refer to them today do not do so with the intention of aligning themselves with the anti-determinism or anti-Marxism of those years. Because all of these arguments are in a 'weak contingency' mold – that is, they do not insist that nothing is determined, only that many things are contingent – there is no reason why even a scholar with a strong interest in the structural should not engage with and adopt them, as several do (see, inter alia, Jepson, 2012; Rutherford, 2013; Villanueva, 2017b). In fact, precisely because strong determination theses are so rare in the social sciences today, it is hard to imagine *any* research into the law whose findings did not confirm to some degree the first two arguments: that law, space, and society are mutually imbricated, and that law is more open than it sometimes appears. It is this that allows Delaney to demonstrate the importance of the idea of legal contingency to legal geography by rhetorically asking, after describing some recent examples of work in the field, 'in a given process, such as those referred to, how many moments were *determined* in any strong sense?' (2015: 101, emphasis in original). None, of course.

But even if these weak contingency arguments are compatible with accounts of law emphasizing structural factors, our review of the literature suggests that there is still not, within the field or the discipline, a body of scholarship that is self-consciously devoted to the production of knowledge about law from what we would call a weak determinist perspective, that is, a perspective that is interested in better understanding the structural terrain on which agency operates. There is, as we have noted, scholarship on law and the structural within legal geography. There is also scholarship on law and the structural in other parts of geography (for examples of this last see Gilmore, 2007; Barkan, 2011, 2013; Essex, 2013; Christophers, 2014; Quastel, 2017). But these interventions do not constitute a coherent body of scholarship. They lack the exchanges and debates that could link the disparate parts into a whole while also inspiring scholars to further refine their arguments. To our eyes, this represents a missed opportunity for legal geographers and other scholars interested in questions of law and structure to improve the quality of their and others' arguments through mutual engagement and critique, and to generate the momentum that could move the field of legal geography and the discipline of geography towards a more holistic understanding of law. In the next section, we discuss the importance of attention to structure and determination to holistic scholarship in general and about law, and we suggest some ways that scholars might develop their existing engagements with law and structure into a stream of scholarship that is self-consciously oriented towards the production of research-based theoretical arguments about structure and determination as these relate to law.

IV Engaging with structure and determination in legal geography: Why and how

1 Why?

Here we discuss why attention to structure and determination, in addition to agency and contingency, are necessary to produce holistic analyses of the social world, law included, and why, by extension, we need such analyses if we are to avoid ideological traps as we attempt to generate effective strategies for praxis.

Simply put, if we do not consider the role of determination as well as contingency in what we study, we risk producing accounts that misrepresent the true nature of the object being studied and that obscure the larger system of which it is a part. As Stuart Hall (1996: 36) writes:

> If, in our explanation, we privilege one moment only, and do not take account of the differentiated whole or 'ensemble' of which it is a part; or if we use categories of thought, appropriate to one such moment alone, to explain the whole process; then we are in danger of giving what Marx would have called (after Hegel) a 'one-sided' account.

'One-sided explanations', he goes on, 'are always a distortion', and always produce explanations that are 'only partially adequate'. As an illustration of this, consider Godelier's statement above that structures are 'levels of reality that exist beyond man's visible relations' (1977: 45). It is possible to see Godelier's use of the word 'man' here as contingent. Indeed, there is a sense in which it *was* contingent, was an expression of his agency: Godelier chose to write what he wrote. He might have made his point in another way. He might have written something else altogether. But Godelier's use of the word 'man' is not only contingent. It is also, as we know, *conditioned* – determined in a weak sense – by the system of patriarchy as it was operating at a particular time and in a particular place. To argue only that his statement demonstrates the contingency of human thought or expression is to offer an analysis that is 'onesided' and thus 'only partially adequate'.

In a similar way, focusing primarily on contingency where the law is concerned is only partially adequate. Arguments about contingency allow us to see the relative autonomy of law from structures, but they do not tell us in what ways the law is *not* autonomous from these, much less how structures interact in particular conjunctures to shape the law. Consider the disproportionate arrests of black, Latinx, and indigenous people, the far greater likelihood they will be assaulted or killed by police, their longer prison sentences, the greater likelihood that they will face the death penalty, the decreased likelihood that crimes against them will be prosecuted, etc. Or consider the criminalization of poverty that we have seen across the planet in recent decades. Arguments emphasizing legal contingency explain only part of these things: that they *can* happen (because the law is contingent), but not why and how they have. To be sure, these things can be explained to a degree by recourse to phrases like racism/white supremacy, capitalism or neoliberalism, and patriarchy; but without investigating exactly how and why these structures interact with and work through law in particular times and places, our understanding of the law, and how we might harness it for progressive ends, is limited. Relatedly, arguments about legal contingency can shine a light on the law's inconsistencies, informality, and openness; but such arguments on their own do not illuminate what is *not* flexible in law – even if only within a particular spatial and temporal horizon – and how the law can be, as a result of that inflexibility, determin*ing* (in a weak sense) of particular outcomes. In fact, it is precisely this qualified inflexibility that makes the law an effective tool for classes and other groups hoping to direct social benefits selfward and social liabilities away: if the law were entirely fluid and indeterminate, it would not likely be deemed worth the effort to capture, whether from below or from above. If the law's contingency makes it harnessable, its inflexibility makes it worth harnessing. In sum, while arguments about legal contingency represent an

important improvement upon reductionist or strongly determinist accounts, they can take us only part of the way towards a holistic account of law.

In addition to their analytical problems, moreover, partial accounts of the social world can be ideological and as such can inhibit the development of political strategies that effectively advance the interests of marginalized groups and enable progressive change. This is a point that Hall makes in the discussion of capitalism from which the quote above is taken. The understanding of capitalism at which we arrive when using market categories and concepts alone is partial and for that reason *mystifying*: the market categories and concepts through which we understand capitalism obscure other aspects of the system. Similarly, emphasizing only the contingency of Godelier's use of the word 'man' in the statement above not only limits the accuracy of our analysis of it, but directs our attention away from the structure that made it *likely* that Godelier would express what he had to say in the way he did. In cases such as these, the analytical neglect of structure can impede not only the holism of our understanding but our ability to devise effective responses to the injustices around us.

For the past few decades, geographers, including legal geographers, have been concerned about the ideological and practical implications of overstating the power of structures. But the dangers of underestimating them, and of overrating the power of agency and the reality of contingency, are no less grave. Jim Glassman (2003) makes this point in his critique of the post-structural reading of capitalism offered by J.K. Gibson-Graham, Stephen A. Resnick, and Richard D. Wolff in the 1990s. Situating this work within its intellectual context, Glassman writes:

> Working in the wake of theoretical tendencies that became prominent within geography during the 1980s, many studies of resistance have either bracketed or ignored structural power, with some versions of poststructuralism simply denying that structural power is a useful concept in a world where power is putatively highly fluid and dispersed.

The problem with such studies, Glassman continues, is that they

> limit the ability of studies of resistance to articulate the conditions under which political and social struggles might transcend resistance and succeed in liberating groups of humans from the oppressive conditions against which they struggle (2003: 695; see also Mitchell, 2004).

International legal scholar Susan Marks has made a similar critique within her field. Inverting CLS scholar Roberto Unger's influential notion of 'false necessity' – the incorrect belief that things simply are, and must be, the way they currently are – Marks argues that we also must be on our guard against what she calls 'false contingency'. By this she means the failure to see that, 'while current arrangements can indeed be changed, change unfolds within a context that includes systematic constraints and pressures' (2009: 2). Unger does not completely disavow structures – they are 'in the background, casting long shadows but rarely coming directly into view' (Marks, 2009: 12) – but, like many legal geographers, he is more interested in exposing the ways agency and contingency can upend the injustices of the world. One risk of this emphasis on contingency for praxis that Marks notes is that 'the injustices of the present order' will appear as though they are 'random, accidental and arbitrary'. To the extent that they appear

thus, she writes, 'the prospects of changing them become every bit as remote as if they were fated' (2009: 20).

This risk is not a concern in legal geography, we do not think, with its *weak* contingency orientation. The risks that face our field are borne not of an extreme exaltation of agency and contingency above all else, but of a lack of sustained and collective attention to structure and determination. More attention to these can help us to avoid two risks in particular. The first is the risk of overestimating the political purchase of voluntarist, small-scale, informal responses to injustices, including because we fail to see how what may appear to be resistance to structures is in fact permissible within, recuperable by, or constitutively part of them (Hall, 1980: 67; Marks, 2009: 15). See, for example, Brophy's argument about how integral the law's flexibility is to capitalism (2017; see also Christophers, 2016). Unless we study structures explicitly, it is easy to misunderstand them, including by assuming that they are monolithic and static, and to thus mischaracterize tolerable or even necessary variations as real and effective subversions.

The second and related risk, one especially associated with the failure to examine structures in their relationships to one another, is that we will fail to see how and when, as Lila Abu-Lughod put it, 'resisting [systems of power] at one level may catch people up at other levels' (1990: 53). If it is social justice that we are after, we cannot afford to prematurely celebrate actions that seem to subvert one oppressive structure even as they reproduce or are predicated upon another. Geographers, so keen to dispel the gloom that determinist theories of old seemed to bring with them, should take this warning to heart. As Abu-Lughod (1990: 53) writes,

> those of us who have sensed that there is something admirable about resistance have tended to look to it for hopeful confirmation of the failure – or partial failure – of systems of oppression. Yet it seems to me that we respect everyday resistance not just by arguing for the dignity or heroism of the resistors but by letting their practices teach us about the complex interworkings of historically changing structures of power.

2 How?

We are not calling for a wholesale transformation of work that takes place in the field of legal geography but rather for the development of a stream of scholarship whose purpose is to self-consciously and collectively develop and refine research-based theoretical arguments about structure and determination as these relate to law. Far from disavowing the existence or importance of agency and contingency, this stream should be oriented towards developing our understanding of the limits to those in particular times and places, precisely so that we can better understand when agency can be exercised and contingency exploited with the best chances of success. We would hope that this stream of scholarship would be in conversation with – influencing and being influenced by – scholarship conducted in the weak contingency spirit as well as other types of scholarship in the field. And we would hope that its existence could render more holistic legal geography's and geography's understanding of law and legal relations. Scholarship in this stream could take a number of different forms. We restrict ourselves to just a few suggestions here.

First, in order to be able to speak more effectively to one another even when the particulars of our research projects differ, we should not shy away from making or refining theoretical arguments. Theory and abstraction have sometimes been maligned in the field of legal geography (Blomley and Clark, 1990; Blomley, 2014a) and several scholars have noted or critiqued the field's avoidance of it (Blomley 2008a; Philippopoulos-Mihalopoulos, 2011). But theory is an indispensable part of scholars' ability to make what they have learned in their particular research more broadly relevant. Theory is what renders ostensibly different things commensurable and thus comparable. To forsake it is to dramatically diminish the potential relevance and reach of our scholarship, both individually and collectively. Theory is especially important, moreover, when we are talking about structures because, as Godelier's definition of them makes clear, they are not easily observed. As Stuart Hall writes, analyzing 'the complexity of the real' requires 'the use of the power of abstraction and analysis' in order to 'reveal and bring to light relationships and structures which cannot be visible to the naive naked eye, and which can neither present nor authenticate themselves' (1980: 67).

But geographers needn't develop their theories from whole cloth. They should engage with existing theoretical accounts of the structural and, where possible, law's relationship to it. This is our second suggestion. There is, for example, an uneven but important corpus of Marxist scholarship on law (Marx, 1964 [1844]; Thompson, 1975; Poulantzas, 1980; Pashukanis, 1983 [1924]; Tigar, 2000 [1977]) that could be engaged with. And legal geographers should not hesitate to engage with the scholarship within geography, a discipline with a long history of taking (at least some) structures seriously, and one where scholars are increasingly attuned to the ways in which structures work together (see, inter alia, Woods, 1998; Wright, 2006; Gilmore, 2007; Bonds, 2013; Pollard, 2013; Derickson, 2014; Werner et al., 2017; Villanueva et al., 2018). Among other things, this could allow geographers to contribute to scholarship about law taking place beyond the field that has found it hard thus far to think structures together: as Robert Knox has argued about international legal studies, for example, 'the two most prominent radical strands in thinking about imperialism in international law' – the Marxist and the postcolonial – 'frequently talk past each other' (2016: 84).

None of this means that legal geographers should forsake empirical research. It does not even mean that geographers must eschew their interest in lived experiences of law or law at local scales. But there is, as Gellert and Shefner's (2009) and Willis' (1997) appraisals of world systems scholarship and anthropology help us to see, a relationship between the research questions we ask, the methods we employ, the findings we uncover, and the arguments we can make therewith. As Marks explains, moreover, it is very easy to organize one's research in such a way that determination simply does not come into view:

> the angle of vision may be too narrow, or the time-frame too short, so that patterns and logics cannot appear. Systemic factors may also be removed from view insofar as the focus is on issues conceived as monadic and autonomous, rather than relational and interactive. Or yet, to refer to one final mode, explanatory ambitions may be disavowed, so that the existence or non-existence of determining factors becomes a matter of indifference in the discussion at hand. (2009: 15)

Our third suggestion, then, is that legal geographers interested in structure and determination should take care to ask research questions and design research projects that will allow them to learn about structures as well as contingencies. There is no formula for doing so that we know of and many recent suggestions for methodological turns in the field strike us as potentially compatible with weak determinist approaches to law.[6] What matters is that legal geographers avoid the trap of thinking that, as Willis puts it, 'all that you need to know to understand the field is in some way *in* the field' (1997: 184, emphasis in original).

Finally, if this stream really is to be a collectivity of some sort, rather than just a collection of disparate interventions, scholars involved in it must engage with one another, including critically. While the lack of debate in legal geography has created a decidedly peaceable field, critique and debate are indispensible to the goal of improving the quality and the holism of the knowledge that we produce about law.

V Conclusion

Our argument in this paper has been that the field of legal geography remains dominated, if only by default, by a contingency orientation, and that it would be better able to meet the goal of producing holistic accounts of law, space, and society if scholars paid more concerted attention than they currently do to structure and determination as these relate to law. The purpose of this attention is not to end or supersede legal geographical attention to contingency but to contribute to it, and to contribute to the holism, and thus the usefulness, of the knowledge that we produce as legal and other kinds of geographers.

While we hope readers are convinced by our arguments about the current status of determination and contingency, and structure and agency in the field of legal geography, and about the need for a stream of scholarship devoted to better understanding structure and determination, we will be equally gratified if our intervention sparks discussions – in what is, by all accounts, a too atomistic field – about both the goals of the field and the best means of achieving them. As Blomley and Clark noted several decades ago, at the conclusion of an article that attempted to offer some direction to the nascent field, 'there is no obvious recipe or mode of analysis that all would agree with'. Just like theirs, our argument is 'made with the understanding that there must be further debate and criticism about the "proper" intersection between law and geography' (1990: 442).

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Notes

1.

To be sure, legal geography is not the only field where scholars have not extensively debated the purpose of their work, though geographers across the discipline have increasingly called attention to the importance of such discussions both politically and for the quality of the knowledge that we produce (see, for example, Castree, 2006; Megoran, 2008; Mann, 2009; Olson and Sayer, 2009; Orzeck, 2012; Derickson, 2017).

2.

In casting our argument in terms of contingency and determination, we are borrowing a framework that has been used in Critical Legal Studies (Unger, 2001; Marks, 2009). Moreover, it was Susan Marks' (2009) astute critique of 'false contingency' in her field (about which more below) that helped us to see why a related critique was warranted in ours.

3.

Scholars increasingly consider more-than-human agency as well, an important topic we do not have the space to do more than mention here.

4.

But even though Marxists tend to have narrower criteria for what kinds of agency matter when it comes to social transformation (see Anderson, 1980: 16–58), the extent to which post-structuralist scholars like Foucault and Butler envisage a subject that is able to act independently, intentionally, and effectively against structures is far from clear (see Boucher, 2006).

5.

Closely related to these ideas is the empirical tendency of legal geographers to focus on the lived dimensions of law – how law and legal relations are experienced – and to focus on law in local, sometimes 'mundane' sites (Bennett and Layard, 2015: 413). As Bennett and Layard note in their review of the field, 'in most legal geographic studies, investigation has been "from the site up", focusing on explicating historical, social and spatial specificity' (p. 410).

6.

We are especially enthusiastic about the aforementioned suggestions that legal geographers should pay greater attention to political economy. Also promising are suggestions that, in addition to studying the 'mundane sites' that are often favored in the field (Bennett and Layard, 2015: 413), legal geographers study

the operations of and within powerful institutions (Braverman, 2014: 121; see also Azuela and Meneses-Reyes, 2014); that they look at law historically, or otherwise with time in mind (Griffin, 2009; Valverde, 2014; Freeman, 2017); that they look at law comparatively, and law in transit from one place to another (Kedar, 2014); that they look at law and legal relations in the relatively neglected sites of the civil law world (Villanueva, 2013; Kedar, 2014) and the rural (Pruitt, 2014); and that they study law as it relates to war and violent conflict (Blomley, 2003b; Forman and Kedar, 2004; Smith, 2014); to the environment (Delaney, 2001; Andrews and McCarthy, 2014; Ojalammi and Blomley, 2015); to the bodily (Fannin, 2011); and to the creation of social subjectivities (Delaney, 2014; Valentine and Harris, 2016; Villanueva, 2017a).

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