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Performing Spatial Justice

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Abstract

In *Spatial Justice: Body, Lawscape, Atmosphere*, Andreas Philippopoulos-Mihalopoulos introduces a theory of spatial justice that takes into consideration the agential capabilities of nonhuman legal actors. However, in an effort to decenter the human legal subject, Philippopoulos-Mihalopoulos argues that the co-constitutivity of law and space (the lawscape), as the site where (human and nonhuman) legal bodies take shape, cannot be mediated through the political. In response to this claim, I argue that spatial justice is an inherently political project, and I identify the practice of spatial justice (or performing spatial justice) as a means of understanding how to engage the political aspects of this posthuman perspective on justice and law. In my final chapter, I compare this theory of spatial justice with Indigenous law to demonstrate how spatial justice is performed through practices of Indigenous resurgence.

Keywords

spatial justice, Andreas Philippopoulos-Mihalopoulos, Indigenous resurgence, Indigenous law, John Borrows, posthumanism, legal geography, social justice

Summary for Lay Audience

This project considers the challenges posed by nonhuman legal actors to conventional forms of legal subjectivity. Drawing on the theoretical contributions of Andreas Philippopoulos-Mihalopoulos, I suggest a practice of spatial justice rooted in the relationship between human and nonhuman agents. In support of this approach, I conduct a comparative analysis of this practice of spatial justice and Indigenous law, in particular as discussed in the writings of John Borrows.

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Introduction

“The quasi-logical presupposition of an identity between mental space (the space of the philosophers and epistemologists) and real space creates an abyss between the mental sphere on one side and the physical and social spheres on the other. From time to time some intrepid funambulist will set off to cross the void, giving a great show and sending a delightful shudder through the onlookers. By and large, however, so-called philosophical thinking recoils at the mere suggestion of any such *salto mortale*.”

Henri Lefebvre, *The Production of Space*

In *Spatial Justice: Body, Lawscape, Atmosphere*, Andreas Philippopoulos-Mihalopoulos takes a *salto mortale* by proposing a co-constitutivity of law and space that recognizes the centrality of material agency, and introduces a new dimension to the concept of spatial justice. This conceptualization of spatial justice pushes the boundaries of legal subjectivity to reveal the role of nonhuman or more-than-human actors in legal processes, and to provide an introduction to what a posthumanist theory of justice might look like. I argue this conceptualization of spatial justice makes a substantial contribution to political thinking as well by introducing the idea that these posthuman legal assemblages can perform spatial justice.

The co-constitutivity of law and space is a concept introduced by legal geographers to describe how laws and regulations influence everyday life, and in particular, how they limit or facilitate forms of political resistance. However, while this approach engages with the idea that law is materially expressed, oftentimes nonhuman agents are sidelined in order to foreground the social and political implications of law’s spatiality. Philippopoulos-Mihalopoulos adopts the idea that law and space are mutually constitutive, but he focuses on the role played by nonhuman legal agents in shaping this relationship. However, in order to posit a posthumanist theory of spatial justice and distinguish this project from prior formulations of spatial justice, Philippopoulos-Mihalopoulos claims that the co-constitutivity of law and space, which he names the lawscape (a tautology of law and space), is not mediated by the political. According to Philippopoulos-Mihalopoulos, focusing on the political dimension of this relationship detracts from a properly spatial and material analysis of law because it centers it on humanist concerns, like social process and power relations. Philippopoulos-Mihalopoulos recognizes that a posthumanist theory of justice must interrogate the question of legal

agency in novel ways, as there is no human liberal subject that can exercise its will, but rather assemblages (or ‘situated’ collectivities) that produce it. However, I argue that Philippopoulos-Mihalopoulos also shows that agency is articulated through these assemblages, and in a sense, gives us an idea of what a politics of spatial justice might entail. More specifically, I argue that a legal assemblage’s ability to reorient the lawscape, which is the first step towards spatial justice, demonstrates that there is a form of agential capability which acknowledges that assemblages engage in political practice.

The legal assemblages (or ‘situated’ collectivities) that replace the traditional legal subject can perform spatial justice through the process of withdrawal. I argue that this material and spatial process, which demands an attunement to materiality and spatiality, as more than limit or container, introduces a form of ethical practice that can guide legal and political engagement. Philippopoulos-Mihalopoulos’ assemblages engage in this process of withdrawal because they operate as conative bodies, which are perpetually striving to sustain themselves, while simultaneously engaging in creative and productive ontological processes. The crux of Philippopoulos-Mihalopoulos’ theory rests in a shift from thinking through the abstract positionality of a liberal legal subject to the materiality of a legal body (or assemblage) that reveals the tensions and complex legal (and political) entanglements that these bodies must negotiate through their positionality. His theoretical approach allows us to understand how the relationships between human and non-human agents unfold, and how they may be harnessed to shift the parameters of current lawscapes in order to give rise to spatial justice. According to Philippopoulos-Mihalopoulos, these transformative movements can only occur at the level of the lawscape (or the material manifestation of laws and regulations), and as such, they engage both human and non-human legal agents. As legal practice is increasingly coming to terms with the presence of non-human legal actors (e.g. the environment, animals, artificial intelligence), the field will have to consider how these actors affect the ways in which we have traditionally framed legal subjectivity, a relationship which is formed through very specific understandings of an individual’s relationship to land, for example.

As I considered examples of performing spatial justice, I began to note similarities between Philippopoulos-Mihalopoulos’ concepts and ethical and political practices

outlined through theorizations of Indigenous law. In my final chapter I engage in a comparative analysis of spatial justice and withdrawal with Indigenous legal philosophy and resurgence. The treatment of the more-than-human in Indigenous theory provides an example of how ethical practice can be shifted through a more resolute engagement with spatiality and the nonhuman. Indigenous commitment to a form of social, political and legal organization based on the idea of a ‘physical’ philosophy that is centered on the idea of mobility, contradiction, and an attunement to ‘situatedness’, as well as the concept of ‘all our relations’ which de-centers the human, contribute to this discussion in a significant way. My knowledge of these theories is derived primarily from the writings of Anishinaabe legal scholar, John Borrows; however, I believe there is room to expand this engagement beyond what I have outlined in the thesis, and to consider more carefully how Indigenous law can play a role in re-framing our understanding of legal subjectivity.

This thesis is structured as a monograph comprised of three chapters. The first chapter consists of a literature review of the concept of spatial justice which addresses, in particular, the ways in which different schools of thought have interrogated the political potential of the concept. By arguing that the question of justice engages the political and by demonstrating that power relations remain at the core of Philippopoulos-Mihalopoulos’ concept of spatial justice, I show that the relationship between justice and politics persists. The literature review begins with an analysis of the writings of critical human geographers like David Harvey and Ed Soja, who have played an instrumental role in introducing and shaping the concept of spatial justice. Then, I discuss the work of legal geographers, like Nicholas Blomley, David Delaney, Irus Braverman and Mariana Valverde, whose writing on the mutual constitutivity of law and space has been central to discussions about the shifting nature of the social and the political in these types of discourses. I also address legal geography’s engagement with posthumanism, as its most recent theoretical frontier. Finally, in this first chapter, I unpack some of Philippopoulos-Mihalopoulos central concepts (i.e. spatial justice, lawscape, lively agency, continuum, and atmosphere) in order to demonstrate how it is that he frames the mutual constitutivity of law and spatiality and how he considers the role of matter in this process.

The second chapter outlines how assemblages engage in a practice of spatial justice by delving deeper into Philippopoulos-Mihalopoulos' framework. By unpacking Philippopoulos-Mihalopoulos concepts of lawscape and withdrawal along some of his main theoretical influences: David Delaney, Doreen Massey, Gilles Deleuze and Felix Guattari and Karen Barad, I show how we can draw out a political project from his theory of spatial justice. These individuals help to elucidate the political potential of Philippopoulos-Mihalopoulos' complex theoretical project; however, I note the influence of Gilles Deleuze's writing in *The Fold*, in particular, as a means of reading withdrawal as becoming. Deleuze's writing aids in our understanding of the processes of folding that sustain the onto-epistemological project of spatial justice, while also maintaining a creative potential through withdrawal and closure.

As I noted above, the third chapter consists of a comparative analysis between Philippopoulos-Mihalopoulos' spatial justice and John Borrows' writing on Indigenous law and 'situated' freedom. According to Borrows, Anishinaabe law is centered on mobility and agency (as human and more-than-human) which demonstrates an attunement to positionality that is responsive to the more-than-human. I believe that the following examples of Indigenous resurgences show what a practice or performance of spatial justice entails. I draw on two concrete examples of how Indigenous knowledge plays a central role in resurgent practice, and how it can serve to reorient lawscapes and open up the possibility of attaining spatial justice: (1) Rebecca Belmore's performance in Queen's Park on Canada Day in 2012; and (2) the blockade on Unist'ot'en and Wet'suwet'en land that has been in place since 2009.

Chapter 1

1 Literature Review of Spatial Justice

1.1 Introduction

This literature review provides an overview of the main theoretical perspectives that have contributed to the development of a concept of spatial justice. In recent years, critical scholarship has renewed its interest in the relationship between law and spatiality, specifically with respect to its influence on legal subjectivity and the practice of social justice lawyering.¹ Although the co-constitutivity of law and space has been a concern for the emerging, interdisciplinary field of legal geography, critical legal scholars have also developed a keen interest in the intersection between law and space. One notable figure of this movement is critical legal scholar, Andreas Philippopoulos-Mihalopoulos, whose recent book, *Spatial Justice: Body, Lawscape, Atmosphere*, develops an insightful theory of the role of space and materiality in relation to law and justice, primarily by adopting a post-humanist feminist lens. His theory of spatial justice opens up the possibility of thinking about nonhuman legal agency, and in the process, broadens the scope of the influence of law in everyday life, and the notion of legal and political resistance. Philippopoulos-Mihalopoulos has taken a bold, but timely, leap in a field whose foundation is rooted in a property relation that is decidedly humanist: “the basic notion of property as the *relationship among people in respect of objects*.”² By de-centering the human legal subject, Philippopoulos-Mihalopoulos also influences the role of politics in relation to subjectivity, spatiality and law. He argues that in order to understand this posthumanist theory of justice the mutual constiutivity of law and space should not be

¹ The interdisciplinary field of legal geography has garnered a lot of interest since the publication of Blomely, Nicholas, David Delaney and Richard T. Ford, editors. *Legal Geographies Reader: Law, Power, and Space*. Oxford: Blackwell, 2001.

² Mary Jane Mossman and Phillip Girard, *Property Law: Cases and Commentary*, 3rd ed. (Toronto: Emond Montgomery Publications, 2014), 3.

mediated by a political theoretical lens.³ However, as this literature review will demonstrate, the concept of spatial justice has been defined by its ‘political’ contribution to the theorization and practice of law, insofar as it points out spatial manifestations of power struggles, primarily based on class difference. In order to reflect on the significance of this concept to legal scholarship, I believe we need to give further consideration to the relationship between legal subjectivity, justice and space, and political practice.

This literature review addresses the political dimension of spatial justice and theories of space in relation to legal subjectivity. I am interested in the persistence of the political, through a practice of spatial justice, in relation to a legal context in which the human legal subject is decentered and the influence of nonhuman agency is brought to the forefront. By centering the question of the ‘political’ in this discussion of spatial justice, I establish that it is not possible (nor necessary) to relinquish this dimension in order to craft a posthuman theory of justice.

In order to capture the impact of posthumanism on our current understanding of legal subjectivity, Philippopoulos-Mihalopoulos argues, in part, that the co-constitutivity of law and spatiality is not dependent on human relationality. Although the mutual constitutivity of law and space is a foundational premise of legal geography scholarship, Philippopoulos-Mihalopoulos’ desire to craft a theory of law and justice that captures the agency of the nonhuman distinguishes his work from that of more traditional strands of legal geography. Philippopoulos-Mihalopoulos argues that space (or matter, in this case) is also a participant in the process of ontological negotiation in which human bodies engage, rather than its container, and that it can maintain its own sense of legal (and political) agency. The mutual constitutivity of law and space gives shape to the borders, conflicts and movements of these bodies in a much more fundamental sense, and as such, it gives rise to Philippopoulos-Mihalopoulos claim that there is no outside to law.⁴

³ Andreas Philippopoulos-Mihalopoulos, *Spatial Justice: Body, Lawscape, Atmosphere* (New York: Routledge, 2015), 19.

⁴ *Ibid.*, 1.

This literature review is organized into three sections. The first two sections will serve as a theoretical background on spatial justice as a concept that has emerged primarily within the discipline of geography. The first section will address the critical foundations of the concept, primarily within the works of David Harvey and Edward Soja. This formulation of spatial justice is tightly knit to the concept of social justice, demonstrating its Marxist political roots, as well as the influence of postmodern thought on its early conceptualizations.

The second section will address the emerging field of legal geography, demonstrating the concept's more direct relationship to law, yet maintaining a resolutely political perspective through the authors' concerns with the relationship between law and power. This section will consider the writings of early legal geographers, like Nicholas Blomley and David Delaney, as well as those of more recent figures, like Irus Braverman. This trajectory marks a shift in legal geography scholarship from socio-legal relations to human-nonhuman legal relations. As an emerging interdisciplinary field, legal geography settles somewhere between geographical and legal thought, though it encounters difficulty framing the writings of scholars like Andreas Philippopoulos-Mihalopoulos and Mariana Valverde, who are rethinking the foundations of the relationship between law and space.⁵

In the third section, I will discuss the influence of posthumanist thought on the concept of spatial justice through the work of Philippopoulos-Mihalopoulos. At this point, I will refer to a few of the main concepts that arise in his theory of spatial justice: lawscape, atmosphere, withdrawal, responsibility of indistinction and lively agencies. In particular, the last part of this section will discuss the notion of lively agencies as a counterpoint to legal subjectivity. Philippopoulos-Mihalopoulos' theory of justice engages with the blind spot created by a resolutely humanist perspective, and introduces legal theory to a philosophical debate on materiality, subjectivity and agency. I contend that this theory of justice presents us with an alternative ethical framework that is sensitive to the agential

⁵ David Delaney, "Legal Geography III: New Worlds, New Convergences," *Progress in Human Geography* 41 (2017): 668, doi: 10.1177/0309132516650354.

capabilities of the nonhuman legal actor, while opening up our thinking on new forms of political engagement.

1.2 Spatial Justice as Social Justice

1.2.1 David Harvey's Social Justice

During the 1970s, a desire for a more critical and philosophical engagement with the concept of space within geographical studies gave rise to the field of critical human geography.⁶ The concept of spatial justice was formulated during this time, and it is primarily associated with the writings of Marxist geographer, David Harvey, whose seminal work, *Social Justice and the City*, introduces a theory of social justice premised on the idea that spatial form and social process inform each other.⁷

Influenced by the writings of French Marxist thinker Henri Lefebvre, Harvey proposes “historical-geographical materialism [as] method of inquiry” effectively shifting the direction of geographical scholarly work towards a more purposeful engagement with class analysis through spatiality.⁸ However, as Ed Soja notes, Harvey’s spatial analysis is primarily focused on social process, rather than the dialectical relationship between the social and the spatial.⁹ In order to explain the impact of human practice on social and political issues, Harvey notes that,

“spatial forms are...seen not as inanimate objects within which the social process unfolds, but as things which ‘contain’ social processes in the same manner that social process *are* spatial.”¹⁰

⁶ Edward W. Soja, *Postmodern Geographies: The Reassertion of Space in Critical Social Theory* (New York: Verso Books, 1989), 43.

⁷ *Ibid.*, 51.

⁸ *Ibid.*, 44 and 52.

⁹ *Ibid.*, 58.

¹⁰ David Harvey, *Social Justice and the City: Revised Edition* (Athens, Georgia: The University of Georgia Press, 2009), 10-11.

This statement indicates that social processes are produced and reproduced through particular spatial arrangements, and that the way spaces are framed will influence how social processes operate.¹¹ However, this particular approach privileges the role of social process (and human relations) in crafting these spaces without considering the significance of the relationship between the two.¹² The idea that spatial forms act as ‘containers’ for social processes does not provide sufficient insight into the capacity of space to influence social process (and of course, no insight into the agential capabilities of the nonhuman), except insofar as it sustains and responds to human action.

This theoretical perspective diverges from Lefebvre’s objective regarding the

“socio-spatial dialectic: that social and spatial relations are dialectically interactive, interdependent; that social relations of production are both space-forming and space-contingent (at least insofar as we maintain, to begin with, a view of organized space as socially constructed).”¹³

Arguably, this tension strikes at the heart of the literature review because the way in which the relationship between the spatial and the social is formulated impacts the definition of subjectivity, which in turn bears implications for the legal and political dimensions of the discussion. Taking Soja’s concern with Harvey a step further, Philippopoulos-Mihalopoulos is critical of this cautiously humanist theoretical engagement with space because it “ignor[es] ecological, technological and other production processes that eschew the ‘social’ in its narrow, anthropocentric description.”¹⁴ However, I argue that Philippopoulos-Mihalopoulos’ concern with this narrow definition of the ‘social’ is superimposed on his understanding of the limits of political engagement, and that while the constitutive relationship between law and space might provide us with a formulation that is more suited to capture the agential capability of the non-human, it should not concern itself with the political. However, I am cautious

¹¹ Soja, *Postmodern Geographies*, 76-77.

¹² *Ibid.*, 57.

¹³ *Ibid.*, 81.

¹⁴ Philippopoulos-Mihalopoulos, *Spatial Justice*, 179.

of this formulation and propose that politics remains central to this conversation, though it might not be formulated in a traditional Marxist sense.

1.2.2 Edward W. Soja's Spatial Justice

Edward Soja is also concerned with the constitutive relationship between the subject and their spatialized existence, and he wants to return the analysis closer to Lefebvre's conceptualization of social and spatial relations. However, his focus on discourse and representation does not manage to push the question of spatiality as effectively as Philippopoulos-Mihalopoulos.

Due to his focus on epistemological analytical frameworks, his spatial analysis remains firmly positioned within the realm of textuality and representation. This fact is evident in his early treatment of physical space and matter as a mere empirical concern:

“Space as physical context has generated broad philosophical interest and lengthy discussions of its absolute and relative properties (a long debate which goes back to Leibniz and beyond), its characteristics as environmental ‘container’ of human life, its objectifiable geometry, and its phenomenological essences. But this physical space has been a misleading epistemological foundation upon which to analyse the concrete and subjective meaning of human spatiality. Space in itself may be primordially given, but the organization, and meaning of space is a product of social translation, transformation, and experience.”¹⁵

And, while it may be difficult to discount the value of Soja's contribution, as well as that of other geographical thinkers, it limits our ability to engage with space, materiality and the nonhuman more seriously as long as its focus is resolutely centered on human sociality. Therefore, Soja's engagement with the concept of spatial justice is limited by this understanding of space.

This approach is further solidified in *Seeking Spatial Justice: Globalization and Community*, where Soja mediates our understanding of spatial justice through a politically pragmatic ‘right to occupy or inhabit’.¹⁶ While this may be an effective means

¹⁵ Soja, *Postmodern Geographies*, 79-80.

¹⁶ Edward W. Soja, *Seeking Spatial Justice* (Minneapolis: University of Minnesota Press, 2010), 109.

of mobilizing groups and presenting arguments in favour of inclusion into a liberal political context, it limits our understanding of the agential capabilities of more-than-human actors, and frames spatial justice as a form of social justice sensitive to its spatial containers.¹⁷

Soja defines ‘spatial consciousness’ in this framework as “a way of thinking that recognize[s] that space is filled with politics and privileges, ideologies and cultural collisions, utopian ideals and dystopian oppression, justice and injustice, oppressive power and the possibility of emancipation.”¹⁸ Although this approach attunes us to spaces as the locus of diversity, power struggles and contingency, it represents agents as “inescapably embedded” in space and geography, collapsing the temporality of these encounters and relations, and in a sense, ‘freezing’ these individuals in space.¹⁹ This approach establishes a political identity from which the individual can act, since he claims that the individual maintains the “particularized contingency” of the spaces they inhabit.²⁰ However, if the particularities of our social context become static and immutable characteristics of individual experience, then there is little opportunity for a re-examination of these forms of representation.²¹ As Philippopoulos-Mihalopoulos notes, this is merely “a bringing into light of the spaces in which social (in)justice can be located while conceptualizing itself and the world,” which brings to light one of the main difficulties with a particular understanding of an identity politics approach, namely using particular identity positions as universal and fixed markers of individual experience.²²

¹⁷ Ibid., 109.

¹⁸ Ibid., 103.

¹⁹ Ibid., 71.

²⁰ Ibid., 68-71.

²¹ Ibid., 71.

²² Philippopoulos-Mihalopoulos, *Spatial Justice*, 180.

However, this debate has been quite pervasive, in particular within feminist political and legal theory. In *Beyond Identity Politics: Feminism, Power, Politics*, Moya Lloyd proposes an alternative conceptualization: the “‘subject-in-process,’ a term [used] to capture the idea that subjectivity is constituted (by language, discourse, or power), inessential and thus perpetually open to transformation.”²³ Although Lloyd’s theory relies on discourse and language, it turns away from Soja’s ‘situated’ political agent by maintaining open the possibility for a readjustment of positionality and tactics in order to acknowledge “a proliferation of possible sites of political contestation.”²⁴ Lloyd’s work can be interpreted to claim that materialism and embodiment are considered through a form of ‘situatedness’ that does not reduce the individual to a category by capturing the significance of movement and mobility. Philippopoulos-Mihalopoulos’s theory of spatial justice attempts to capture this mobile and shifting subjectivity in the form of assemblages. Although I will revisit this concept in more detail in the final section, I do want to note that the operations of these legal assemblages can be indicative of a political process.

1.2.3 Conclusion

These formulations of spatial justice as social justice pose two problems that may serve to limit the possibility of justice: (1) spatiality is limited to the operations of social processes and constraints that result from human practice; and (2) political engagement is premised on a static identity framed through these constricting spatialities. Then, we can surmise that in order to understand a more responsive form of political action we need to think of the spatial and material differently. Legal geographers, who infuse Soja’s perspective on the role of spatiality within the legal context, have attempted to address the question of structure or context by arguing for the mutual constitutivity of law and space. The next part of this literature review will engage with their work, and their understanding of the concept of spatial justice.

²³ Moya Lloyd, *Beyond Identity Politics: Feminism, Power and Politics* (London: Sage Publications, 2005), 1.

²⁴ *Ibid.*, 2.

1.3 Law, Politics, and Space: Legal Geography and Spatial Justice

Legal geography is an interdisciplinary area of study that emerged in the early 1990s, and is influenced, at least in part, by the writings of critical human geographers. This ‘field’ was developed by individuals interested in the intersection between law, space and power within the human geography context,²⁵ and as such, it aims to uncover the ways in which power relations operate through spatio-legal mechanisms. Legal geography is concerned with the ways in which,

“Distinctively legal forms of meaning are projected onto every segment of the physical world. These meanings are open to interpretation and may become caught up in a range of legal practices. Such fragments of a socially segmented world – the *where* of law – are not simply the inert sites of law but are inextricably implicated in *how* law happens.”²⁶

The engagement with spatiality in this context is reminiscent of that of critical human geographers insofar as social process is replaced with a socio-legal process which highlights how the law plays a role in sustaining and framing violence and injustice through seemingly innocuous every day processes. However, the legal geographers’ approach to the co-constitutions of law and space, especially where it intersects with theories of performativity, engages with spatiality in a different way.

Although legal geographers do not always employ the term spatial justice explicitly, as their work is concerned with the convergence of law, space, and power, it does address the question of justice indirectly. However, David Delaney provides a useful summary of legal geography’s concern with spatial justice:

²⁵ David Delaney, “Legal Geography I: Constitutivities, Complexities, and Contingencies,” *Progress in Human Geography* 39 (2014): 96, doi: 10.1177/0309132514527035. Irus Braverman argues that legal geography is not a field or sub-discipline, but rather an intersection of various fields of inquiry that engage in a particular spatio-legal analysis. See Irus Braverman, “Introduction” in *The Expanding Spaces of Law: A Timely Legal Geography* Irus Braverman, Nicholas Blomley, David Delaney and Alexandre (Sandy) Kedar eds. (Stanford: Stanford University Press, 2014): 1.

²⁶ Braverman, “Introduction,” *Expanding Spaces of Law*, 1.

“...because traces of the legal are commonly constitutive of the spatialities of injustice – underpinning them, shaping relations of power with respect to them, rendering places meaningful in distinctively legal ways – then much of what legal geographers do is to investigate the contingencies and constraints of spatial justice... Legal geographers take us into the workshops where space, law and (in)justice are the means of the co-production of each other...(In)justice is intrinsically *social* and relational in the sense that claims of injustice necessarily call into account inherently *social* states of affairs concerning contingent *social* arrangements – including socio-spatial arrangements.”²⁷

Delaney’s desire to centre the social at the core of this discussion of justice, firmly positions a humanist perspective at the core of the project as well. An engagement from this perspective provides insights into how certain socio-legal mechanisms function, but give us little in the way of guidance beyond their relations of power.

Early investigations into the intersection between law and geography stirred a lively debate between legal theorists influenced by radical politics and those interested in the theoretical contributions of post-structuralism. The former argue that the aesthetic projects of the ‘linguistic turn’ circumvent more practical theoretical initiatives and as a result hinder social change.²⁸ At its core, the argument turns on the relationship between representation and materiality in socio-legal debates. This debate reverberates into our current discussion, as legal geography is a propitious theoretical lens through which to think about the relationship between the abstract and the concrete dimension of space. However, Chouinard argues that these fields are more complementary than they seem:

“[I]aw’s space not only threads its way through our daily lives, often in the ‘background’ of our conscience, but it is also a material and conceptual medium through which people fight for the control and use of space itself.”²⁹

In this example, space as a “tapestry of relations and practices”³⁰ is being represented both materially and discursively. It unfolds as a narrative of the world that is being

²⁷ David Delaney, “Legal geography II: Discerning Injustice,” *Progress in Human Geography* 40 (2016): 268-269, doi: 10.1177/0309132515571725.

²⁸ Vera Chouinard, “Geography, Law and Legal Struggles: Which Ways Ahead?” *Progress in Human Geography* 18 (1994): 417, doi: 10.1177/030913259401800401.

²⁹ *Ibid.*, 430.

produced and re-produced through the contributions of those who take part in it, on a constant basis. As I will later argue, this perspective does not have to exclude the contributions of the nonhuman in the negotiation of these spaces of law.

Chouinard seems to suggest that materiality forms a bridge between politics and language, and the epistemological limitations of discourse analyses can be overcome through a better understanding of the political conditions of those contexts so that “representations of radicalism [do not] become more important than political praxis.”³¹ As a reflection on legal geography’s future, Chouinard states,

“A more inclusive radical geography of law and other sites of social conflict also requires efforts to develop more dynamic conceptions of how and why individual and collective identities form in specific times and places (Chouinard, 1994), and how these identities translate into practices which sustain, challenge and sometimes transform prevailing relations of power in people’s lives, and their capacities for effective collective action on social issues. These ‘senses of selves’ are not fixed, but evolve as people negotiate material relations of daily life and assign and reassign (or ‘appropriate’) meaning to their experiences of lived legal relations and circumstances in specific places.”³²

1.3.1 The Co-constitutivity of Law and Space and Performativity

Legal geographers engage in an analysis of spatio-legal relations in order to demonstrate how particular representations of space shape the subjective position of individuals who are impacted by the laws or regulations that apply within those spaces. This approach informs the oftentimes contested presence of the political in law and legal practice. By uncovering the legal discourses that legitimize violence towards particular groups, and demonstrating how these are facilitated through specific spaces and sites, legal geographers have developed a rich and complex field of scholarship which sheds light on the legal narratives of marginalized groups. In this section, I draw on the work of two

³⁰ Ibid., 430.

³¹ Ibid., 428.

³² Ibid., 428-429.

legal geographers, Nicholas Blomley and David Delaney, to demonstrate legal geography's treatment of politics through the co-constitutivity of law and space.

Nicholas Blomley is one of the earliest scholars of the intersection between law and geography.³³ Blomley has written extensively on the property relation and its impact on marginalized groups, and demonstrated an interest in understanding it as an abstract, but also material concept.³⁴ According to Blomley, property "is not a static, pre-given entity, but depends on a continual, active 'doing,'" which he suggests in a later article "is at once practical, symbolic and institutional."³⁵ In order for property relations (and ultimately power relations) to maintain themselves, bodies and technologies are coopted into the logic of the space in order to perform the particular dynamics that uphold that space.³⁶ Therefore, the spatial and material dimension of property needs to be re-enacted and performed in order to be sustained. As Blomley explains,

"Space itself is not only produced through performance, but is simultaneously a means of disciplining the performances that are possible within it. These social performances are citational, reiterating past performances and thus reproducing dominant norms and practices at the same time as they diverge from them. Similarly, the enactment of property is dependent upon spaces, whether everyday or imagined, material or discursive. The enactment of property, in turn, helps constitute those spaces, investing them with particular valences and political possibilities."³⁷

This quote captures, more or less, the sentiment of legal geographers with respect to space, as well as the source of one of Philippopoulos-Mihalopoulos's main critiques,

³³ Nicholas K. Blomley and Joel C. Bakan, "Spacing Out: Towards a Critical Geography of Law," *Osgoode Hall Law Journal* 30 (1992): 661-690, <https://digitalcommons.osgoode.yorku.ca/ohlj/vol30/iss3/9>.

³⁴ Nicholas Blomley, "Law, Property, and the Geography of Violence: The Frontier, the Survey, and the Grid," *Annals of the Association of American Geographers* 93 (2003): 122, doi: 10.1111/1467-8306.93109.

³⁵ Nicholas Blomley and Janet C. Sturgeon, "Property as Abstraction," *International Journal of Urban Regional Research* 33 no. 2 (June 2009): 565, doi:10.1111/j.1468-2427.2009.00882.x.

³⁶ Blomley, "Law, Property, and the Geography of Violence," 122.

³⁷ Ibid.

namely that property (or social) relations invest spaces with political possibilities. In this sense, we note that space is not an active participant, but rather a framework of reproduction of a specific set of relations, and a tool for discipline. However, by engaging with these processes through the lens of performativity we are provided with a lens that permits us to understand the subjects of law as constituted and thus, potentially shifting.

In *Nomospheric Investigations: The Spatial, the Legal and the Pragmatics of World-Making*, David Delaney presents a methodology for legal geography premised on a performative theory of law by analyzing how it is that we engage space and materiality in discursive processes. This pivotal text in legal geography is particularly useful here because it addresses some of the same concerns Philippopoulos-Mihalopoulos has with the relationship between law and space as not sufficiently spatial. Before I delve into a brief explanation of the main concepts introduced by Delaney (i.e. nomoscape, nomosphere and nomic technicians), I want to note two significant points of convergence between the works of the two theorists: discursive materiality and performance. I will do this through the lens of Karen Barad's posthuman performativity, as it is a concept that both theorists use in their writing.³⁸

Delaney's writing may not engage with nonhuman legal actors, but it does engage with objects that act as 'technologies of delimitation', like walls, barriers, turnstiles, etc. Delaney employs the concept of discursive materiality to create the concept of nomicity.³⁹ Like Barad, he invokes performative practice to bridge discourse and our material surroundings and explain how we engage in processes of 'world-making'.⁴⁰ Delaney's project focuses on the production of knowledge in spaces that are dominated by particular laws and particular power relations. However, given Barad's theoretical focus, her project aligns itself closer to Philippopoulos-Mihalopoulos' because it claims

³⁸ David Delaney, *The Spatial, the Legal and the Pragmatics of World-Making: Nomospheric Investigations* (New York: Routledge, 2010): 14-15; Philippopoulos-Mihalopoulos, *Spatial Justice*, 48.

³⁹ Delaney, *The Spatial, the Legal and the Pragmatics of World-Making: Nomospheric Investigations*, 14.

⁴⁰ *Ibid.*, 14.

an agential capability of the nonhuman that is not a concern for Delaney in quite the same way. Yet, this point of convergence between Philippopoulos-Mihalopoulos and Delaney's theoretical perspectives remains a useful point of interrogation.

Due to the fact that the engagement with materiality that emerges in Delaney's work is primarily one that casts matter as a tool or technology,⁴¹ for matter to matter then, it must provide some use to human actors. In Delaney's investigation these forms of materiality play a role in upholding, and perhaps, recreating asymmetrical power relations.

Therefore, the human sits at the center of this analysis, and we can clearly see how any engagement with spatiality must uphold a social context. This shapes the concepts I will summarize below, and thus solidifies the scope of legal geography as an investigation into the mutual constitutivity of law and space, where space is to be understood as something produced by humans for human use.

The 'nomosphere' is a driving concept behind Delaney's work. He defines it as,

“the cultural-material environs that are constituted by the reciprocal materialization of ‘the legal,’ and the legal signification of the ‘socio-spatial,’ and the practical, performative engagement through which such constitutive moments happen and unfold.”⁴²

The nomosphere is the product of two concepts, the Greek word 'nomos' which is used to describe law or custom, and the biosphere, which suggests an enclosed environment in which particular investigations can be conducted.⁴³ As a combination of these two notions, then, the nomosphere presents a cross-cut of social, political and legal activity that lends itself to analysis so that we may draw greater conclusions about how particular mechanisms function. However, an analysis of the 'nomosphere' might be difficult to conduct since we are generally participants in it.⁴⁴ Our movements, choices, practice all

⁴¹ Ibid., 21. See discussion on barbed wire.

⁴² Ibid., 25.

⁴³ Ibid., 24.

⁴⁴ Ibid., 26.

contribute to the sustaining of the ‘nomosphere’, and perhaps they can also contribute to its undoing. This premise is also shared by Philippopoulos-Mihalopoulos: assembling bodies have the capability to shift the course of the larger mechanisms of the lawscape and atmosphere.

According to Delaney, the ‘nomosphere’ is a useful concept because it “successfully holds together the socio-spatial and the socio-legal while foregrounding the dynamic interplay of forms of social meaning and materiality; as these are implicated in the historical constitution of socio-relational power and situated, embodied experience.”⁴⁵

This concept sums up the main goals of Delaney’s theory, and it demonstrates that although there is an engagement with ‘spatialized’ concepts and physical materiality, the main point of the concept (and perhaps legal geography more broadly) is to engage with representation and identity (or subjective positioning) at the expense of the spatial. This project is significant in so far as it is important to identify and uncover forms of inequality and injustice within the social realm, however, it only shows one aspect of the potential engagement with spatiality. Furthermore, as I will argue throughout the thesis, an engagement with the non-human in a more purposeful way can open the possibility to new ethical positions, and thus, a more robust form of spatial justice, for human and nonhuman agents alike. The first step forward is a deeper understanding of the co-constitutivity of law and space.

1.3.2 New Directions in Legal Geography

Philippopoulos-Mihalopoulo is not alone in trying to incorporate the nonhuman or novel perspectives on the relationship between space, time and law. In this section, I discuss the work of Irus Braverman, Mariana Valverde and Andreas Philippopoulos-Mihalopoulos, their perspective on space and materiality, and the role of politics in their analysis, especially in relation to nonhuman legal actors.

⁴⁵ Ibid., 26-7.

In a recent publication, David Delaney identifies a growing anxiety surrounding the parameters and the definition of the field of legal geography, and he confirms that legal geography should pay closer attention to “the world of other places beyond Western common law legal regimes; the world of the international; and the physical, other-than-human worlds.”⁴⁶ However, there is no indication in his summary as to how the methodology of legal geography will change to accommodate these new areas of inquiry, or even what challenges these fields might pose from a fundamental theoretical standpoint.

Irus Braverman, who is interested in engaging with the nonhuman in a legal setting, identifies two main ideas that need to be further considered (or perhaps returned to) in discussions about legal geography: power and time.⁴⁷ Her solution to the challenges posed by the presence of nonhuman actors in legal contexts is a renewed interest in pragmatism, and specifically, the benefits posed by an analysis that focuses on the idea of ‘power with others’ rather than ‘power over others’.⁴⁸ Braverman herself notes that there is an impact on how space can be thought:

“Space figures [in relation to the nonhuman] in terms of traditional conceptions of place, landscape, and scale, for example, than as a way of approaching alterity, diversity, and multiplicity.”⁴⁹

Since the publication of *The Expanding Spaces of Law: A Timely Legal Geography* in 2014, there has been an increased interest in the question of treatment of nonhuman or more-than-human actors within legal contexts.⁵⁰ However, Philippopoulos-Mihalopoulos

⁴⁶ Delaney, “Legal Geography III: New worlds, New Convergences,” 667.

⁴⁷ Braverman, “Introduction” in *The Expanding Spaces of Law: A Timely Legal Geography*, 13.

⁴⁸ Ibid.

⁴⁹ Braverman, “Introduction” in *The Expanding Spaces of Law*, 12.

⁵⁰ See Braverman, Irus, ed. *Animals, Biopolitics, Law: Lively Legalities*. New York: Routledge, 2016.; Brown, Katrina M., Frode Flemsaeter, Katrina Ronningen. “More-Than-Human Geographies of Property: Moving Towards Spatial Justice with Response-ability,” in *Geoforum* 99 (2019): 54-62, <https://doi.org/10.1016/j.geoforum.2018.12.012>; Ojalammi, Sanna and Nicholas Blomley. “Dancing with

is among the few legal scholars who have attempted to grapple with the theoretical and philosophical foundations of the relationship more purposefully.

Mariana Valverde is another significant contributor to a discussion of the theoretical engagement with law and space although she approaches this question from the perspective of time in relation to the analysis of law and spatiality. In *Chronotopes of Law: Jurisdiction, Scale, Governance*, Valverde introduces the concept of a ‘legal chronotope’, which allows

“us to explore how different legal times create or shape legal spaces, and vice versa: how the spatial location and spatial dynamics of legal processes in turn shape law’s times – how spatial dynamics thicken time.”⁵¹

Valverde argues that it is important to consider “how temporalization affects spatialization and vice versa [as well as] how heterogeneous and even contradictory chronotopes coexist not only in a single literary (or legal) text but even within a single utterance.”⁵² The ‘chronotope’ takes many shapes: for example, as a legal setting, as a complex legal process, or as a figure that is caught in this process. It is merely used to describe the particular characteristics analyzed in space and time that might arise when a particular legal issue arises. For example, criminalizing marital rape assumes that the spouse is an autonomous person who engages in a transaction, and thus, is required to consent to taking part in that process.⁵³ This particular example demonstrates how the chronotope of the family is impacted by the chronotope of the market (through the liberal subject). For Valverde, the productive moment of analysis occurs at the point of

Wolves: Making Legal Territory in a More-Than-Human World.” in *Geoforum* 62 (2015): 51-60, doi: 10.1016/j.geoforum.2015.03.022.

⁵¹ Mariana Valverde, *Chronotopes of Law: Jurisdiction, Scale and Governance* (New York: Routledge, 2015): 17-18.

⁵² *Ibid.*, 22.

⁵³ *Ibid.*, 23-24.

interaction between space and time.⁵⁴ The significant contribution of the legal chronotope is its emphasis on legal processes and systems rather than individual action. While individual ‘tactical decisions’ might drive the change in the legal process, the focus is on the operations of the system as a whole, rather than the intentionality or agency of the individual.⁵⁵ This perspective is echoed in the discussion of spatial justice and the role of political agency, which will be discussed in more detail in the second part of this literature review.

1.4 Spatial Justice and Posthumanism

The influence of posthumanist thought on the relationship between law and space rests at the core of this next stage in the development of the concept of spatial justice.

Philippopoulos-Mihalopoulos, arguably, has crafted a posthumanist theory of justice through his work in *Spatial Justice: Body, Lawscape, Atmosphere*, however he is not alone in attempting to think through the relationship between posthumanism and social justice.⁵⁶ In this section, I will introduce a main influence on Philippopoulos-Mihalopoulos’ thought, Karen Barad’s theory of a posthuman performativity, and then I will move into a description of some of the more salient concepts that are put forward in *Spatial Justice*, specifically in relation to law and spatiality.

In her seminal article, “Posthumanist Performativity: Toward an Understanding of How Matter Comes to Matter,” Karen Barad argues for a shift from

“questions of correspondence between descriptions and reality (e.g., do they mirror nature or culture?) to matters of practices/doings/actions [because they] bring to the forefront important questions of ontology, materiality, and agency, while social constructivist approaches get caught up in the geometrical optics of reflection where, much like the infinite play of images between two facing

⁵⁴ Ibid., 26.

⁵⁵ Ibid.

⁵⁶ Rosi Braidotti, “Four Theses on Posthuman Feminism,” in *Anthropocene Feminism* edited by Richard Grusin (Minneapolis: University of Minnesota Press, 2017): 21-48. I should note that Braidotti’s review does not mention Philippopoulos-Mihalopoulos’ work.

mirrors, the epistemological gets bounced back and forth, but nothing more is seen.”⁵⁷

Barad builds on the writings of critical social and political theorists, like Michel Foucault and Judith Butler to consider “*how the body’s materiality* – for example, its anatomy and physiology – *and other material forces actively matter to the processes of materialization.*”⁵⁸ She is concerned with the ways in which power operates through materiality, taking into consideration matter’s agential capability in this process, and, raising an argument for a more purposeful engagement with the materiality of discursive analysis.⁵⁹ Drawing on the performative nature of discourse, Barad argues that

“Matter, like meaning, is not an individually articulated or static entity. Matter is not little bits of nature, or a blank slate, surface, or site passively awaiting signification; nor is it an uncontested ground for scientific, feminist, or Marxist theories. Matter is not a support, location, referent, or source of sustainability for discourse. Matter is not immutable or passive. It does not require the mark of an external force like culture or history to complete it. Matter is always already an ongoing historicity.”⁶⁰

Barad presents us with an analysis of material agency beyond social spatiality. Against Delaney’s interpretation of Barad’s work, then, the material engagements and spatial frameworks may be attributed to a material-discursive analysis in accordance with Foucault or Butler’s ‘social constructivist’ perspectives, but it need not stop there.⁶¹ However, by shifting the discussion away from the social, have we also shifted the

⁵⁷ Karen Barad, “Posthumanist Performativity: Toward an Understanding of How Matter Comes to Matter,” in *Signs* 28 (2003): 802-803, doi: 10.1086/345321.

⁵⁸ *Ibid.*, 809.

⁵⁹ *Ibid.*, 819.

⁶⁰ *Ibid.*, 821.

⁶¹ The relationship between spatial justice, withdrawal and social constructivism is presented in Luigi Russi, “‘a Legge d’o Munno – Three Sketches on Spatial Justice,” *Global Jurist* 16 (2016): 1-25, doi: 10.1515/gj-2015-0003. Russi is one of the few scholars who have attempted to contextualize and apply Philippopoulos-Mihalopoulos’ concept of spatial justice, and the notion of withdrawal. While his analysis is insightful, and I do use it in the final chapter, I do think that the need to return to a form of ‘social constructivism’ misses the potential of the theory, though at the same time, I recognize the challenges that arise in attempts to apply the theory.

discussion away from the political? What implications does this hold for spatial justice as social justice?

As I noted in the earlier sections, the idea of spatial justice was introduced as a way to theorize social injustice and inequality in a capitalist system, and more specifically, in an urban setting. It served a dual purpose by exposing the ways in which social and economic inequality affected marginalized communities, and by providing the language and framework through which activist work could be spatially situated. Therefore, from its incipient stages, spatial justice was a politically-oriented legal concept. Legal geography continued the analysis of law and space through a social justice lens. However, these approaches are both theoretically (and ultimately practically) ineffective because they do not address the constitutive premises of legal relationships from a materialist perspective. Rather, as a reflection of social injustice, the concept only serves to uncover an alternative perspective of a legal context, but it is often unsuccessful in dismantling the system that gave rise to those oppositions. Following Barad and Philippopoulos-Mihalopoulos, I argue that a more purposeful engagement with materiality and the nonhuman can provide insight into addressing the shortcomings of social justice analyses.

1.4.1 What is (Posthuman) Spatial Justice?

Spatial justice is produced through a rupture at the level of the lawscape. The lawscape is defined by movement and embodiment. It is both material and discursive, and unlike the atmosphere, it is mutable. The lawscape is made up of the physical, material world and the bodies that move within it, the rules and regulations that shape them, and anything in-between, including affect, emotion, unknown materials, etc. A fixed or situated representation of the lawscape results in an atmosphere, thick with discourse, yet sufficiently diffuse to envelop large systems and assemblages. A key characteristic of atmosphere is its ability to dissimulate the mechanisms through which it functions.⁶²

⁶² Philippopoulos-Mihalopoulos, *Spatial Justice*, 4.

The lawscape is the site where conflicts and displacements unfold, and a rupture or reorientation of the lawscape can produce a possibility of spatial justice. However, the rupture that opens up the possibility for spatial justice must reverberate through multiple lawscapes and eventually through the atmosphere in order for change (reorientation) to result in spatial justice.⁶³ Philippopoulos-Mihalopoulos explains that spatial justice occurs when the ruptured lawscape engages in a lawscaping process that hinges on repetition and disruption of other lawscapes.⁶⁴ Lawscapes can turn into atmospheres and vice versa.⁶⁵ There is a constant motion at play here which captures the movement of bodies, and the tilting of the continuum.⁶⁶

As mentioned earlier, spatial justice distances itself from the ‘distributive’ nature of the idea of social justice in order to frame a more fluid understanding of the legal subject. Or precisely because there is ‘no outside to law,’ by thinking through spatial justice we are able to understand how legal assemblages and bodies are more effective means of capturing our relationship to our legal surroundings that the legal subjective lens. The impact of spatial justice is palpable and shattering, as it leads to a reframing of the lawscape within which bodies (or assemblages) operate.

However, I believe that Philippopoulos-Mihalopoulos encounters difficulty framing the political dimension of spatial justice because it cannot be conceptualized as will flowing from a legal subject. In line with legal geographical thinking, his analysis demonstrates a vested interest in revealing the mutually constitutive relationship between law and spatiality, however, this is achieved at the expense of ‘politics’ because politics has been framed with the human subject at its core. He explains as follows,

⁶³ Ibid., 202.

⁶⁴ Ibid.

⁶⁵ Ibid., 232.

⁶⁶ Philippopoulos-Mihalopoulos relies on the idea of a tilted continuum to demonstrate a material asymmetrical power relation present in the tensions between bodies and assemblages.

“The problem with the above analyses – and in full awareness of an arguably unjust generalization – is that the spatial remains an adjectival context, a background against which considerations of the surrounding space are thrown into relief with the ‘obscured spatiality of all aspects of social life.’ Society is reinstated in its primacy, the human subject never abandons *his* enlightened central perspective, and the usual rationalizing political processes are applied even if presented in their revolutionary variation...”⁶⁷

Legal geographers have carefully analyzed specific legal relationships in order to show how it is that spatial dynamics play a role in maintaining particular power relations, and shaping these legal subjects. The political dimensions of these legal subjective positions are much more evident because the positionality is fairly uncontested once identified. What I mean to say is that although we are made aware of the conflicts and power relations that may arise in particular legal contexts, we are not asked to challenge the framing of legal subjectivity outright, we are merely presented with its opposite, or its ‘other’. One of the reasons for this kind of approach is based on the fact that legal geographers’ projects align themselves closer to social justice discourse and legal practice, and a particularly humanist perspective. Again, this approach aspires to be inclusionary by extending the same types of rights to others, without contesting the grounding or definition of those rights, and oftentimes, their necessary reliance on that exclusivity. The potential for a more radical understanding of the issues at the heart of these spatial dynamics is lost if we do not push the limits of the legal subject. This proposition in turn demands a novel investigation of the role of materiality and the political in our understanding of spatial justice. By framing legal subjectivity through the lens of spatial justice and legal assemblages, we are able to grasp a new ethical position which may have lasting implications for human rights discourses. This ethical position is borrowed from posthumanist theory, and it is described as the ‘responsibility of indistinction’; it is informed by Karen Barad’s concept of ‘agential separability’. I will introduce this concept properly in the section on agency and political practice.

Spatial justice does not necessarily guarantee a solution to the various problems that arise in law (or the societies it frames). It poses a problem or a question, and

⁶⁷ Ibid., 182.

contributes to a constant analysis of the current structures that define our existence, in hopes that it can reorient the discussion, and shift some fundamental aspect of our legal (and arguably social and political organization). As Philippopoulos-Mihalopoulos explains,

“At the same time however, the concept is aware of its limitations. Epistemologically, it can never do away with the incommunicability between epistemes. Ontologically, and in the same vein, it can never be the solution. Spatial justice cannot bring about better identities, more organized popular will, broader consensus, healthier or richer developing countries. Nor can it do away with time and its fundamental role in 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 marginalized spatial factor: in short, while acknowledging and working through the impossibility of a solution, spatial justice brings forth the conditions of such and impossibility, thereby allowing a flicker of possibility to stream through.”⁶⁸

Although movement lawyers, or per Delaney, nomospheric technicians, would have a tough time accepting this idea of justice, they would also be able to recognize uncertainty as a fundamental aspect of their everyday work. Philippopoulos-Mihalopoulos is describing an inherently political problem when he talks about the ‘incommunicability between epistemes’. Politics cannot be reduced only to identities and conflict between them, but rather the negotiation of those spaces of everyday life, and the material-discursive processes that give rise to these identities. In fact, Philippopoulos-Mihalopoulos clarifies his intention as follows,

“This is the challenge of spatial justice: to negotiate a contested space without taking recourse to origins, central commands, outlines. To be thrown into the mobile multiplicity of the grass is to follow the blades waving in the wind: spatial justice is required to understand bodies as posthuman assemblages, that is with their political, personal, legal, religious, technological elements, moving on a continuum of differentiated power relations.”⁶⁹

⁶⁸ Ibid., 184.

⁶⁹ Ibid., 189.

Although we are presented with a different political process, we are presented with a political process nonetheless, and it is important to investigate how we can consider a performance, or practice, of spatial justice.

1.4.2 Rupturing the Continuum: The Politics of Spatial Justice

In order to think about the political implications of spatial justice, we have to address the shift in thinking in terms of legal subjectivity and political agency to thinking about assemblages and lively agency. By eschewing the idea of the legal subject, and replacing it with the notion of assemblage or situated collectivity, we are able to think more dynamically about the implications of our bodies in relation to other bodies (human or nonhuman). This perspective allows us to understand how nonhuman entities are actively implicated in our social and political existence. This approach does not intend to imbue material space with vitality or to anthropomorphize objects; rather, it aims to demonstrate that these bodies maintain and contribute to a political framework. Philippopoulos-Mihalopoulos invokes the assemblage as a framework through which we can understand interactions between different participants on a continuum in order to allow us to see the networked and complex interactivity between bodies on that continuum.

By removing politics from the discussion, he is not suggesting that the possibility of a type of politics is not present in the interactions between human and nonhuman bodies, rather, he is suggesting that the notion of political agency has changed because the individual is not exercising political will in a traditional subjective sense. For this reason, he approaches this discussion through the lens of agency. It is understandable that this position will seem strange, in particular to legal geographers, who are attempting to work new subjective categories (animals, environment, artificial intelligence, microbes, trees, etc) into an already-established framework of rights discourses. However, thinking about political agency beyond the human, or restricted categories that are formulated in relation to the human, complicates the situation when we want to invoke the idea of social justice in relation to spatiality and materiality.

Philippopoulos-Mihalopoulos is attempting something quite brave for legal theory, which is to help us grasp our fundamental vulnerability in the world, and to give us an opportunity to think that position in a legal context. He has to do this by taking the human-centred legal subject off its pedestal, and propose a novel approach to its reconstruction. This approach becomes increasingly interesting in light of the introduction of new tech to facilitate governance and essentially alter the basis of human interaction.

1.4.3 Lively Agencies and the Assemblage

Lively agency is a form of agential capability that is not centered on the human (or the nonhuman); it does not attempt to reformulate hierarchies between animate and inanimate bodies, but rather, according to Philippopoulos-Mihalopoulos, it addresses the single, defining characteristic of all bodies, which is their singularity (i.e. a conative withdrawal).⁷⁰

Lively agency is informed by Gilles Deleuze and Felix Guattari's theories on bodies and assemblages, Graham Harman's notion of ontological withdrawal, and to a more limited extent Michel Foucault's biopolitics. Lively agency is defined as "the ability of bodies (animate and inanimate) to withdraw in their singularity while connecting to other bodies."⁷¹ This form of agency can only emerge within the space of the law because it acts as the "vessel through which the law emerges, since each body is responsible for its position in relation to the wider assemblage."⁷²

The assemblages shifting and moving through the lawscape provide the flexibility and adaptability necessary to recognize the pressure of particular power relations. This kind of approach differs from that of legal geographers because it is not reliant on the dialectical oppressor/oppressed binary and the spatial context that sustains the legal

⁷⁰ Andreas Philippopoulos-Mihalopoulos, "Lively Agency: Life and Law in the Anthropocene," in *Animals, Biopolitics, Law: Lively Legalities*, edited by Irus Braverman (New York: Routledge, 2016): 193.

⁷¹ *Ibid.*, 194.

⁷² *Ibid.*

violence which gives rise to this relationship. However, this does not mean that resistance and agency are not present in Philippopoulos-Mihalopoulos's work. In fact, I believe his theory presents a more politically relevant relationship because it relies on encounter, and negotiation, rather than origin and causality.⁷³ However, in that process it does not attempt to obscure the reality of power relations, nor the fact that some bodies have a greater ability to influence the movement and direction of the assemblage.⁷⁴

Philippopoulos-Mihalopoulos also draws our attention to the failure of these processes to be perpetually open towards their vulnerability to cooptation. He notes the following with respect to assemblages and the potential of rhizomatic thinking,

“[h]owever, rhizomes have been routinely fetishized in the literature as the way to guarantee openness, flexibility, flatness and contingency. But rhizomes are also co-opted, overcoded and used in ways that go against the very idea of rhizome. Received legal histories, prefabricated political positions, historical origins and facts that have been maintained as affects of spatial and temporal nostalgia or claims for reterritorialization make use of rhizomes and their affective way of spreading. We are all encased in atmospherics of legal and political engineering which spread imitatively, rhizomatically. The space in the middle is not always open and possible. It often succumbs to the rhizomatics of atmospheres. This is the struggle: the middle is neither necessarily ‘good’ nor ‘bad’, positive or negative. In its point of folding, the tilting surface gathers speed, becomes vertiginous, with bodies sucked in or centripetally deracinated. It is not an easy space to be in, and no readily available moral hook is there to orient us.”⁷⁵

The capabilities of the assemblage demonstrate that these spaces are vulnerable to cooptation, which in a sense, acknowledges the uncertainty of politics, even though there is a risk of harmful outcomes.

1.4.4 Lively Agencies and the Responsibility of Indistinction

Lively agency is not agential in the sense that it initiates action, but rather because it opens itself up to the possibility of being “acted upon” by ‘a life’ (i.e. a virtual and not

⁷³ Ibid., 190.

⁷⁴ Ibid., 196.

⁷⁵ Ibid., 190.

yet actualized form of agency).⁷⁶ This ability is made possible through the assemblage because it fosters both actualized and virtual bodies through its perpetual moving and shifting borders. This ability also permits a different understanding of responsibility: a responsibility of indistinction.

However, there is no guarantee of openness, rather the ‘ability to be acted upon’ is premised on the notion that all bodies tend towards a conative withdrawal. And, because these shifts are taking place within assemblage formations, then those bodies are displacing other bodies as they retract. They are also responding to their conative desire, but they are also producing something through that relation.⁷⁷ They actualize, but never reveal themselves as full objects.

The continuum, “a tilted, power-structured surface, on which bodies move, rest and position themselves, affecting the tilt while being affected by it,”⁷⁸ is differentiated through ruptures that arise out of a process of folding. The continuum folds into itself (through the process of withdrawal), and as such creates temporary distinctions. The bodies that move on this continuum are assemblages, premised on relations and entering in relations with other bodies/assemblages. Although these assemblages are inherently amoral, the bodies within have a choice with respect to how they position themselves in relation to other bodies.⁷⁹ The tilt on the continuum is achieved because of the ‘weight’ or ‘power’ of an assemblage (human or nonhuman).⁸⁰ He states,

⁷⁶ Ibid., 196.

⁷⁷ Philippopoulos-Mihalopoulos is quite clear that this perspective is a departure from Deleuze and Guattari’s writing, which does not understand the process of assemblage creation through withdrawal or closure to the extent that Philippopoulos-Mihalopoulos does.

⁷⁸ Ibid., 196.

⁷⁹ Philippopoulos-Mihalopoulos, *Spatial Justice*, 61.

⁸⁰ Ibid., 62.

“one can organize one’s own body (itself an assemblage, namely a collectivity) in relation to the rest of the assemblage, in its turn in relation to the world. Each assemblage is a lawscape, and the lawscape keeps moving.”⁸¹

He names this process withdrawal, or the responsibility of indistinction. It is achieved because of our inherently entangled collectivity, and the fact that we bear a degree of responsibility towards each other as a result of this entanglement.⁸² This situated responsibility captures the fine line between understanding that we may not have complete control over the movement of certain assemblages (especially very powerful ones, like large corporations or natural disasters), and that we are not absolved of responsibility simply because we might not have control over these greater structures.⁸³

1.5 Conclusion

The purpose of this literature review was to demonstrate that spatial justice is not an apolitical project, but rather that it attempts to frame an alternative view of politics in order to distance itself from its humanist roots. Through spatial justice we are presented with a material, embedded and contingent form of legal and political existence. A continuum brims with activity because of the political nature of the assemblages that are constantly moving and shifting as a result of the power relations that unfold within. However, those power relations are not necessarily hinged on human-human relations, but through a mutual conative desire to persist, these struggles can emerge between all kinds of bodies. Therefore, the mutual co-constitutivity of law and space maintains a political dimension at its core.

The next chapter will present a more pointed argument for the political dimension of spatial justice and argue for a performative practice of spatial justice, in order to provide an indication of what political activism and social justice lawyering may look like.

⁸¹ Ibid., 63.

⁸² Philippopoulos-Mihalopoulos, “Lively Agencies,” 205. See also Karen Barad on this topic.

⁸³ Ibid., 204.

Chapter 2

2 Performative Assemblages and Spatial Justice

2.1 Introduction

In the following chapter I argue that politics remains a central aspect of the concept of spatial justice, and that the mutual constitutivity of law and space relies on a performativity, albeit a posthuman one. In order for the lawscape to be reoriented, and open up the possibility of spatial justice, the assemblaging bodies of the lawscape engage in a performance of spatial justice.

The mutual constitutivity of law and spatiality reflects the significance of law in everyday life in a manner that acknowledges it as a simultaneously abstract and material concept. This approach to legal theory is important not only because it uncovers the pervasive presence (and violence) of the law, but also because it reveals the complicated nature of the distinction between the legal and the political in conventional legal practice. For example, the fact that we categorize lawyers who advocate for social justice as ‘political lawyers’ speaks to this deeply problematic representation of law and politics, and the need to delimit the legal and the political then becomes a tool for rendering power relations invisible.

According to Philippopoulos-Mihalopoulos, spatial justice emerges through a rupture (or reorientation) of the lawscape which is produced by the spatial negotiations of the assemblages that move across the surface of the continuum that sustains the lawscape. Although these bodies may have particular tendencies based on their placement within the lawscape, they are responsive to the collective nature of the assemblages with which they engage. This responsiveness speaks to bodies’ ability to shift and change depending on the situation, which can be beneficial or detrimental to the greater assemblage.

By acknowledging the double articulation between law and space, we also begin to see how the field can be influenced from the outside in a much more effective and coherent way. Although Philippopoulos-Mihalopoulos claims that there is no outside to law, that is

merely a commentary on the fact that law is everywhere; however, this does not mean that politics is no longer a necessary constitutive aspect of how law and space co-emerge. Therefore, the relationship between interior/exterior (or closure and openness) becomes a central concern to this theory. I argue that in order to understand the political implications of spatial justice we need to engage with Philippopoulos-Mihalopoulos' conceptualization of the outside.

Unlike the legal geographers, Philippopoulos-Mihalopoulos frames the co-constitutivity of law and space as a concept that blurs disciplinary boundaries, allowing us to understand how seemingly non-legal actions can bear deep legal implications. I want to use this opportunity to suggest that, in this sense, spatial justice provides an opportunity to think about how political issues can shift legal discourses in very effective ways by actively engaging with their environments in different ways. Simultaneously, it suggests that shifts in our environments, whether prompted through human or nonhuman action, could have lasting implications on our legal and political landscape.

In order to establish this position, I read Philippopoulos-Mihalopoulos' complex theoretical perspective closer to the texts that inform it, specifically those of Gilles Deleuze and Felix Guattari, despite the fact that he distances himself from these theories. The influence of these two French thinkers is present through the use of concepts like the fold, reorientation, rupture and immanence. I argue that a Deleuzo-Guattarian political ontology is present in the concept of spatial justice, and that it emerges through the idea of the co-constitutivity of law and space in the lawscape. I will propose that performing spatial justice depends on the political activity of assemblages comprised of both human and nonhuman agents.

This chapter is divided into three sections which are centered on Philippopoulos-Mihalopoulos' main concepts: (1) The Lawscape: A Mutual Constitutivity of Law and Space; (2) Withdrawal: Monadic Bodies, Assemblages, and Lively Agencies; and (3) Performing Spatial Justice: Assemblages and the Reorientation of the Lawscape. Although I will address the influence of Deleuze and Guattari's writing throughout, the main analysis of their writing will take place in the two sections. The second section will

investigate the posthuman legal subjectivity and agency envisioned by Philippopoulos-Mihalopoulos, and its political implications. Finally, the third section will introduce what I believe to be the practice of spatial justice, namely how bodies perform spatial justice, and it will argue for the need to recognize political thought and agency alongside the law.

2.2 The Lawscape: The Mutual Constitutivity of Law and Space

As I mentioned in the first chapter, the mutual constitutivity of law and space is a concept which emerged, at least within contemporary theoretical discourse, in the writings of legal geographers in the 1980s and 1990s. This relationship between law and space can provide insight into how it is that we can begin to re-conceptualize legal subjectivity and agential capability. Yet, in order to engage with this project from a legal and philosophical perspective, and to be able to consider the agential capabilities of the non-human, Philippopoulos-Mihalopoulos distances himself from the social and political space of the legal geographers, eventually arguing that law “kills politics.”⁸⁴

2.2.1 David Delaney on the Mutual Constitutivity of Law and Space

The mutual constitutivity of law and space is defined by legal geographers as the way in which law influences social space, and in turn, how social spaces affect the laws that are required to contain and define these spaces.⁸⁵ David Delaney presents the close link between these two seemingly disparate disciplines as a practice of “world-making.”⁸⁶ The objective of these projects is to investigate the ways in which a trans-disciplinary analysis can serve to uncover new meanings and practices within these legal spaces and specifically with respect to the bodies that enact them.⁸⁷

⁸⁴ Andreas Philippopoulos-Mihalopoulos, “And for Law: Why Space Cannot be Understood Without Law,” *Law, Culture, and the Humanities* 1 (2018): 9.

⁸⁵ Delaney, *The Spatial, the Legal and the Pragmatics of World-Making*, 7.

⁸⁶ *Ibid.*, 8.

⁸⁷ *Ibid.*, 15.

Influenced by Henri Lefebvre's work on the production of space, legal geographers view law as productive of social space and vice versa. However, the significance of Lefebvre's work rests in how it is that he sets up the "socio-spatial dialectic," and the way that space is viewed as a more significant actor.⁸⁸ Arguably, this engagement sets his work apart, even from legal geographers. In his seminal work, *Production of Space*, Lefebvre applies a Marxist analysis to demonstrate how cities are shaped by the social relations of those who inhabit them, and how these in turn solidify and reproduce these relationships. To Lefebvre these processes are mutually productive, and the notion of social space and the performance of social space in a capitalist system stems from his thinking.

However, due to a focus on the social and political significance of this analysis, legal geographers seek a better sense of how space and matter could be represented through these processes. In an effort to bridge this gap, Delaney proposes the concept of 'nomoscape' which he describes as follows:

"Nomoscapes may most intuitively be thought of as nomic landscapes. But...these are not simply occupied (as we might imagine figures in a landscape), they are *lived*. They are continually enacted through engaged, situated human activity. The practical organization of nomoscapes strongly conditions how people move through their worlds. They determine what lines we encounter, cross, or refrain from crossing; what consequences follow from our crossings; how we are differentially positioned and repositioned with respect to nomic fields of power."⁸⁹

Therefore, the nomoscape is a landscape formed of different interrelated or overlapping settings, each with its own specific characteristics and power dynamics which are sustained through law and space.⁹⁰ Delaney informs us early on that these spaces are performed, and the legal subjects who move within (or perhaps, through) these spaces, are produced by these spaces, as they in turn produce these spaces. This perspective on law and spatiality is informed by a variety of theoretical sources, but Karen Barad theory

⁸⁸ Soja, *Postmodern Geographies*, 81.

⁸⁹ *Ibid.*, 104.

⁹⁰ *Ibid.*, 104.

of posthuman performativity influences Delaney's analysis, and in a sense, brings him closer to Philippopoulos-Mihalopoulos' work.

This theoretical framework becomes instrumental in understanding how spaces are employed to produce and advance legal forms of violence and inequality. Legal geographers then attempt to uncover, articulate and analyze the relationship between law and space from this perspective. However, this analysis operates largely at the level of the epistemological and representational. The legal subjects who are enacted through the performative processes of these legal spaces seem to become trapped within the logic of these spaces and the oppressor/oppressed binary. Therefore, while the legal geographers allow us to understand the operations of power through the production of these legal spaces, they are not able to capture the fullness of the performative subjects that inhabit the nomoscape beyond their identity in relation to that space, or the dynamic between themselves, and usually, the state as an oppressive mechanism. This point is further evidenced in the fact that, ultimately, the site of agential privilege is held by Delaney's nomospheric technicians, or 'political' lawyers, as they operate at the border between oppressors and oppressed to resolve conflicts.

2.2.2 Doreen Massey on Political Space

A main challenge for thinkers of space has been the collapsing of the spatial and material into the textual.⁹¹ Doreen Massey developed a theory of spatiality, drawing in part on a Deleuzo-Guattarian becoming, that challenges conventional understandings of the 'production of space' because they undergo the risk of rendering space as static and measurable, or representational.⁹² Instead, she proposes an understanding of space as activity:

“For if scientific/intellectual activity is indeed to be understood as an active and productive engagement in/of the world it is none the less a *particular kind* of practice, a specific form of engagement/production in which it is hard to deny (to absolve

⁹¹ Doreen Massey, *For Space* (New York: Routledge, 2005), 29.

⁹² *Ibid.*, 29.

ourselves from the responsibility for?) *any* element of representation (see also Latour, 1999b; Stengers, 1997), even if it is, quite certainly, productive and experimental rather than simply mimetic, and an embodied knowledge rather than a mediation. It does not however have to be conceived of as producing a space, nor its characteristics carried over to inflect our implicit imaginations of space. For to do so is to rob place of those characteristics of freedom (Bergson), dislocation (Laclau) and surprise (de Certeau) which are essential to open it up to the political.”⁹³

While the idea of the performativity of space might seem to bring Doreen Massey in line with the work of the legal geographers, she argues against thinking a multiplicity of perspectives that open up space to plurality in the sense of categories, but rather, for a view of a multiplicity which keeps alive the possibility of new trajectories for those who engage in these spatial processes. She urges us to adopt a theory of spatiality that recognizes *becoming* as the necessary condition of life, and that becoming is always with.⁹⁴

She uses the concept of throwntogetherness to capture these spatio-temporal processes:

“but what is special about place is not some romance of a pre-given collective identity or of the eternity of the hills. Rather, what is special about place is precisely that throwntogetherness, the unavoidable challenge of negotiating a here-and-now (itself drawing on a history and a geography of thens and theres); and a negotiation which must take place within and between both human and nonhuman... This is the event of place.”⁹⁵

Therefore, Massey sets us up for a thinking of space as open, processual and grounded in the negotiations of bodies, all with the desire to keep open the possibility of thinking the political.

⁹³ Ibid., 29.

⁹⁴ Ibid., 56.

⁹⁵ Ibid., 140.

2.2.3 Andreas Philippopoulos-Mihalopoulos on the Lawscape

In “And for Law: Why Space Cannot be Understood Without Law” Philippopoulos-Mihalopoulos mounts a critique of Massey’s work based primarily on the idea that her writing fails to capture the inherent relationship between law and space.⁹⁶ The main critique rests in the fact that law is understood only as positivist, doctrinal, and inflexible, which are the main critiques Massey (and Philippopoulos-Mihalopoulos) apply to conventional theorizations of space.⁹⁷ However, there is a fundamental distinction in how they theorize law and space out of their representational prisons, namely that Massey turns to a positivity inherent in space, and Philippopoulos-Mihalopoulos finds himself having to capture the negativity of law.⁹⁸ I argue that in order to think through the potential of the mutual constitutivity of law and space we need to address this tension between Massey’s open and affirmative politics and Philippopoulos-Mihalopoulos’ closed and auto-poietic law because it impacts the role of politics at the heart of an analysis of law and space.

In framing this tension, Philippopoulos-Mihalopoulos re-affirms a very particular, yet conventional, relationship between politics and law:

“Law operates through rupture and exclusion as a matter of course. One of the things that law ruptures and fragments is reality. The various narratives of the people who come to or are called by the law, are submitted to a process of legal analysis and indeed fragmentation, excluding irrelevant facts and retaining only the ones that can be converted into legally ingestible bites. For this reason, law habitually excludes politics. This initially might appear counter-intuitive, but it is important to understand that law is not politics...but the idea of exclusion of politics from law is an integral part of the legal identity. In a universally and equitably applied law, political biases are just that and must be avoided if the desired impression of neutrality and objectivity of the law is to remain beyond approach...Law must remain apolitical if it is to retain (the allure of) objectivity.”⁹⁹

⁹⁶ Philippopoulos-Mihalopoulos, “And For Law”.

⁹⁷ Ibid., 4-5.

⁹⁸ Ibid., 6.

⁹⁹ Ibid., 6.

In response to this statement, I argue that the process through which law excludes politics is in and of itself political, and furthermore, it is by understanding the materiality of the mutual constitutivity of law and space that we are made aware of this fact. Material and spatial practice reveals the implications and negotiations that stem from the ‘universal’ and abstract application of the law. Therefore, on one hand, politics cannot be cast into the shadows of legal practice, and on the other hand, politics cannot be reduced to a rudimentary understanding of identity politics and representation, or ‘political bias’. The significance of understanding the relationship between law and space through a performative lens is that it recognizes flexible and shifting identity positions of the bodies that are affected by it through an engagement with materiality. Therefore, in order to recognize the limitations of the law, Philippopoulos-Mihalopoulos accepts the basic operational nature of law as a tendency towards closure.

2.2.4 Lawscape, Body, and Political Agency

The mutual constitutivity of law and space is marked by the concept of the lawscape in Philippopoulos-Mihalopoulos’ theoretical universe. The lawscape is the outcome of the co-emergence of law and space, and it is formed through the interactions between the material world, the environment and the bodies (assemblages) that move across its continuum. The lawscape is vibrant and continuous, while also perpetually ruptured, and vulnerable to reorientation. This fact is meant to reflect the dynamic nature of the lawscape, and to distinguish it from the engineered atmospheres that operate through diffuse and yet suffocating and constrictive laws.¹⁰⁰ The lawscape is ontologically negative and reliant on closure, however, because it is material and produced through the folding and unfolding of the continuum (space), “it accepts negativity within a much ampler, positive plenitude.”¹⁰¹

This seemingly fraught dynamic between openness and closure plays a significant role in shaping the ontological premises of the bodies and assemblages that emerge within these

¹⁰⁰ Philippopoulos-Mihalopoulos, *Spatial Justice*, 69-70.

¹⁰¹ Philippopoulos-Mihalopoulos, “And for Law”, 10.

lines, and thus, is significant to an understanding of agency and subjectivity within this legal framework. In the following section, I will address how Philippopoulos-Mihalopoulos understands the body and its agential capabilities. This will bring us one step closer to thinking about the performance of spatial justice.

2.3 Withdrawal, Monadic Bodies and Assemblages

The theoretical thought of Gilles Deleuze and Felix Guattari has a significant influence on the concepts of spatial justice and the lawscape. Concepts like folding, immanence and reorientation, which are oftentimes used in framing this theoretical perspective on law and justice, are drawn from the writings of these two French philosophers, as well as the political ontology that they crafted through their collaborations. Although Philippopoulos-Mihalopoulos has explicitly stated that his theories are not exclusively Deleuzo-Guattarian, I believe that there are sufficient theoretical overlap to allow us to craft a theory of political agency within spatial justice and the lawscape by taking a closer look at this relationship.¹⁰²

As I noted in the earlier section, a noteworthy distinguishing factor between Philippopoulos-Mihalopoulos' writing and that of Deleuze and Guattari revolves around the question of closure, and the desire to understand the negativity of the law without capitulating to the openness that is typically attributed to the writings of Deleuze and Guattari. Philippopoulos-Mihalopoulos wants to develop a theory of law and justice that is capable of explaining this fundamental characteristic of law, while at the same time, working towards recognizing the embeddedness and contingency of legal practice. I argue that if we want to think of the relationship between law and spatiality, and a material justice, then we have to address the question of the political.

I begin with an overview of the concepts of fold and orientation in the work of Deleuze and Guattari because they are significant to the ways in which Philippopoulos-Mihalopoulos understands the body and agency. Then I will address the concept of

¹⁰² Philippopoulos-Mihalopoulos, *Spatial Justice*, 105.

withdrawal and the assemblage, and I will conclude this section with the concept of a ‘responsibility of indistinction’ which demonstrates how we may think through the concept of spatial justice from a political perspective.

2.3.1 Fold and Orientation

The ‘fold’ offers “an at once abstract and tactile sense of matter...at the crux of any social practice.”¹⁰³ As a monadic thinker, Deleuze is interested in the interior/exterior dynamic present in the process of unfolding, and the new conceptualization of subjectivity that this process entails.¹⁰⁴ Following Leibniz’s thinking on continuums and folds, Deleuze explains that “a fold is always folded within a fold,” and that “unfolding is thus not the contrary of folding, but follows the fold up to the following fold.”¹⁰⁵ Thus, the process of unfolding is creative and generative, “whereas to fold is to diminish... ‘to withdraw into the recesses of a world.’”¹⁰⁶ Unfolding is a process whereby the body (or the monad) is exposed to the outside (or exteriority), and as such it engages in a process of proliferation and redefinition. However, as Deleuze indicates, a simultaneous process of folding results in a productive withdrawal, since to withdraw into the ‘recesses of a world’ suggests the possible creation of a world into which the body may withdraw. I posit that this interpretation is close to the notion of withdrawal suggested by Philippopoulos-Mihalopoulos.

The movement inherent in the processes of folding and unfolding is noted in various ways in *A Thousand Plateaus: Capitalism and Schizophrenia*, through the process of deterritorialization and reterritorialization. In order to understand how the lawscape can be reoriented, it is useful to understand how it is that Deleuze and Guattari treat the concept of place and spatiality, which relates to these de/reterritorializations. Nomadic

¹⁰³ Gilles Deleuze, *The Fold: Leibniz and the Baroque* (New York: Continuum, 2006), xv.

¹⁰⁴ *Ibid.*, xix.

¹⁰⁵ *Ibid.*, 6.

¹⁰⁶ *Ibid.*, 9.

space is conceptualized as a “nonlimited locality,”¹⁰⁷ namely a space which is not traversed linearly, from point A to point B, but rather through a process of constant readjustment and reorientation.¹⁰⁸ The idea of nomadic space (or smooth space) brings to the fore the significance of orientation: “the local operations of relay must be oriented by the discovery (and often the continual rediscovery) of direction; otherwise, these operations would be in vain.”¹⁰⁹ Therefore, for Deleuze and Guattari, the ontological and epistemological are indivisible, or as pithily stated by Ed Casey: “that where something is situated has everything to do with how it is structured.”¹¹⁰ Casey further explains that the figures that move through ‘smooth’ space engage the idea of “place-as-region”¹¹¹ which projects the body as capable of “existing *through* the entire region.”¹¹² Therefore, the body, as conceived by Deleuze and Guattari, breaks with the “bilaterality” inherent in an orientation in Cartesian space, acknowledging that orientation can be accomplished through “actions at ‘close range’....[and yet, that] there is a ‘contiguity’ with the ground one is on.”¹¹³ Evidently, not all bodies are capable of engaging in these particular spatial processes as the world is generally formed of both smooth and striated spaces; however, the ability to engage in movement between these spaces gives us an idea of what kind of action might be required to reorient the landscape.

The distinct contribution of Deleuze’s thought to the question of subjectivity is centered on the idea of situatedness or localization, but it is framed in such a way so as to eschew the necessity of permanent emplacement by promoting the idea of negotiation and regeneration. The foundational premise of the Deleuzo-Guattarian subject is movement,

¹⁰⁷ Edward S. Casey, *The Fate of Place: A Philosophical History* (Los Angeles: The University of California Press, 1998), 304.

¹⁰⁸ *Ibid.*, 306.

¹⁰⁹ *Ibid.*, 306.

¹¹⁰ *Ibid.*, 302.

¹¹¹ *Ibid.*, 305.

¹¹² *Ibid.*, 305.

¹¹³ *Ibid.*, 308.

and as such, we begin to understand the event as a significant element in shaping the subject. This concept should have lasting implications for legal subjectivity as well (as political subjectivity), and Philippopoulos-Mihalopoulos presents us with a theory that speaks to these implications. Therefore, the fold as the “reduction of variables to a ‘single and unique variability’ of the touching or tangent curve”¹¹⁴ allows us to understand how the distinct character of each body can be simultaneously localized and abstract (or universal). According to Deleuze, this process is accomplished through the envelopment or “inhesion” that is facilitated by the fold.¹¹⁵ Leibniz defines the monad as the “unity that envelops multiplicity.”¹¹⁶ It is the ‘point of view’ that encapsulates an entire world, but only expresses a particular part of it.¹¹⁷ He describes the process of creating the fold as a torsion between the world and the soul (or the subject), highlighting an indistinction at the heart of the production of monadic bodies.

2.3.1.1 Folding and Unfolding in the Lawscape

The processes of folding and orientation provide a direction for the political project at the heart of this theory of spatial justice. The fold is both the metaphorical and material (virtual and real) manifestation of withdrawal. It gives shape to the assemblages or bodies that form within the continuum of the lawscape, and thus, the process of folding (or rather unfolding) has a significant influence on the ways in which the lawscape can be reoriented.

The lawscape is defined as “the way the ontological tautology between law and space unfolds as difference.”¹¹⁸ This definition reflects the dynamism and movement of law, as

¹¹⁴ Deleuze, *The Fold*, 20.

¹¹⁵ *Ibid.*, 24.

¹¹⁶ *Ibid.*, 25.

¹¹⁷ *Ibid.*, 25-27. As Deleuze further expands at page 28: “The world must be placed in the subject in order that the subject can be for the world. This is the torsion that constitutes the fold of the world and of the soul. And it is what gives to expression its fundamental character: the soul is the expression of the world (actuality), but because the world is what the soul expresses (virtuality).”

¹¹⁸ Philippopoulos-Mihalopoulos, *Spatial Justice*, 4.

well as a constitutive tension or conflict. The lawscape is the ‘place’ where the material and immaterial dimensions of law meet, and it marks the site where bodies fold and unfold into existence. The lawscape is simultaneously dynamic and situated; it can be changed and reoriented, and yet, it also reflects the stability and shape of legal bodies. The lawscape incorporates both an epistemological dimension, as it expresses differentiation between bodies, and captures their presence (whether visible or invisible) in the moment of rupture, and, it also incorporates ontological characteristics, as a continuum that reflects indistinction and the possible emergence of bodies. This is the crux of the onto-epistemological theory that is central to Philippopoulos-Mihalopoulos’ project, the emergence and withdrawal of bodies. The lawscape is like the ‘place-region’ because “the law in the lawscape emanates from every body without any origin.”¹¹⁹

2.3.1.2 (Un)folding and Withdrawal

The processes of folding and unfolding that are taking place through the continuum and within the lawscape contribute to an ontological withdrawal, which is central to Philippopoulos-Mihalopoulos’ theory of spatial justice. This particular theorization of withdrawal is influenced by Graham Harman’s definition of the concept. Harman argues that objects constantly withdraw into an “infinite recess” and as they do, they leave behind ‘qualities’ and ‘notes’ that are meant to reflect that sensual and cultural characteristics of these objects, respectively.¹²⁰ Harman’s withdrawal refers to a productive interiority, an inner world or something akin to an unconscious at the level of matter. The object of object-oriented ontology is properly out of reach, cannot be ‘known’, and rather, all we ‘know’ are these ‘qualities’ and ‘notes’ the objects leave behind.

As I mentioned above, Deleuze understands withdrawal as a movement towards the ‘recesses of a world’. It is a description that leaves us with the image of a very particular

¹¹⁹ Ibid., 69-70.

¹²⁰ Frenchy Lunning, “Allure and Abjection: The Possible Potential of Severed Qualities,” in *Object-Oriented Feminism*, Katherine Behar, ed. (Minneapolis: University of Minnesota Press, 2016), 88.

representation of a narrowly understood and specific world. Therefore, although this is a creative process, it is also suggestive of closure and definition. The unsettling or catalyst for a creative process however seems to have a different source for Deleuze and Guattari and Philippopoulos-Mihalopoulos, one privileging openness and the other closure, or self-destruction/self-overcoming (Nietzsche) and self-preservation (Spinoza).¹²¹ Yet, when we look closer at Deleuze's theory, and we consider the role of the fold, we immediately understand that the processes of deterritorialization (which produce the openness that defines Deleuze's writing) are not necessarily linked to an interiority or exteriority, rather they operate at the border, the skin, or strata of the fold. I argue that the question of openness versus closure sets up a false theoretical binary, and that it is the process and movement that bears more significance to the onto-epistemological production of bodies and subjectivities. A return to the material conditions through which these bodies are performed provides some insight into how this relationship can be overcome.

This spatial and material dimension of justice allows us to break through the image of the legal body as an individual unit, and to think of it in terms of its relations, its processes of formation (both ontological and epistemological), and ultimately its recolonization. Through this theory of justice we are able to understand the material context that sustains these social, political and legal interactions, especially because we can no longer ignore our presence within this world. It captures the socio-political context and the material context, and as such, the theory of spatial justice and the responsibility of indistinction create a very useful vehicle for thinking about law and justice. As Philippopoulos-Mihalopoulos reminds us: "only from within matter can law control."¹²²

2.3.2 Withdrawal and Assemblage

Withdrawal, as conceptualized by Philippopoulos-Mihalopoulos, is premised on bodies' engagement in a negotiation of space, and their subsequent emergence. In this sense,

¹²¹ Paul Patton, *Deleuze and the Political* (New York: Routledge, 2000), 50.

¹²² Philippopoulos-Mihalopoulos, *Spatial Justice*, 66.

withdrawal (as a form of becoming) allows us to see a political ontology emerging across the lawscape. These withdrawing bodies (or legal assemblages) are operating in a mix of human/nonhuman relations, indeed challenging traditional legal definitions of agency, and yet, engaging in spatio-legal practices that are properly understood to be political. In order to consider the future of political and legal thought, it is important to look closely at how these ‘lively agencies’ and assemblages operate.

The bodies that form on the continuum of the lawscape are assemblages, defined by their relationships and the productive contexts, rather than their characteristics. This allows us to understand the human, not as a unit, but rather, “as a set of intensive and extensive qualities that can be natural/technological, non/human, in/organic, im/material and so on, with which the human gathers into spatiotemporal assemblages.”¹²³ The assemblage, and its perpetual movement and negotiation of spaces, demonstrates the body’s ability to simultaneously engage in closure and openness: “the body as a *singularity that is permanently withdrawn*.”¹²⁴ As Philippopoulos-Mihalopoulos further explains:

“A body is understood as an assemblage of various conditions and materialities – we are isolated things; skin does not separate us from the world; otherness is not over there but very much with us, on us, in us...Rigid separation is an epistemological construct, often a necessity, according to the foundational fantasy of distinction between self and environment”¹²⁵

As assemblages bodies become situated in space, and through their movement (whether withdrawal or becoming) they produce these spaces. This is the performative action that rests at the heart of how bodies express their agential capabilities, and the key to how we may understand the relationship between spatial justice and politics.

Deleuze and Guattari formulated the assemblage as an alternative to subjectivity as it emerged within structuralist frameworks. In order to challenge the static nature of being,

¹²³ Ibid., 154.

¹²⁴ Ibid., 161.

¹²⁵ Ibid., 176.

they focused on the idea of becoming as a process that is capable of bringing language to the level of the material:

“the way an expression relates to a content is not by uncovering or representing it. Rather, forms of expression and forms of content communicate through a conjunction of their quanta of relative deterritorialization, each intervening, operating in the other.”¹²⁶

Therefore, we begin to see that performativity is linked to becoming, and becoming is itself linked to movement. The assemblage (and the body) is significant for Deleuze and Guattari because they claim that although the implications of politics occur at a larger scale, the decision-making is taking place at a molecular level.¹²⁷ There is a constant relationship between the molar and molecular dimensions of society in their view, and these processes of negotiation and influence give rise to a particular manifestation of political thinking and action.

2.3.3 Responsibility of Indistinction

The conceptualization of withdrawal has further implications with respect to how it is that we can think about responsibility in the age of the Anthropocene, as Philippopoulos-Mihalopoulos urges us to do. Through the concept of the responsibility of indistinction, we are tasked with thinking about the relations that form between bodies and that define the scope of our actions. The responsibility of indistinction is a concept derived from Karen Barad’s writing on posthuman bodies and the networks and connections they sustain through assemblages. It is premised on the idea that the human body as an assemblage that is part of its environment in a more biologically dynamic sense. Barad argues that rather than thinking that the body now lacks agential capacity, in fact, it has a heightened responsibility to be attuned and attentive to its environment. The ‘responsibility of indistinction’ is a call to understand the human as one of many bodies, in a situated material context, and on the same level as the environment. Yet, does the

¹²⁶ Gilles Deleuze and Felix Guattari, *A Thousand Plateaus: Capitalism and Schizophrenia*, translated by Brian Massumi (Minneapolis: University of Minnesota Press, 1987), 88.

¹²⁷ *Ibid.*, 222.

responsibility of indistinction mean that we must claim that there is no outside? Is the answer to ethical action and spatial justice the recognition that we inhabit a perpetually differentiating inside that is constantly attempting to reorganize itself in order to appease particular bodies simply because they ‘weigh’ more?¹²⁸

In “And for Law”, Philippopoulos-Mihalopoulos clarifies his position with respect to agency and the responsibility of indistinction by indicating that bodies can identify noxious assemblages that they must not only withdraw from, but must also actively resist.¹²⁹ I think this statement entails an imperative for orientation, and something that happens on a material, affective level. If a body can identify ‘noxious’ assemblages suggests that these assemblages are a direct affront to the material integrity of a body, and that they are both of an environmental and political nature.

The intimate connection between Philippopoulos-Mihalopoulos’ writing and that of Deleuze and Guattari provides an indication of the presence of politics within the concept of spatial justice. The presence and necessity of thinking politically through this concept is further evidenced through the concept of ‘lively agency’ which I will look at more closely in the next section. It is through this concept that we may come to understand how bodies perform spatial justice.

2.4 Performing Spatial Justice: Lively Agencies and the Reorientation of the Lawscape

Performing spatial justice allows us to understand how it is that we can capture political agency within the ambit of the lawscape. The idea that justice or law are political is a problematic concept within legal discourse. In order to maintain its impartiality, law cannot be understood to be political, even though political relations influence the

¹²⁸ The concept of ‘weight’ is how Philippopoulos-Mihalopoulos introduces power relations into this material theoretical perspective. He notes that the continuum can be tilted, to favour certain bodies, because these bodies ‘weigh’ more. This is how he overcomes the horizontality of a flat ontology, and introduces asymmetrical relations, in order to demonstrate that certain bodies are better suited to shift the direction of an assemblage, although it does not mean that ‘lighter’ bodies cannot find ways to do so too.

¹²⁹ Philippopoulos-Mihalopoulos, “And for Law”, 15.

operation of the law. However, the theory of justice presented by Philippopoulos-Mihalopoulos has granted an opportunity to (re)analyze this fraught, but intimate relationship between law and politics, and arguably, to determine more fruitful ways to engage with law politically.

One of the main reasons this can be accomplished is the fact that spatial justice is immanent, rather than deferred.¹³⁰ Spatial justice is also material and produced, and as such, it is an event that unfolds at the level of the body, out of the emergence of legal assemblages, and their particular, special positioning within the lawscape.

Philippopoulos-Mihalopoulos does not want to reduce the emergence and differentiation of these bodies to mere political conflict, which is why he notes that his concept should not be confused with an impoverished definition of identity politics, limited by a representation of bodies within monolithic categories.¹³¹ However, the tilted nature of the continuum and the struggle for space between the bodies on the lawscape are indicative of more than just an ontological distinction, and rather, mark a reflection of power and agency. Politics is not something that we can also read alongside this theory of law and spatiality, rather politics is something that must be read as an integral part of the theory.¹³²

2.4.1 What are Lively Agencies?

In order to understand how bodies perform spatial justice, we must turn to the concept of ‘lively agency’ and its relationship to responsibility and justice. According to Philippopoulos-Mihalopoulos, liveliness is

“the absolute difference of each individual body [which] emerges under paradoxical conditions: each body, namely each singularity, is both ‘withdrawn’ and gathered in

¹³⁰ Philippopoulos-Mihalopoulos, *Spatial Justice*, 176.

¹³¹ *Ibid.*, 219.

¹³² Philippopoulos-Mihalopoulos, “And for Law,” 10.

itself (for how else would it be singular), and at the same time connected to other singularities (for how else could it carry on).”¹³³

Lively bodies withdraw to ensure that the continuum is ruptured, and new bodies are presented “depending on the particular combination of bodies participating in it.”¹³⁴ The simultaneous movement of bodies towards interiority and exteriority (withdrawal and connection) suggests that agency is also connected to responsibility because the body is always caught up in an assemblage, it is always responsive to other bodies.

Lively agency and the continuum (as well as the lawscape) are closely connected. Philippopoulos-Mihalopoulos described the agential capability of bodies as: “vessel through which the law emerges, since each body is responsible for its position in relation to the wider assemblage.”¹³⁵ Responsibility emerges as the position of the body is established, and it is responsive to that context and those other bodies. In this sense, it is performative. It is the product of the relations that give rise to a particular assemblage. It is through the assemblage that we come to understand how and why a body could act, and could be acted upon by the processes that sustain the lawscape.

Lively agency denotes how bodies are engaged in rupturing processes in the first place, which is why Philippopoulos-Mihalopoulos turns to Karen Barad’s concept of “‘agential separability’ to signal the need for boundaries between bodies.”¹³⁶ These boundaries are formed as the continuum is folded to give shape to the bodies within, and through this process an agential position emerges.¹³⁷ This is closely connected to the idea of responsibility because it is also formed in relation to the assemblage. The “call to

¹³³ Andreas Philippopoulos-Mihalopoulos, “Lively Agency: Life and Law in the Anthropocene,” in *Animals, Biopolitics, Law: Lively Legalities*, edited by Irus Braverman (New York: Routledge, 2016): 193.

¹³⁴ *Ibid.*, 194.

¹³⁵ *Ibid.*, 194.

¹³⁶ *Ibid.*, 199.

¹³⁷ *Ibid.*

justice”, as Philippopoulos-Mihalopoulos indicates, is contextualized, and responsive to the environment and relationships that gave shape to the body in the first place.¹³⁸

A body’s lively agency is closer to the notion of an “affective ability.”¹³⁹ It is through understanding how bodies move, and “whether and to what extent they can form assemblages that respond to environmental conditions in a way that results in conative perpetuation,”¹⁴⁰ that we begin to grasp this distinct form of agency. Lively agency does not denote an individual choice, nor does it denote a position that results from the institution bodies might find themselves related to, instead it is material and emplaced, and expressed through a relationship between human and nonhuman assemblages. Lively agency, then, is an important aspect of this continuous process of assemblage building that takes place within the lawscape. As bodies shift and re-position themselves, they re-establish their responsibility to each other, and continuously re-define the possibility for spatial justice.

2.4.2 Lively Agencies and the Reorientation of the Lawscape

The lawscape can only be reoriented as a result of the movement and re-organization of the bodies within it, and spatial justice can only emerge if the reorientation of a lawscape reverberates through other lawscapes. This event is not abstract, as in a shift in the law that is removed from its material context, rather it occurs through a material engagement with the world. Philippopoulos-Mihalopoulos privileges matter because it brings us a richer understanding of the implications of the abstract dimension of law allowing us to understand the full capacity and implications of the law. He notes that a

“critical reading of autopoiesis, which, however does not succumb to critique but carries on by unfolding itself along the object of its attention, moves alongside its

¹³⁸ Ibid., 203.

¹³⁹ Philippopoulos-Mihalopoulos, *Spatial Justice*, 154.

¹⁴⁰ Ibid., 154.

body and employs its folds in order to construct concepts and conceptual practices that aim at a different reality.”¹⁴¹

This practice is not exclusively ontological, and it relies on a material-discursive practice, a performance or a practice that enacts it within the world, reproduces it, and gives shape to the social, political, and environmental conditions of existence.

If we understand law and space as mutually constitutive of each other, then politics is the element that provokes their emergence. Philippopoulos-Mihalopoulos describes it as excess, but this is only if we understand politics as the partisan discourses that clash in negotiation, rather than politics as constitutive of the relations and practices that facilitate material existence. Therefore, these processes are not autopoietic in the Luhmannian sense, rather, borrowing from Deleuze, they form a dynamic relationship between interior/exterior, so that the innermost layers are the most dynamic. Deleuze introduced this through the plane of immanence (which is similar to Philippopoulos-Mihalopoulos’ continuum) and if we consider his theories closely, we note that he advances processes of de-stabilization. It is helpful to think about it in terms of the permeability and processes of movement that occur within this boundary. In this sense, we begin to see correlations between Deleuze’s thought and that of Graham Harman’s theory of withdrawal. They both harken back to a moving, dynamic and ever-shifting layer, that becomes ordered, if only briefly, while maintaining the potentiality of change. This element of ‘unpredictability’ holds the key to the bodies’ ability to effect a reorientation of the lawscape.¹⁴²

Spatial justice is premised on a movement and transformation of the current conditions of a lawscape; but it does not guarantee a better world, just a different one.¹⁴³ The process of withdrawal depends on an “articulated strategy”¹⁴⁴ that takes place in physical as well as

¹⁴¹ Andreas Philippopoulos-Mihalopoulos, “Critical Autopoiesis and the Materiality of Law” in *International Journal for the Semiotics of Law* 27, no. 2, 393.

¹⁴² Philippopoulos-Mihalopoulos, *Spatial Justice*, 138.

¹⁴³ *Ibid.*, 199.

¹⁴⁴ *Ibid.*, 199.

symbolic places. Spatial justice emerges when we are presented with the possibility of a ‘new’ world, and when that has an impact by resulting in a production of space.¹⁴⁵ Yet, as Philippopoulos-Mihalopoulos reminds us,

“any reorientation of space can only occur through repeated encounters with other bodies. Such encounters take place on the space of withdrawal from the atmospherics of the existing lawscape. No doubt the new lawscape needs to prove its relevance. But spatial justice as an emergence takes place regardless of the validity of the new lawscape. It is enough to reorient the lawscape towards its new validation.”¹⁴⁶

The process of reorientation is marked by a material-discursive (performative) practice that attempts to claim a resistance through withdrawal from the atmosphere that dissimulates conflict. However, it is through a negotiation of places within the atmosphere that this can be made possible. These engagements between bodies, the negotiations of material spaces, and processes that think and create a different context, each sustain the possibility of spatial justice. These practices, then, are indicative of a form of politics, conceived as a struggle between bodies to affirm themselves, yet at the same time, withdraw in order to perpetuate the processes of creation. Despite the fact that the body withdraws into an interiority, it simultaneously gives shape to the body, and places it in contact with an exteriority. The performance of spatial justice rests in these processes of tension, redefinition and movement.

2.5 Conclusion

The processes of negotiation of space inherent in Philippopoulos-Mihalopoulos’ project of spatial justice are indicative of a political practice that operates to precipitate the possibility of spatial justice. This political practice influences the ruptures in the continuum that may cause a reorientation of the lawscape. Drawing on Deleuze and Guattari’s work I argued that withdrawal acts as a productive and creative force, much like the processes of becoming conceptualized by these philosophers in their work. The

¹⁴⁵ Ibid., 200.

¹⁴⁶ Ibid., 200.

productive and ultimately political negotiations denoted through withdrawal occur at the interstices of a body's negotiation of space.

In the next chapter, I draw a connection between Philippopoulos-Mihalopoulos concept of spatial justice and Indigenous resurgent practices to demonstrate how bodies can engage in a performance of spatial justice. I will draw on the writings of John Borrows, an Anishinaabe legal scholar, to show how the dynamic character of Indigenous law and resurgent practice is demonstrative of a practice of spatial justice.

Chapter 3

3 Performing Spatial Justice and Indigenous Resurgence

3.1 Introduction

The final chapter of the thesis will demonstrate how spatial justice can be approached as a performative practice by engaging in a comparative analysis between Andreas Philippopoulos-Mihalopoulos' theory of spatial justice and John Borrows' writings on freedom, Indigenous law and resurgence. A central objective of this thesis is to understand the implications of engaging the idea of legal subjectivity in relation to a grounded or material legal practice. Spatial justice offers an entry point into a discussion of law and justice that engages with the role of the nonhuman or the more-than-human. John Borrows' writings on freedom and Indigenous legal philosophy (or as he calls it, 'physical philosophy') allows us to grasp a practice of spatial justice. Also, it is not a coincidence that Borrows' writings, and Indigenous legal philosophy more generally, are the source of a practice of spatial justice as their engagement with the more-than-human permits the re-conceptualization of legal subjectivity. I believe this perspective on law and legal practice can open up more fruitful discussions with respect to the future of political lawyering.

Both Philippopoulos-Mihalopoulos and Borrows argue that law emerges through an engagement *with* the world, rather than an experience *of* the world.¹⁴⁷ I believe that this fundamental point distinguishes their work from that of most legal geographers because spatiality and materiality bear a distinct agential capability within these forms of legal practice, and a performance of spatial justice is not limited to the human legal subject, but rather it requires a situated relationality with other bodies, both human or more-than-

¹⁴⁷ APM contends that his work is not phenomenological because it is not centered on the human subject, and as such, it relies on a different engagement with the material world. While perhaps that might be true, I do think that his theory shares enough of a common ground with phenomenological thinking to blur the boundaries between the two.

human.¹⁴⁸ This perspective affords a different understanding of ethics and responsibility, which as Borrows and others have noted, is a cornerstone of Indigenous traditional knowledge.¹⁴⁹ Philippopoulos-Mihalopoulos, drawing on posthumanism, identifies this ethical relationship as the responsibility of indistinction.¹⁵⁰ Although there are some differences between these theories, in both cases, a relationship arises from a contextual, grounded and contingent encounter, and through this material event or struggle, arises the possibility of reorientation and spatial justice. The law is always grounded; it is never only abstract.

As a non-Indigenous person, my familiarity with Indigenous law and knowledge is limited to the research undertaken to write this chapter. Although I believe this thesis contributes to legal scholarship related to both spatial justice and Indigenous law, I understand that certain nuances or perspectives might be side-stepped because I do not have a lived or learned experience of Indigenous knowledge and traditions. In particular, I want to note that while I make use of the broader term of more-than-human and compare it to the non-human or lively agency in Philippopoulos-Mihalopoulos' work, I do not mean to equate the two. I will employ the term more-than-human, primarily in relation to Indigenous scholarship, while the term nonhuman will be used in reference to the work of posthumanists.

Also, the term Indigenous peoples has often been used as a monolith, thus failing to account for the various forms of traditional knowledge and the different approaches taken by different Nations. I do not mean to replicate this with the term Indigenous law. I did

¹⁴⁸ I should note that legal geographers, notably Irus Braverman and Nicholas Blomley, have engaged in writing about the more-than-human. See Braverman, Irus, ed. *Animals, Biopolitics, Law: Lively Legalities* (New York: Routledge, 2016) and Ojalamm, Sanna and Nicholas Blomley. "Dancing with Wolves: Making Legal Territory in a More-than-human World." in *Geoforum* 62 (2015): 51-60.

¹⁴⁹ See Borrows, John. *Freedom and Indigenous Constitutionalism*. (Toronto: University of Toronto Press, 2016).

¹⁵⁰ See Philippopoulos-Mihalopoulos, Andreas. *Spatial Justice: Body Lawscape Atmosphere* (New York: Routledge, 2015); Philippopoulos-Mihalopoulos, Andreas. "Lively Agency: Life and Law in the Anthropocene," in *Animals, Biopolitics, Law: Lively Legalities*, edited by Irus Braverman (New York: Routledge, 2016): 193-210.

consider whether using Indigenous legal traditions or legal orders would be a more appropriate term, or whether I could state that I am working only on Anishinaabe law; however, neither of those felt appropriate in this context because I do not have a sufficient understanding of Anishinaabe law to make specific claims, and because I believe that the project of spatial justice in relation to the concept of resurgence can be applied more broadly. In order to capture this dynamic, I chose to focus on Indigenous law as an umbrella term, but I do not want it to suggest that there is one way, or one particular practice that defines the experiences of all Indigenous peoples in Canada.

The first part of this chapter outlines aspects of Indigenous legal theory that will be used to advance my argument. As I mentioned earlier, this chapter is centered on the work of John Borrows whose writing on Anishinaabe law and practice is outlined in various books, notably *Drawing Out Law: A Spirits' Guide* and *Freedom and Indigenous Constitutionalism*. The former, which is both personal reflection and rigorous theorizing, weaves dreams, stories, anecdotes and law to bring us closer to an understanding of Indigenous knowledge, its processes of world-making, and the idea of agency. Borrows' work provides a starting point from which to think about justice and responsibility in relation to the more-than-human, and to understand why this is an important step in advancing broader social justice objectives.

The second part of this chapter will mark the crossroads between Indigenous law and a practice of spatial justice by providing a comparative analysis of the relationship between Indigenous resurgence and agency, and Philippopoulos-Mihalopoulos' Spinozist interpretation of withdrawal as an onto-epistemological movement. This section draws on my writing in the second chapter and helps us locate the conditions of possibility for political agency within the ethical and legal frameworks of Indigenous law and spatial justice. In this section, I will also build on the comparison between resurgence and withdrawal to discuss what a practice of spatial justice (or reorientation of the lawscape) may look like. This section engages more closely with the concept of freedom as a practice in the context of the struggle to engage with ideas of reconciliation and resurgence beyond state recognition.

The third section of this chapter will address two case-studies in order to demonstrate how spatial justice can be performed. The first case-study will engage with Rebecca Belmore's performance art piece, *Facing the Monumental*, which took place at Queen's Park on Canada Day in 2012. The second case-study is an analysis of discussions surrounding the 'rule of law' within the context of the recent Wet'suwet'en and Unist'ot'en protests against the Coastal Gaslink Pipeline Ltd. in British Columbia.

3.2 Indigenous Legal Philosophy

Indigenous law has a variety of sources: ancient stories, customs and codes, historical agreements with the Crown, Canadian common and civil law, constitutional law and contemporary international instruments.¹⁵¹ This multiplicity of sources reflects the complex legal and political reality of this area of law and it marks a commitment to understanding a contemporary and evolving definition of Indigenous law, which serves to counter a colonialist understanding of Indigenous law and traditions as fixed in the past.¹⁵² The persistent obstruction of the validity of contemporary claims made by Indigenous peoples underscores the continuing damage caused by a settler colonial mentality, and it diminishes the positive influence of Indigenous legal philosophy on contemporary legal and political theory.

In the last half-decade, the Canadian legal landscape has seen an increased interest in the future of Indigenous rights and the role of Indigenous law alongside the common law system. In 2014, Beverly McLachlin, Former Chief Justice of the Supreme Court of Canada stated that the future of Canadian constitutional law will be shaped by aboriginal rights, rather than the Charter, denoting the high court's intention to focus on clarifying the parameters of s.35 of the *Constitution Act*, 1982 and make substantial steps towards

¹⁵¹ John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010), 24.

¹⁵² John Borrows, *Freedom and Indigenous Constitutionalism* (Toronto: University of Toronto Press, 2016), 130-131.

reconciliation.¹⁵³ In September 2018, the University of Victoria Faculty of Law inaugurated its Joint Degree Program in Canadian Common Law and Indigenous Legal Orders. This program is the first of its kind in the world.¹⁵⁴ These hopeful steps are shifting legal discourse surrounding Indigenous rights in Canada, as well as the application of Indigenous legal philosophical concepts to Canadian law, and they mark an effort to contribute to the project of decolonization of the Canadian settler state.

These varied sources of Indigenous law demonstrate how legal practice can operate at different levels and in different contexts, outside what is commonly associated with the legal realm (our common law systems of legal practice). Indigenous constitutionalism has started to shift common law discourses, notably in the way common law jurisprudence on Indigenous rights is recognizing the validity of Indigenous legal traditions.¹⁵⁵ Yet, despite this progress, tensions and problems within processes of recognition and reconciliation complicate and oftentimes obstruct more transformative efforts towards self-determination.¹⁵⁶ I argue that the application and proliferation of Indigenous law is important to this struggle for self-determination, and it is useful to think through the ways in which the objectives of spatial justice lend themselves to legal and political transformation that can acknowledge and further the contributions of Indigenous legal philosophy.

¹⁵³ Darren Calabrese, "'Reconciliation' with First Nations, not the Charter of Rights and Freedoms, will define the Supreme Court in coming years, Chief justice says," *The National Post*, March 13, 2014, accessed March 22, 2019, <https://nationalpost.com/news/canada/reconciliation-with-first-nations-not-the-charter-of-rights-freedoms-will-define-the-supreme-court-in-coming-years-chief-justice-says>.

¹⁵⁴ "Joint Degree Program in Canadian Common Law and Indigenous Legal Orders JD/JID," University of Victoria Faculty of Law, accessed March 22, 2019, <https://www.uvic.ca/law/about/indigenous/jid/index.php>.

¹⁵⁵ Borrows, *Freedom and Indigenous Constitutionalism*, 34. Also see *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010. In an unprecedented move, the Court heard and considered oral history evidence from the First Nation groups. This marked a significant step in recognizing the value of Indigenous law within the common law system, and the ability of the common law system to coexist with an indigenous law.

¹⁵⁶ Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014), 3.

Before I continue this chapter, I note that there is a largely unacknowledged debt to the relational ontologies of Indigenous philosophy in forms of Western philosophical thought, including the texts of Gilles Deleuze and Felix Guattari.¹⁵⁷ Arguably, this fact also contributes to the similarities between Philippopoulos-Mihalopoulos's posthuman take on spatial justice which is largely driven by a Deleuzian analysis, and Anishinaabe conceptions of the more-than-human which are present in John Borrows' work, as well as that of other Indigenous scholars. I will not address this further because it is beyond the scope of my research, but I believe it is important to acknowledge this point.

As I note above, this chapter's views of Indigenous law are informed primarily by Anishinaabe law, as John Borrows is a member of the Chippewas of the Nawash First Nation at Neyaashiinigmiing (Cape Crocker Indian Reserve) and his writing is influenced primarily by Anishinaabe legal traditions.¹⁵⁸ The Anishinaabeg are the second-largest Indigenous group in Canada, and their territory spans the Great Lakes region, parts of northern Ontario, Manitoba and Saskatchewan, as well as parts of the northern United States.¹⁵⁹

My interest in spatial justice in relation to Indigenous law stems from the fact that Indigenous legal thinking is already well-positioned to consider the mutual constitutivity of law and space and, as such, it can shed light on how we may approach the shortcomings of our legal system through a practice of spatial justice. The next subsections outline a few key concepts in Indigenous legal philosophy that will demonstrate how it relates to the concept of spatial justice.

3.2.1 'Physical' Philosophy

In *Freedom and Indigenous Constitutionalism*, John Borrows introduces the idea of Indigenous law as a 'physical' philosophy or *akinoomaagewin* which is premised on a

¹⁵⁷ Dolleen Tisawii'ashii Manning, "Mnidoo-Worlding: Merleau-Ponty and Anishinaabe Philosophical Translations," (PhD diss., Western University, 2017), 52.

¹⁵⁸ Borrows, *Freedom and Indigenous Constitutionalism*, 4.

¹⁵⁹ *Ibid.*, 5.

continuous practice of grounded or Earth-related emancipatory traditions.¹⁶⁰ It is an approach that suggests an analysis of an experience of the world, and in a sense, it might be interpreted as a phenomenology.¹⁶¹ The performative nature of this practice is driven by a resistance to the status quo. Borrows calls this a “settled flux”, meaning “our perpetual motion coexists with a persistent and enduring near-permanence.”¹⁶² The physicality of Anishinaabe philosophy enacts grounded, but mobile agents, who are formed through both material and abstract processes. This perspective acts as a departure from the fixed and unitary legal subjects of the common law, which are framed abstractly, through the relationship they share over land, rather than with it. For this reason, how one’s relationship to the land is framed (and subsequently, how we understand legal subjectivity) impacts the ethical perspective and practice of the legal and political agents, and eventually, the ability to produce social and political change through legal frameworks.

There are two guiding principles for a practice of ‘physical’ philosophy according to Borrows: *dibenindizowin* and *mino-bimaadiziwin*, which mean, respectively, that “a person possesses liberty within themselves and their relationships,” and “living a good life.”¹⁶³ Although many works on Indigenous law, including Borrows’ writing on the subject, are focused on governance, harmonization and community-building framed around various values and principles, these do not act as rigid a priori categories that impose a universal moral order onto the agents of Indigenous law.¹⁶⁴ What he describes as this ‘physical’ philosophical approach is more so aligned with an ethical practice, and in this sense, I believe it reflects some of the ways in which Philippopoulos-Mihalopoulos conceptualizes bodies’ movement and engagements within the lawscape. There is no guarantee that the form of action undertaken will have the desired results, which is why

¹⁶⁰ Ibid., 4.

¹⁶¹ Manning, 198.

¹⁶² Borrows, *Freedom and Indigenous Constitutionalism*, 21.

¹⁶³ Ibid., 6.

¹⁶⁴ Borrows, *Freedom and Indigenous Constitutionalism*, 11.

he proposes a contextualized, practice-oriented understanding of Indigenous law that is flexible and adaptable.

This perspective of Indigenous knowledge as a form of ‘place-based’ ethical practice is similar to what Glen S. Coulthard calls *grounded normativity*.¹⁶⁵ He argues that “land...[is] an ontological framework for understanding *relationships*” between humans and nonhumans.¹⁶⁶ By engaging with the law in a grounded way (i.e. by drawing it out with the natural surroundings, rocks, trees, water, and land) we begin to understand that there is no “jurisprudential center of the universe” that is ‘the human’.¹⁶⁷ This perspective on law deviates from the liberal theoretical norm of legal subjectivity centered on human experience and the rest of the world as mere resource for human consumption and use. This de-centering of the human legal subject is a central premise of Philippopoulos-Mihalopoulos’ writing as well, and both mark a new horizon for the practice of law, and for conceptualizations of the ‘subject’ of law.

As I noted in earlier chapters, spatial justice, a product of the reorientation of the lawscape, does not necessarily occur when a lawscape is reoriented. The shift must be transformative, and as such, it must resonate across several lawscapes. Through his analysis of examples of direct action undertaken by various First Nations communities across Canada, we could argue that Borrows identifies successful and less successful attempts to attain spatial justice through a reorientation of the lawscape.¹⁶⁸ He provides insights into the varied and complex strategies employed in these cases, and suggests which have been successful and which have not. This approach demonstrates that certain practices, in this case direct action and the setting up of blockades, are not always

¹⁶⁵ Coulthard, 13.

¹⁶⁶ Coulthard 60-61.

¹⁶⁷ John Borrows, “Earth-Bound: Indigenous Resurgence and Environmental Reconciliation,” in *Resurgence and Reconciliation: Indigenous-Settler Relations and Earth Teachings* eds. Michael Asch, John Borrows and James Tully (Toronto: University of Toronto Press, 2018), 61.

¹⁶⁸ Borrows, *Freedom and Indigenous Constitutionalism*, 50-102.

successful, and that outcomes may differ depending on the history, timing and context of each First Nation.

3.2.2 Agency, Freedom and Resurgence

Agency, according to Borrows, means living according to one's vision within a network of people.¹⁶⁹ It is a recognition of the independence and interdependence of living in a community, and the mutual respect and responsibility that emerge from that relationship.¹⁷⁰ This definition of agency rests at the core of Borrows' idea of a *situated freedom*: freedom as practice and experience, rather than an abstract concept (or in a liberal philosophical sense, freedom as property, thus fixed and owned).¹⁷¹ This perspective on agency and freedom emerges because of the way in which spatiality and the relationship between human and more-than-human bodies is framed in Anishinaabe law. Although it is grounded, this form of agential practice relies on mobile, rather than fixed agents.¹⁷² Agency, then, becomes a fundamental concept for Borrows' theories on Indigenous self-determination and resurgent practice through stories, experiences, and relationships with (and within) the environment.

Despite the presence of guiding or universal principles and values in Indigenous thought, Borrows rejects the moral universalism of liberal philosophy in large part because it has been persistently utilized as a mechanism to justify and further advance the dispossession of Indigenous peoples through processes of annihilation and assimilation. Rather, these guiding principles form the basis of an ethical subjectivity, and not a moral order. Therefore, he seeks a different path for Indigenous law in Canada, and presents an alternative to the liberal theoretical foundation that informs our legal systems.

¹⁶⁹ Borrows, *Freedom and Indigenous Constitutionalism*, 6. However, in *Drawing Out Law*, he does speak of agency in relation to the more-than-human as well, in the context of a larger network.

¹⁷⁰ Borrows, *Canada's Indigenous Constitution*, 79-80.

¹⁷¹ Borrows, *Freedom and Indigenous Constitutionalism*, 19-20.

¹⁷² *Ibid.*

Therefore, Borrows rejects the spatial and politico-legal configurations of property relations within liberal societies as they have been applied in Indigenous contexts, and he contends that the framing of an a priori Indigenous identity has limited the contemporary realities and experiences of Indigenous people.¹⁷³ These traditions can adapt and change over time to fit the needs of their communities. Stories are re-told to respond to contemporary needs, and new stories are crafted to provide guidance with respect to new issues. Indigenous traditions are not static, and political rhetoric and legal judgments that have attempted to limit them as such have had a negative impact on Indigenous communities' ability to flourish.

Resurgent practice and freedom are closely related, and they are important to understanding how spatial justice may apply in this context. Leanne Betasamosake Simpson, a Miichi Saagig Nishnaabeg scholar and poet, describes resurgent practices as:

“Biiskabiyang— the process of returning to ourselves, a reengagement with the things we have left behind, a re-emergence, an unfolding from the inside out— is a concept, an individual and collective process of decolonization and resurgence. To me, it is the embodied processes as freedom. It is a flight out of the structure of settler colonialism and into the processes and relationships of freedom and self-determination encoded and practiced within Nishnaabewin or grounded normativity... My flight to escape colonial reality was a flight into Nishnaabewin. It was a returning, in the present, to myself. It was an unfolding of a different present. It was freedom as a way of being as a constellation of relationships, freedom as world making, freedom as a practice. It was biiskabiyang.”¹⁷⁴

This is a necessary part of the practice or resurgence according to Simpson, and it is a significant step towards decolonial practice.

Glen S. Coulthard, following Franz Fanon's anticolonial theories, also argues that the development of a radical praxis necessitates a “turning away” or a process of “self-recognition.”¹⁷⁵ According to him, *ressentiment* is a necessary step in a process of

¹⁷³ Borrows *Freedom and Indigenous Constitutionalism*, 20

¹⁷⁴ Leanne Betasamosake Simpson, *As We Have Always Done: Indigenous Freedom Through Radical Resistance*, 17-18.

¹⁷⁵ Coulthard, 48.

decolonization because it acts as a catalyst for rupture from processes of colonial subjection. However, Coulthard argues that Fanon's theory of *ressentiment* is not the same thing as resentment, which is simply reactionary or oppositional, rather it is a productive and 'self-affirmative' process.¹⁷⁶ Whether we consider a 'turning inward' or 'biiskabiyang' or 'withdrawal' the process bears significance because it is capable of creating a stepping-stone towards a "more just relationship."¹⁷⁷ For this reason, Coulthard does not view reconciliation as the solution to Indigenous peoples' current struggles within a settler colonial context, and offers resurgence as the alternative, almost as a development of a cultural collective consciousness, that can be approached both at the individual and group level in order to advance the interests of Indigenous peoples.¹⁷⁸ And, I would highlight, that this is a significantly spatial and material project, as Coulthard himself notes the significance of the use of blockades as mechanisms for asserting Indigenous sovereignty.¹⁷⁹

Further, an early theorist of resurgence, Taiaiake Alfred, who defined resurgence in the context of Indigenous sovereignty, argued that it is necessary not only to regain political space, but to fill it up with Indigenous content.¹⁸⁰ Along with Jeff Corntassel, Alfred argues that,

“Indigenous pathways of authentic action and freedom struggle start with people transcending colonialism on an individual basis – a strength that soon reverberates outward from self to family, clan, community and into all of the broader relationships that form an Indigenous existence. In this way, Indigenousness is reconstructed,

¹⁷⁶ Ibid., 43 and 111.

¹⁷⁷ Ibid., 120.

¹⁷⁸ Ibid., 140

¹⁷⁹ Ibid., 118.

¹⁸⁰ Sean Robertson, "Thinking of the Land in That Way: Indigenous Sovereignty and The Spatial Politics of Attentiveness at Skwelkwek'welt," in *Social and Cultural Geography* 18 (2017), 186.

reshaped and actively lived as resurgence against the dispossessing and demeaning processes of annihilation that are inherent to colonialism.”¹⁸¹

These views of resurgence offer an alternative to a particularly ineffective (and ultimately harmful) form of reconciliation, which has been persistently exemplified by the Canadian government.¹⁸² Oftentimes, the concept of reconciliation has either been deferred or it has been interpreted as form of acceptance within the ambit of the Canadian nation state with little desire or action towards structural change and mutual respect. This type of action has led Indigenous scholars, like Coulthard, to oppose reconciliation outright (and to declare it a failed project) because it depends on a politics of recognition, which means that it is always dependent on the goodwill of the settler state. Borrows, on the other hand, advocates for a simultaneous process of resurgence and reconciliation.¹⁸³ Although he does not support a non-transformative form of reconciliation, Borrows disagrees with Coulthard’s more radical project because he is attempting to frame his analysis in terms of a collective effort that recognizes the tension between independence and interdependence.¹⁸⁴ According to Borrows, Indigenous peoples must move from “critique to construction,” and seek out “‘transformative’ reconciliation [which] must be empowered by robust practices of resurgence.”¹⁸⁵

¹⁸¹ Taiaiake Alfred and Jeff Corntassel, “Being Indigenous: Resurgences against Contemporary Colonialism,” in *Government and Opposition* 40 (2005), 612.

¹⁸² A striking example is Stephen Harper’s apology to former residential school students in 2008, which vowed to make progress on reconciliation, only to make so little effectual change over the following seven years that Truth and Reconciliation Commission Chair, Murray Sinclair, publicly admonished the government for failing to live up to its promises. See APTN National News, “PM Harper has failed to live up to promise of 2008 residential school apology: TRC,” *APTN News* June 2, 2015, accessed: April 1, 2019, <https://aptnnews.ca/2015/06/02/pm-harper-failed-live-promise-2008-residential-school-apology-trc/>. However, this is not a partisan issue, as the current Trudeau government is also failing in making the progress it promised towards re-building the Indigenous rights framework in Canada and dissolving the *Indian Act*, 1876 or engaging First Nations on this issue in a constructive manner. See Justin Brake, “‘We Have to Take Chances’: Jody Wilson-Raybould Talks About Her Efforts as Justice Minister and Attorney General to Strengthen Indigenous Rights,” *APTN News* April 26, 2019, accessed: April 27, 2019.

¹⁸³ John Borrows and James Tully, “Introduction,” in *Resurgence and Reconciliation: Indigenous-Settler Relations and Earth Teachings* eds. Michael Asch, John Borrows and James Tully (Toronto: University of Toronto Press, 2018), 5.

¹⁸⁴ *Ibid.*, 4.

¹⁸⁵ *Ibid.*, 5.

This perspective sets up Borrows' notion of 'situated freedom'. The idea of situated freedom acknowledges

“that we are all differently situated and governed, in both constraining and enabling ways, in relationships of division, patriarchy, imperialism, racism, capitalism, ecological devastation, and poverty.”¹⁸⁶

He prefers this approach because it is capable of capturing nuance and complexity, and more likely to produce transformative change. Borrows argues for a response to Indigenous issues that is sensitive to context and seeks the best practice, not necessarily the most reactionary one. As he and James Tully note, the process of resurgence and reconciliation,

“requires attentiveness and attunement and must move beyond the simplistic models and metaphors standardly used to mis-describe and dominate the field from one perspective or another...Layers of meaning and ambiguity reside in any system of instruction and practice, and they embrace the social as well as the physical activity of construction.”¹⁸⁷

Therefore, to be of 'one mind' in this context does

“not seem to refer to complete agreement, but to understanding each other, holding all views in tension. Then reconciliation negotiations began. So this form of dialogue can be seen as a pathway of and to reconciliation.”¹⁸⁸

Although these accounts of resurgence and freedom do not always overlap, I believe they support the same goal of bringing forward transformative social change through a concerted revitalization and affirmation of Indigenous knowledge in a variety of 'scapes'. Yet resurgence is not necessarily done outside of settler colonialism or simply in opposition to it. Rather, I would argue that it is closer to a conative process that operates simultaneously as a means of affirming Indigenous knowledge, and demonstrating how it shifts and adapts to contemporary contexts. Through this operation, it demonstrates the lasting presence of Indigenous knowledge in sites that have been imbued with the authority of the settler state. Resurgence acts as a mechanism to perpetually challenge,

¹⁸⁶ Ibid., 7.

¹⁸⁷ Ibid., 10.

¹⁸⁸ Ibid., 12.

disrupt and reveal alternative spatial configurations that are taken for granted within the nation state. I will take this up again in the final section of this chapter, when I discuss Rebecca Belmore's performance piece, *Facing the Monumental* (2012), which demonstrates what resurgent practice looks like and how we can see the reorientation of the lawscape, and the potential for spatial justice.

3.2.3 The More-Than-Human of 'All Our Relations'

The relational philosophy of Indigenous thought is premised on the idea that more-than-human entities share an equal footing with human entities within the larger legal and political framework of Indigenous communities. At its core rests the notion of 'all our relations' which prioritizes a relationship of responsibility and mutual respect within inter-human relationships, as well as human and more-than-human relationships. This idea has been extended into discussions about law, especially within the context of environmental justice, but it can hold greater implications in terms of the contributions of Indigenous legal orders to common law systems. As Borrows reminds us: "Reconciliation between Indigenous peoples and the Crown requires our collective reconciliation with the earth."¹⁸⁹

The pursuit of a decentered human subjectivity is a familiar premise of critical legal theory contexts, and as such, it appears unusual that discussions on posthumanism within this context have eschewed the topic of the more-than-human and the influence of Indigenous theory. Although the concept has been recently taken up in discussions on spatial justice, particularly in environmental studies and legal geography contexts,¹⁹⁰ it is oftentimes incorporated as an attribute of Western theoretical perspectives. I believe that this reluctance to engage with the contributions of Indigenous thought in a substantial

¹⁸⁹ Borrows, "Earth-Bound: Indigenous Resurgence and Environmental Reconciliation," 50.

¹⁹⁰ See Robertson, Sean. "Natives Making Space: The *Softwood Lumber* Dispute and the Legal Geographies of Indigenous Property Rights," in *Geoforum* 61 (2015) 138-147; Ojalammi, Sanna and Nicholas Blomley. "Dancing with Wolves: Making Legal Territory in a More-than-human World." in *Geoforum* 62 (2015): 51-60; Brown, Katrina M., Frode Flemsaeter, Katrina Ronningen. "More-than-human geographies of property: Moving Towards Spatial Justice with Response-ability," in *Geoforum* 99 (2019): 54-62; and, Temper, Leah. "Blocking Pipelines, Unsettling Environmental Justice: From Rights of Nature to Responsibility to Territory," in *Local Environment* 24 (2019): 94-112.

manner reflects a gap in critical legal scholarship. Perhaps this is due to the fact that, as Regna Darnell notes, it is difficult to find a way to have these disparate theories speak to each other.¹⁹¹ However, I expect that John Borrows and other Indigenous legal scholars would differ, as much of their scholarship has attempted to find ways to incorporate Indigenous philosophy in a substantial way within common law systems. Nonetheless, with respect to critical legal theory, and the challenges it poses to liberal legal thought, I believe that Philippopoulos-Mihalopoulos' work on spatial justice provides us with a glimpse into how these disciplines may be bridged, though in both cases it requires a challenge to liberal legal formulations.

We must be wary, however, of the more-than-human marking merely another way of discussing the nonhuman of posthumanism (i.e. animate and inanimate organisms, technology, objects). Borrowing from Robertson, I argue that these engagements do not “think of the land in that way.”¹⁹² The more-than-human presents an important element of the relational ontology that defines Indigenous practices. As Sean Robertson explains with respect to Secwepemc understandings of Indigenous knowledge and the land, “[they] have not simply (biophysical) relationships with the land. They also have a co-constitutive relationship with it that shapes their being, informs their doings and orients their ethics to the collective...”¹⁹³ These relations form the ground of traditional Indigenous knowledge, and they guide legal and political practices. Although there are overlaps in terms of the sense of collectivity and interdependence they do not reflect indistinction in the posthuman sense.

An important contribution of Indigenous philosophy's perspective on interdependence through the concept of 'all of our relations' is the shift in understanding the human

¹⁹¹ Regna Darnell, “Reconciliation, Resurgence and Revitalization: Collaborative Research Protocols with Contemporary First Nations Communities,” in *Resurgence and Reconciliation: Indigenous-Settler Relations and Earth Teachings* eds. Michael Asch, John Borrows and James Tully (Toronto: University of Toronto Press, 2018), 242.

¹⁹² Robertson, Sean, “Thinking of the Land in That Way” 190-191.

¹⁹³ Ibid.

relationship to the land, and the legal implications this formulation of human subjectivity holds. While liberal legal theory understands land as resource to be extracted for human use and profit regardless of the impact this may have on the sustainability of other entities, Indigenous philosophy, by capturing a relationship of interdependence with the land intergenerationally is able to frame a different subjective position. The de-centering of the human legal subject is a necessary step in finding ways to engage more equitably within legal landscapes. If agency and freedom can be extended to the more-than-human, then:

“Rocks, water, plants, insects, birds, animals, and humans with little social, economic, or political power must be part of this circle of care. Freedom for these ones often requires that we restrain ourselves rather than exploit them as resources for our own selfish purposes.”¹⁹⁴

Furthermore, as Borrows and others have noted, this is a necessary and fundamental step in the process of reconciliation. Acknowledging the interdependence of human and more-than-human beings can promote better living within communities and states, and this must be incorporated within larger legal discourses.¹⁹⁵ The ‘physical’ philosophical premise of this relationality is that “being is ‘being-with’” and this ethical standpoint can facilitate forms of “transformative reconciliation” which may be either “constructive, obstructive, and contestatory,” but will ultimately lead to “a critical mass of networked practices that transform vicious systems into virtuous ones.”¹⁹⁶

Sean Robertson’s interview with Secwepemc-Okanagan traditional land user, Dorothy Christian provides a useful glimpse into what practice may mean in an ethical context that gives deference to the more-than-human:

¹⁹⁴ Borrows, “Earth-Bound: Indigenous Resurgence and Environmental Reconciliation,” 61-62.

¹⁹⁵ See Asch, Michael, John Borrows and James Tully, editors. *Resurgence and Reconciliation: Indigenous-Settler Relations and Earth Teachings* (Toronto: University of Toronto Press, 2018).

¹⁹⁶ James Tully, “Reconciliation Here on Earth,” in *Resurgence and Reconciliation: Indigenous-Settler Relations and Earth Teachings* edited by Michael Asch, John Borrows and James Tully. (Toronto: University of Toronto Press, 2018): 90-94.

“‘You don’t own the land: The land owns you. That is where our songs come from, that is where our designs come from, that is where we come from. Our spirit is integral to the land, it is a reciprocal relationship...’ You know when Indigenous people say, ‘‘All my relations’’? It is not taken lightly, you are related to everything in the universe: the trees, the birds, the four-leggeds, the little crawly things, the water: you are related. It is like you take care of them, they will take care of you. According to this relational geographical imagination, since individuals ‘‘come from’’ (non)humans, freedom rests on support for ‘‘the universe.’’’¹⁹⁷

The mutual reciprocity inherent in these relationships creates a context that moves us away from liberal legal theory’s understanding of the human subject and their relationship over land as property, rather than their relationship with the land as agent. However, Philippopoulos-Mihalopoulos is also moving us away from this discussion towards the materiality of law. He understands law as a practice that emerges with our surroundings rather than law that is overlaid on them. This fundamental shift in perspective regarding our relationship to the land gives rise to an ethical relationship premised on interdependence and material practice. This marks the significance of understanding a grounded (or material) legal relationship. We begin to see a number of correlated themes between Indigenous legal philosophy and Philippopoulos-Mihalopoulos’ theory of justice. Through storytelling as practice the land is oftentimes conceptualized as a continuum onto which the onto-epistemological relationship unfolds. Withdrawal then, as a turning towards the land, towards grounded knowledge, is a simultaneous action of engagement with the material (and ontological) and at the same time a production of knowledge (or epistemology).

Regna Darnell provides useful insight into how the ephemeral quality of everyday practice can nonetheless be grounded. As she explains regarding the tensions between Indigenous and Western philosophical systems,

“Both modes of knowing are systems: they form non-random patterns, even when the critical variables are too complex to circumscribe. The fluid and contingent may be a more effective way to live in the flux of day-to-day life, but it is equally

¹⁹⁷ Robertson, Sean. “Natives Making Space: The *Softwood Lumber* Dispute and the Legal Geographies of Indigenous Property Rights,” in *Geoforum* 61 (2015): 143.

necessary to have moorings in certainty that are akin to the non-negotiability of (some) physical regularities, such as the intractability of the world/nature. The question for moral philosophy, as for everyday affairs, is to recognize the difference and respond appropriately, to keep the questions in balance and adapt the methodology to the question(s) under consideration.”¹⁹⁸

I note this because it reflects the kind of shift in thinking about moral philosophy (and liberal legal theory) that Philippopoulos-Mihalopoulos is trying to accomplish through his ideas on the materiality of law. However, Philippopoulos-Mihalopoulos explains how it is that these ‘intractable’ material forms are nonetheless vulnerable or responsive to the onto-epistemological influence of law, or how they are co-produced through those encounters. And, in a sense, this perspective gives more due to the agency of those material bodies that have liveliness and that contribute to the development of Indigenous legal frameworks.

Through his reflection on the idea of ‘drawing out law’, Borrows acknowledges that the natural world is not formed of “passive objects to be acted upon,” but rather that these material bodies “had agency and a power of choice which they exercised every day. They were subjects and actively participated in the world.”¹⁹⁹ Practicing law in this way can open up possibilities for social and political change that can hold significance beyond Indigenous communities, and can shift frameworks within the broader Canadian context.

Before I end what is an already substantially lengthy introduction to Indigenous legal philosophy, I do want to turn to the relationship between the more-than-human and storytelling, as this plays an important role in the ethical practices at the heart of this project. The trickster is a familiar figure in Indigenous story-telling that oftentimes brings to light these ethical relationships. Nanabush, the figure of the trickster in Anishinaabe lore, is a half-spirit half-human entity that travels the world and creates mischief for the Anishinaabeg.²⁰⁰ He is a significant figure because he embodies the ethical perspective

¹⁹⁸ Darnell, “Reconciliation, Resurgence, and Revitalization: Collaborative Research Protocols with Contemporary First Nations Communities”, 233.

¹⁹⁹ Borrows, *Drawing Out Law*, 105.

²⁰⁰ *Ibid.*, 14-16.

that runs through Indigenous law. Nanabush's actions tend to bring to light the complexities and ambivalences inherent in challenging situations in order to allow individuals to engage with decision-making processes.²⁰¹

Narrative, then, becomes an important part of Borrows' theory of Indigenous law because it contemplates alternatives and the possibility of thinking of a system of Indigenous law that functions alongside the common law system.²⁰² Story-telling shifts and changes to accommodate the times. The figure of Nanabush engages in situations which suspend decision-making in favour of thinking. They are not necessarily didactic (though we could argue that they inform an ethical perspective), but they let the audience sit with a problem, so that they may find their own path to it. That is the freedom (and autonomy) that Borrows wants us to gather from Indigenous law. Although, as Charles Taylor notes, narratives can serve to "deepen our understanding of abstract or broad principles by contextualizing and making visible some of the 'irreducible' background they are embedded in and emerge from,"²⁰³ they also serve to unsettle those very backgrounds.

In *Drawing Out Law*, Borrows uses the ambivalence of Indigenous story-telling to inform his style of writing. The Trickster plays an important role in how social and political situations are explored and analyzed. The Trickster is represented in various ways, such as, a mischievous black dog that lives on the reserve or a conservative law professor at University of Toronto. Borrows presents these characters as complex figures that disrupt the direction and thinking of our main character, the author himself. The reader does not interpret them as oppositional, rather as part and parcel of his experience, while they challenge and disrupt his thinking/feeling/stories. This example is demonstrative of how Indigenous philosophy treats conflict and contradiction.²⁰⁴

²⁰¹ Borrows, *Freedom and Indigenous Constitutionalism*, 7.

²⁰² *Ibid.*, 90.

²⁰³ *Ibid.*, 89.

²⁰⁴ Borrows, *Drawing Out Law*, 103.

3.2.4 Conclusion

The main objectives of this first section of the chapter are to explain what Indigenous law is and what its relationship to Canadian law is, as well as to explain how it derives a particular ethical practice from its understanding of our relationships with the more-than-human. I accomplish this introduction to this area of law by engaging with some of the key concepts that I encountered through my research: ‘physical’ philosophy, agency and ‘situated freedom,’ and the more-than-human. Indigenous law is premised on a distinct conceptualization of a body’s relationship to the natural environment, and in a sense to spatiality, which holds significant implications for an understanding of legal subjectivity, agency and ethics. Furthermore, Indigenous law, though premised on a grounded normativity, is not fixed, as Western theory would understand it, but rather it is flexible, adaptive and mobile.²⁰⁵ In this sense, I believe it is important to understand how it is that Indigenous law presents us with an ethical framework that can aid in our understanding of a practice of spatial justice.

3.3 Withdrawal and Resurgence: Toward a Practice of Spatial Justice

The previous section outlined several key concepts which play an important role in our understanding of Indigenous law, and attempted to demonstrate how Indigenous law operates as a material legal practice, in particular through its relationship with the more-than-human. This section will be making the connection between these key concepts in Indigenous law and Philippopoulos-Mihalopoulos’ theory of spatial justice in order to demonstrate how we can begin to think of a practice of spatial justice through the operations of Indigenous law. Specifically, this section will compare and contrast Philippopoulos-Mihalopoulos’ concept of withdrawal and the concept of Indigenous resurgence.

²⁰⁵ As I mentioned earlier, grounded normativity is a concept developed by Glen S. Coulthard, while the idea of mobility as a central concept in Indigenous freedom is discussed by John Borrows in *Freedom and Indigenous Constitutionalism*.

The other notable concepts which I would like to link to Indigenous law are the lawscape, atmosphere and spatial justice. As I have mentioned before, Philippopoulos-Mihalopoulos reframes the concept of spatial justice based on a desire to understand spatiality as more than abstract and representational, and to open up new avenues for understanding the transformative capabilities of spatial justice. I build on Philippopoulos-Mihalopoulos' theory to think through what a practice of spatial justice might mean. How do we think of law and justice in a context of a posthuman legal subject, and how might that limit or advance the attainment of justice? How can law capture the complex contextuality of its subjects, as social and political actors, as well as legal actors? What is the role of the nonhuman in this dynamic, and how can we consider the influence of nonhuman legal agents? And, finally, what implications does this hold for the practice of political lawyering? I believe that Indigenous legal philosophy and practice hold some of the answers to these questions because Indigenous legal philosophy is premised on an interrelatedness between human and more-than-human, and as such, it frames a distinct relationship to space and spatiality. One of Philippopoulos-Mihalopoulos' main concepts, withdrawal, provides a useful entry point in our discussion of a practice of spatial justice; therefore, the rest of this section will focus on how we can understand withdrawal as a practice that facilitates spatial justice, and how it can be related to Indigenous legal philosophy through the practice of resurgence. This perspective will also allow us to understand how spatial justice maintains its political character, despite its operation through a relationship to the land.

3.3.1 Withdrawing from the Lawscape

Withdrawal into the continuum marks the shifting motions of the legal assemblages that populate Philippopoulos-Mihalopoulos' lawscapes. In a sense, the lawscape is the material and sensorial manifestation of the law.²⁰⁶ When Philippopoulos-Mihalopoulos states that law and space are mutually constitutive, he means to say that we could not understand or experience the operation of the law outside of its spatial and material manifestation. As legal subjects, we are produced through law's grounding (or its spatial

²⁰⁶ Emma Patchett, "La Zone: In/habitation in the Itinerant City," in *Global Jurist* 15 (2015), 179.

and material dimension). However, he also wants us to understand that space is not simply the medium, but also a fully cooperating agent. Space and law are co-producing, both discursively and materially. The law is simultaneously reproduced and affirmed through the ways we inhabit and live through its constraints. The spatiality of law is premised on inherent limits that give shape to social and political expression.²⁰⁷ And, Philippopoulos-Mihalopoulos argues for a conceptualization of the law as an object or system that operates beyond human (and allegedly, political) relations, which situates his work askew to that of legal geographers. However, Philippopoulos-Mihalopoulos himself stumbles over this hurdle when he tries to think about spatial justice, and he finds himself always linking it back to the relationship to the human.²⁰⁸ More importantly though, I believe we cannot escape the law as a human construct. Yet, despite the fact that it exists as such, we can attempt to think the place of other agents within it, as it is a mechanism that affects, and is affected by, these other agents, particularly the more-than-human entities that appear within the context of Indigenous law as well. Therefore, we are challenged to think of a de-centered human legal subject, but to engage with the asymmetrical power relations and potential responsibility of that human subject at the same time.

Withdrawal plays an important role in how Philippopoulos-Mihalopoulos frames this relationship. It is the ontological condition of the posthuman legal subject in his theory of spatial justice. If all bodies engage in this simultaneous movement of making space and taking up space, then we can understand that lawscapes, the sites where legal bodies (or assemblages) emerge, can be reoriented or reconfigured. Building on deconstructionist

²⁰⁷ The idea of inherent limits is also present in John Borrows' work, particularly in his chapter, "Earth-Bound: Indigenous Resurgence and Environmental Reconciliation," in *Resurgence and Reconciliation: Indigenous-Settler Relations and Earth Teachings* edited by Michael Asch, John Borrows and James Tully (Toronto: University of Toronto Press, 2018).

²⁰⁸ I am referring to the examples used by Philippopoulos-Mihalopoulos in *Spatial Justice*, like the transhumant shepherds in Northern Italy. Also, Wendy Brown encapsulates this concern in her criticism of the cynical position undertaken by some posthuman scholars who might suggest that material indistinction (or as Brown states, "we're just a bunch of cells like everything else on earth!") suggests that humans cannot exercise responsibility or engage in political action. Joost DeBlouis, "Neoliberalism Against the Promise of Modernity: Interview with Wendy Brown," in *Critical Theory at Crossroads: Conversations on Resistance*, Stijn DeCauwer ed. (New York: University of Columbia Press, 2018), 75-86.

theoretical perspectives on the ethics of withdrawal (e.g. Emmanuel Levinas) Philippopoulos-Mihalopoulos attempts to capture the material and situated nature of withdrawal, which he establishes through Deleuze's concept of the fold, as I discussed in the earlier chapter.

With respect to the process of withdrawal as practice, Luigi Russi provides us with a useful definition of the movement at the heart of this onto-epistemological legal practice:

“withdrawal is, in other words, an instance of sensing the strings as propaedeutic to new stirrings, and the stirrings as situated in a tenso-structure of strings, feeling the pull of both and not making either invisible.”²⁰⁹

It is this capability of withdrawal as a means of uncovering and sitting with complexity and contingency (or the history²¹⁰) of a situation, in order to understand the implications it holds for legal subjectivity and judgment. Indigenous story-telling, as a resurgent practice, is a productive way of engaging with complexity and contingency in legal contexts, not only because it draws on the past, but because it is also actively (and openly) crafting a future. For example, the role of figures like the Trickster expose ambivalences and perform a situated ethics, which contribute to processes of understanding land (and spatial contexts) as “a living entity we live *with* and generate knowledge *through*.”²¹¹ Perhaps the most notable and creative aspect of Indigenous philosophy rests in the fact that it allows us to sit with contradiction, disagreement, and difference, in order to understand the tensions that give rise to particular contexts, and to

²⁰⁹ Russi, 16.

²¹⁰ Rosi Braidotti reminds us that the historical and genealogical trajectory of our present times and contexts allows us to understand situatedness not only as particularity and representation, but complexity, tension and conflict. In a similar turn to Philippopoulos-Mihalopoulos, she introduces the concept of ethical affirmative relations to describe radical processes of assemblaging. See Joost De Bloois, “A Critical Europe Can Do It!: Interview with Rosi Braidotti,” in *Critical Theory at a Crossroads: Conversations on Resistance in Times of Crisis*, edited by Stijn De Cauwer (New York: University of Columbia Press, 2018), 9.

²¹¹ Gina Starblanket and Heidi Kiiwetinepinesiiik Stark, “Towards a Relational Paradigm – Four Points for Consideration: Knowledge, Gender, Land and Modernity,” in *Resurgence and Reconciliation: Indigenous-Settler Relations and Earth Teachings* eds. Michael Asch, John Borrows and James Tully (Toronto: University of Toronto Press, 2018), 182.

find individual solutions while simultaneously being attuned to the orientations of the collective.

3.3.2 Indigenous Resurgent Practices as Withdrawal

I argue that resurgent practices are a form of withdrawal, in the sense that they engage in a ‘turning away’ or perhaps a ‘turning into’ an engagement with the land. For example, walking traditional paths and regenerating a relationship and understanding of the land can give rise to Indigenous legal subjectivities that have been previously ignored.²¹² This practice is ultimately performed with the objective of reorienting the Canadian settler-colonial lawscape, as it slowly reveals the atmospherics of the law by demonstrating how these spaces, national parks or public spaces brim with Indigenous knowledge already. In fact they always had, as Leanne Simpson powerfully reminds us,²¹³ and the processes that maintain the lawscape, or rather, have elevated it to the level of atmosphere have contributed to a dissimulation of law’s violence through forgetting.²¹⁴

This practice is indeed a path forward, and it inevitably brings the settler along with it as it reorients lawscape, our spaces of living. These processes can be visible and invisible, as Indigenous law can operate much in the same way as the common law does within the lawscape,²¹⁵ and these processes are necessarily experienced in a variety of ways depending on the location and tension inherent in the assemblages that are withdrawing. Some practices of resurgence may be more successful than others in shifting the

²¹² John Borrows takes his students on walks through various sites that are important to local Indigenous groups in BC as a way of teaching Indigenous law. This resurgent practice acts as withdrawal because it forces individuals to understand the land differently, and to see it not as property, but as a living and equally partnered agent in legal processes (both Indigenous and in common law). I also want to note that having to see action on the part of ‘material objects’ is a difficult way of understanding how agents work. Philippopoulos-Mihalopoulos’ theory of material legal assemblages (or lively agencies) reminds us that learning consists of understanding what we can’t necessarily see, or the way we are impacted by our environments when we don’t necessarily acknowledge those impacts as valuable or as action.

²¹³ See Leanne Betasamosake Simpson, *As We Have Always Done: Indigenous Freedom Through Radical Resistance*, (Minneapolis: University of Minnesota Press, 2017).

²¹⁴ It is important to note that this is a material practice through and through as it requires an engagement with the land, and a reclaiming of spaces.

²¹⁵ Philippopoulos-Mihalopoulos, *Spatial Justice*, 73.

lawscape, however, the form of engagement is the same throughout and it demonstrates how processes of resurgence are necessary to the project of reconciliation. Indeed, as Borrows noted, resurgence and reconciliation are inextricably linked, not in the sense of a process of recognition, but in the sense that there is a shift in the material contexts of existence, facilitated through resurgence, that will inevitably shift the settler-colonial system. Therefore, I do not believe his project operates to the exclusion of the projects of those who are interested in more radical aspects of resurgent practice, like Simpson or Coulthard.

Yet, resurgent practice also signals a distinctive relationship to the land, and an important step in claiming Indigenous sovereignty is to understand it through the lens of co-existence rather than the lens of ownership. A different understanding of property must emerge in order to frame the legal subject in this case, which is the reason why I return to this problem, and why the relationship to spatiality and land is an important one.²¹⁶ The lawscape is shifting, re-arranging, and yet, influencing other lawscapes' reorientations. As I mentioned before, Philippopoulos-Mihalopoulos, as well as Russi, note spatial justice's relationship to Indigenous practices and the idea of co-extensive relationship between land and law, specifically through the well-known example of the 'songlines' performed by particular Australian Indigenous peoples.²¹⁷ It is easier to single out these practices as forms of understanding the law through its material performance rather than only its abstract form. The regeneration of law and land requires a withdrawal from a colonial lawscape, in order to expose what has always been there.²¹⁸

²¹⁶ I note two works that I am not very familiar with at this stage, but which I understand make significant contributions to this argument about property: Nedelsky, Jennifer. *Law's Relations: A Relational Theory of Self, Autonomy, and Law*. Oxford: Oxford University Press, 2011. Keenan, Sarah. *Subversive Property: Law and the Production of Spaces of Belonging*. London: Routledge, 2015.

²¹⁷ Philippopoulos-Mihalopoulos, *Spatial Justice*, 53-55; Russi, 19.

²¹⁸ See Forrest Wade Young, "Rapa Nui," in *The Contemporary Pacific* 29 (2017): 173-181. In this article, Young contrasts the colonial state's lawscape with an Indigenous relationscape, as a means of presenting two distinctive forms of theorizing legal spatiality. However, this contrasting approach differs from my own, as I am interested in how Indigenous law provides a means of understanding Philippopoulos-Mihalopoulos' theories, and because I want to think of the engagement and relationship between Western forms of legal thinking and Indigenous ones, rather than situate them as completely opposite systems of thought, despite the fact that this may oftentimes be the case.

3.3.3 Performing Spatial Justice through Indigenous Resurgence

Spatial justice, and the onto-epistemological framework within which it has been structured, presents an alternative to the “ontological priority of the dualism” through the idea of simultaneity and interstitiality.²¹⁹ Philippopoulos-Mihalopoulos explains this idea as follows:

“One, therefore, has to follow very closely what Brighenti means when he writes ‘the interstice is rather the outcome of a composition of interactions and affections of multiple parts that coexist in various ways within a given spatial situation’...Rather than synthesis, an interstice is an emergence (which means, it lies beyond prescription, controlled mechanics and systematic articulation of the result).”²²⁰

This notion of the ‘middle’ or the primacy of the interstice is important when we consider a practice of Indigenous law which embraces the notion of conflict and ambiguity as central to ethical practice. Thinking through this context as emergence allows us to understand identity as situated in a context (in Philippopoulos-Mihalopoulos’ case this is how an assemblage functions), yet capable of overcoming and shifting into new formulations if necessary.²²¹ To draw on Borrows, for example, direct action operationalizes not necessarily as an oppositional mechanism, but rather as a productive interstice. As we have seen in descriptions of the Uni’stot’en camp and blockade, Indigenous leaders declare these sites as ‘gateways’ in order to highlight the fact that they were sites of learning through resistance. This kind of practice allows us to understand how spatial justice can be productive and transformative, while it is resistant. Although Philippopoulos-Mihalopoulos urges us to remember that the radical potential of these spaces can be “co-opted, overcoded and used in ways that go against the very idea of

²¹⁹ Andreas Philippopoulos-Mihalopoulos, “Spatial Justice in the Lawscape” in *Revista Brasileira de Sociologia do Direito* 5 (2018), 103.

²²⁰ Ibid.

²²¹ The issue with this position, for APM and others, is that there is no guarantee that these reformulations will necessarily amount to an expected, or ‘positive’ result. However, this is why I think his theory aligns well with Borrows’ depictions of Indigenous philosophy, which values the work that comes from facing contradictions and ambivalences, or rather the inevitability of it. And, ultimately, despite our understanding of law, this is something that hits at the heart of legal practice as well.

rhizome,”²²² it is useful to consider the role of direct action and the application of Indigenous law.

What I am proposing, then, is that if we want to understand a performance of spatial justice, we must look to the work being done by Indigenous peoples in processes of resurgence and reconciliation with the land and the more-than-human. This form of performativity within the ambit of an assemblage or a collectivity, as one of many, helps us understand how particular forms of identity and subjectivity can take shape without having to rely on an essentialist position. The collective agency of assemblages reminds us that subjectivities are always moving from the abstract to the concrete by necessity. That law is abstract, in so far as we need it to be this way in order to understand how to act, but its application is always material, always grounded. We cannot escape the ‘politics of locality’ as Braidotti would state, and a performance of spatial justice requires first and foremost the recognition that this political dimension extends not only to the human relations that unfold onto that locality, but how they unfold through it. This process, as noted above by Robertson, requires attentiveness and slowing down, a process of thinking through the stirrings of withdrawal, and noting the tensions at the interstices of the assemblage.

As Jill Stauffer notes, there is a tendency to treat colonial settlement as a *fait accompli*, instead of seeing it

“as a force that requires continual renewal, that might make clear not only that it is up to all of us to choose between different possible outcomes, ‘but the durability, consistency, scope and consolidation of the phenomena’ can be called into question, and non-Natives can begin to ask how their everyday actions, aspirations and goals contribute meaningfully to a continuing settler colonial regime (Rifkin, 327).”²²³

²²² Ibid, 104.

²²³ Jill Stauffer, “Disrupting ‘All the Familiar Geometry’: Drones, Settler Colonialism, and Nasser Hussain’s Difficult Questions,” in *Law, Culture and the Humanities*, (December 2017), doi:10.1177/1743872117750060, 6-7.

Drawing on Mark Rifkin's work in *Settler Common Sense: Queerness and Everyday Colonialism in the American Renaissance*, Stauffer demonstrates, in effect, how the atmospherics of the law, in this colonial legality, function to dissimulate law's violence, and the reproduction of forms of colonial violence through settler deference to the status quo.

I note Stauffer's work because performing spatial justice is not necessarily a process that befalls Indigenous peoples to the exclusion of the settler, or that the burden of undoing Canada's colonial present is solely within the hands of Indigenous peoples in Canada. A tilted continuum reflects the inherent power relations within assemblage formations and within the lawscape, however, through withdrawal, bodies have the ability to shift the parameters of the assemblage. By framing agency in this manner there is a break in oppositional thinking to suggest that the ability to resist or withdraw is a conative mechanism that is available to all agents, including the more-than-human, and it can be effected through allegiances and complicity with other assemblaging actors in order to effectively produce transformative change.

3.4 Rupturing the Lawscape through Indigenous Resurgence

In the following section I will discuss two examples of how it is that we can approach a practice of spatial justice, or an affirmative ethical relation, which I believe demonstrate how the lawscape is ruptured and a glimmer of spatial justice is revealed. Both of these examples are situated within a legal context, as they reveal the tension between Indigenous law and Canadian legal systems. The first example is an analysis of a performance art piece by Rebecca Belmore, entitled *Facing the Monumental*, which took place on Canada Day in 2012 in Queen's Park, in front of the Legislative Assembly of Ontario. It was through Leanne Simpson's re-telling of this event²²⁴ that I first understood what performing spatial justice may look like, and the reason why I thought it was

²²⁴ Leanne Betasamosake Simpson, "Canada Day, Rebecca Belmore and Me," *Leanne Simpson*, <https://www.leannesimpson.ca/writings/canada-day-rebecca-belmore-me> (accessed: April 7, 2019).

important to think about it in relation to Indigenous law and practices of resurgence. In the second example, I wanted to consider a more well-known spatial context for Indigenous resistance, the blockade. Given the recent news coverage of the protests at the Unist'ot'en homestead, as well as these First Nations' rich history of resistance and successful transformation of the Canadian common law system,²²⁵ I thought it would be a productive case-study for this project.

3.4.1 Rebecca Belmore's *Facing the Monumental* (2012)

Rebecca Belmore's performance art piece, *Facing the Monumental* is an example of resurgence, as well as a lesson in Indigenous law. By drawing on Indigenous traditions, through the inclusion of Mitigomizh, an old oak tree, as a central part of the performance, Belmore produces a reorientation of the lawscape of Queen's Park. The outcome of this action is to reveal the depth and source of Indigenous knowledge present in a part of the city that otherwise seems to brim with the legal authority of the colonial state.

As I draw my knowledge of this event from a description provided by Leanne Betasamosake Simpson, I have included her re-telling of this performance below:

“The site of Belmore's performance was Queen's Park, in the expanse of a large, old oak tree, Mitigomizh, in our language.

There were four pots of Nibi (water), and three large plastic bottles of water marking the front of the space, telling me that this performance was going to be about women. Nibi within Anishinaabeg philosophy carries within it many complex teachings and it is also a strong reference to women. There are four female spirits responsible for the water in the oceans, the fresh water, the water in the sky and the water within our bodies. Nibi is the responsibility of women. Nibi is women's sovereignty.

Belmore began by leading her three shkaabewisag (helpers) around the Mitigomizh that would become the focal point for the work. Over the next hour, large sheets of brown kraft paper were unrolled, moistened with spray bottles of

²²⁵ Hereditary chiefs from Wet'suwet'en were also the claimants in *Delgamuukw*, which was the first case to consider oral history as evidence in the context of Aboriginal litigation. Although this case did not mark an incontestable win for the First Nation, it did break a significant barrier and marked the inclusion of Indigenous knowledge within the common law system. This example is oftentimes quoted by John Borrows and others as a way of understanding how Indigenous law and the common law system can work together.

water and carefully wrapped around the tree over and over. They used Nibi to hold the sheets together.

At first, the tying of the brown paper around the tree seemed like a marker to me. My attention was exclusively on Mitigomizh. It was the Elder, the Nokomis in the park. I imagined the destruction Nokomis had witnessed over the course of her life. I thought of all of the water held by her roots and in her body. I thought of all the black oak trees, and black oak savannas that are no longer in Mississauga territory. I noticed the hordes of people walking by the tree, not noticing, on their way to see the horse statue and the legislature. For an hour, we sat or stood, talking and laughing quietly with our friends, eating and drinking and looking at Nokomis, the old oak tree in the context of water. We watched as our water was used to hold together the paper, methodically being wrapped around our grandmother.

I remembered the murdered, the missing, the stolen, the erased. I remembered generation after generation after generation after generation of our warrior women. I remembered the generations yet to come.

When Mitigomizh was wrapped with the paper, it reminded me of a sexy, strapless party dress, with ruching from top to bottom, and one asymmetrical strap coming across her shoulder, where Belmore had attached the gown to the tree (by initially throwing the paper tied to a yellow rope over a very tall branch).

Mitigomizh for me had become sexualized through no choice of her own. She was aesthetically beautiful, but then she was also aesthetically beautiful before the performance began. I had just forgotten to notice.

Then, one of the shkaabewis, dressed in her own black party dress with long and with flowing black hair sat in the lap of Mitigomizh. Belmore took the wig off the shkaabewis's head and placed it over her faced. Then she continued to wrap the shkaabewis into the tree with the paper. All the while, our sacred water was being used as the glue. Eventually, our Anishnaabekwe disappeared.

Belmore then sat on the ground, in front of the pots of water, facing at the Mitigomizh and the disappeared Anishnaabekwe.

That in and of itself was emotionally moving.

Then, the pinnacle.

The peace was suddenly and without warning shattered by the sound of gunfire. I immediately thought of Oka, and the sounds of bullets terrorizing the pines. The violence of the explosion vibrated through my body and the ground.

The twenty one gun salute felt like the brutal targeting and assassination of Indigenous women disguised as a salute and an honouring, which speaks to the insidious and manipulative nature of colonialism, helping, reconciliation and the dangers of perpetually placing Indigenous women in the context of victimhood...

The brilliance of Belmore's work is always for me in its apparent nuanced simplicity, that hours and days later becomes more and more complex. It is the very best of Indigenous storytelling grounded in the very same process that have brought meaning to the lives of our Ancestors – multi-dimensionality, repetition, abstraction, metaphor and multiple sites of perception. In short, a multi-layered conversation whose meaning shifts through time.

At the end of the performance, Belmore took the wig off of her shkaabewis's face (the lovely Cherish Blood, Blackfoot woman from the Blood reserve) and helped her out of the wrappings and down off the tree. The image of Rebecca extending a hand to Cherish and Cherish bursting through the bonds of 500 years of oppression with a huge smile on her face is one of the images seared into my memory from that day. The others, I'll carry with me, and every time I pass by a Mitigomizh, wherever I am in the world, I will now remember the fierce, gentle, beautiful, nurturing nation building spirit of Indigenous women.

Rebecca Belmore takes (back) her (our) space (land) in the world and her work compels me to take (back) my (our) space (land) in the world. Yesterday, she took every Mitigomizh in my territory back, no matter where they grow. She embedded the story of Anishinaabekwewag into their bark, and in doing so she liberated the story of Indigenous women from the bonds of victimhood.

And for those gift, I say Chi'Miigwech to Rebecca, because today I feel slightly more healed than I did yesterday."²²⁶

By challenging the lawscape of Queen's Park, Ontario's legislative core, Belmore recreates for her audience a site of Indigenous knowledge, and reminds them that it was always there. As Simpson notes, Mitigomizh is an Elder, a Nokomis (grandmother), and within its core she contains knowledge of this area that dates back generations. Therefore, through the reorientation of the lawscape, a different legislative core is revealed, the site of Indigenous knowledge. Belmore's actions transcend the boundaries of art, into the realm of law. This performance is a law-making movement and a political statement that reveals a deference to (and care for) the more-than-human.

²²⁶ Simpson, "Canada Day, Rebecca Belmore and Me."

Although Belmore's work reorients the lawscape of Queen's Park, whether that reorientation can produce additional reorientations, and whether it can reverberate beyond that one event to produce spatial justice remains to be seen. However, by revealing the atmospherics of Queen's Park, she demonstrated the sleight of hand employed by settler colonialism in order to maintain its legal and political legitimacy over the land. Arguably, performing spatial justice, and the effects of this kind of practice hinge on an undoing of the practices of colonialism, by revealing them and by engaging in other forms of action. The lawscape will always be part of how it is that law, space and the body interact, however, it is possible to reorient the lawscape in order to create new political and legal possibilities. Law and space, the tensions inherent in political contexts and the complexity and messiness of these spaces is not something that disappears or can be replaced by Indigenous law, as a different way to 'do' law. Rather, it attunes us to the different layers and realities of law that have always been here, but have been dissimulated away by particular concentrations of power.

In anticipation of Belmore's exhibit at the Art Gallery of Ontario, Leanne Simpson captures the spirit of the artist's ethics when she describes her decolonial project:

“This is what colonialism in 2018 feels like. This relentless struggle of carrying forward that which is meaningful, despite being bound, despite monumental obstacles, is a struggle towards sky, towards freedom. The sharp focus on the artist, the fortitude of concentration, her relentless determination and her sound as she reaches the top, is affirmation. Yes, we will win. We already have.”²²⁷

A performance of spatial justice requires that we take stock of the asymmetries of power that inform our positionality and our material and spatial configurations, and then that we reconfigure the parameters of the assemblage in order to allow the possibility for transformative change. What Philippopoulos-Mihalopoulos and others are suggesting is that the reconfiguration takes place in and through the spaces of existence, that it is limited and supported by these spaces. Belmore's movements, her chosen site, the partnership with the old oak tree, as well as her helpers allow us to understand that in

²²⁷ Leanne Betasamosake Simpson, “I Am the Artist Amongst My People,” *Canadianart* <https://canadianart.ca/features/i-am-the-artist-amongst-my-people/> (accessed: March 25, 2019).

order to reframe the legality of the spaces of everyday life, and to challenge power relations, we need to engage with the more-than human agents that inform material practice. Simpson herself draws attention to the importance of an engagement with space and body:

“I’m drawn to the idea of transforming colonial space into decolonizing space, and so I think about my body, my presence and my surroundings as material as well...Belmore’s work is concerned with violence, but that it takes us elsewhere, it doesn’t stay in the pain. It affirms our truths, but it is also generative.”²²⁸

By allowing us to consider the co-constitutivity of law and space at the level of the body, legal geographers, and Philippopoulos-Mihalopoulos in particular, have challenged us to consider a dimension of law that is often overlooked, one that is exercised with respect to the limitations of the body, socio-legal spaces, and more importantly, those who form our collective assemblages (human and more-than-human alike).

3.4.2 Wet’suwet’en Nation’s Unist’ot’en Camp and Blockade

The use of blockades in protests on traditional territories is a common form of direct action utilized by Indigenous communities.²²⁹ It remains an effective and immediate way of affirming Indigenous sovereignty within traditional territories. These are sites of resistance, as they are physical barriers to external access, and they are also sites of knowledge production. The Unist’ot’en camp provides a particularly important example of how these places can advance Indigenous resurgence by acting as sites through which to teach and engage with traditional Indigenous knowledge.²³⁰ The Unist’ot’en maintain that the “homestead is not a protest or demonstration. [Their] clan is occupying and using [its] traditional territory as it has for centuries.”²³¹ The camp is an example of a practice of spatial justice, as it demonstrates that these seemingly liminal and divisive spaces can

²²⁸ Ibid.

²²⁹ Supra note 22.

²³⁰ Leah Temper, “Blocking Pipelines, Unsettling Environmental Justice: From Rights of Nature to Responsibility to Territory,” in *Local Environment* 24 (2019):95.

²³¹ “Governance Structure,” *Unist’ot’en: Heal the People. Heal the Land*, <https://unistoten.camp/about/governance-structure/> (accessed April 11, 2019).

actually lend themselves to productive and regenerative interactions. The Unist'ot'en camp is an example of a resistant and productive activity, and it acts to reorient the lawscape by opening up a space that brims with Indigenous sovereignty. The work being undertaken by the Wet'suwet'en is also likely to impact and shift forms of practice in other communities, leading to the reorientation of multiple lawscapes and creating the possibility of spatial justice.

3.4.2.1 Background

Unist'ot'en clan is affiliated with the Knedebeas (Dark House) house group which is one of thirteen house groups that form the lineage of the Wet'suwet'en hereditary chiefs, and as a whole, operate under the name of the Wet'suwet'en Nation.²³² According to Wet'suwet'en Nation, the hereditary chiefs claim jurisdiction over the traditional territory and the activities that take place on it, whereas the Wet'suwet'en First Nation, formed under the *Indian Act*, 1876, has jurisdiction only over the operations of the band and reserve.²³³ This important distinction demonstrates a substantial shift and definition of the lawscapes within which these groups operate, as well as the more explicit relationship to the more-than-human, advocated by the hereditary chiefs, who give more prominence to their stewardship role.

The Unist'ot'en camp has been in place for more than a decade; it began as an anti-pipeline initiative.²³⁴ In the fall of 2018, after the Canadian government praised the kicking-off of the Coastal Gaslink Pipeline, the Unist'ot'en camp and the Gidimt'en checkpoint were re-introduced as sites of opposition in the larger Canadian national discourse, and solidarity protests were held across the country. However, as I mentioned above, what is oftentimes missing from the Canadian national discourse is the fact that the Unist'ot'en camp is also a “home and a place of healing for Wet'suwet'en people”

²³² Ibid.

²³³ Zoe Ducklow, “Nine Things You Need to Know about the Unist'ot'en Blockade,” *The Tyee*, <https://thetyee.ca/Analysis/2019/01/08/LNG-Pipeline-Unistoten-Blockade/> (accessed April 10, 2019).

²³⁴ Ibid.

according to the Hereditary Chief of the Laksamshu Clan.²³⁵ The site is a place where traditional knowledge is shared and regenerated, in particular with respect to healing those affected by addiction, among other issues. It is a site that is perpetually engaging in a process of un-doing the harmful effect of colonialism on the community.

The impact of Indigenous resurgence practices on the lives of the Wet'suwet'en is undeniable, in particular through the re-establishment of a relationship with the land.²³⁶

As Leah Temper notes,

“Instead of appealing outwards, its aim is to create a space for what Coulthard (2014) refers to as ‘self-recognition’ and Indigenous re-affirmation. In this newly reclaimed space, the Unist’ot’en camp members have been able to assert their own legal understandings, and to live their concept of justice through practice, through enactment and through antagonistic politics that disrupt the economic and social logic and production of settler-colonial power.”²³⁷

Therefore, this checkpoint, or as the camp members call it, “a gateway to understanding truth and meaningful decolonization,”²³⁸ is a significant site where we can see spatial justice not in a distributive sense, as a distribution of resources or territorial control, but rather as a transformative mechanism that hinges, primarily, on re-establishing a distinct relationship with the land. Then, the Unist’ot’en camp and the other checkpoints reflect the mutual constitutivity of law and spatiality, the formation of a lawscape, one that is capable of reflecting Indigenous legal frameworks beyond the relation with the Crown.

3.4.2.2 The ‘Rule of Law’ and Rupturing the Colonial Lawscape

The recent stand-off on Wet'suwet'en territory concluded in January 2019 with the enforcement by Royal Canadian Mounted Police of an interim injunction obtained by

²³⁵ Justin Brake, “Government Document Calls Unist’ot’en Leader ‘Aboriginal Extremist,’” *APTN News*, <https://aptnnews.ca/2018/12/03/government-document-calls-unistoten-leader-aboriginal-extremist/> (accessed April 10, 2019).

²³⁶ *Ibid.*

²³⁷ Temper, 107.

²³⁸ *Ibid.*, 108.

Coastal Gaslink Pipeline Ltd, which resulted in the arrest of 14 individuals.²³⁹ The intervention has been justified through the application of the ‘rule of law’, or simply, compliance with the court order that granted the injunction. However, as it has been stated elsewhere, this concept, which is supposed to reflect order and fairness in a legal system, instead reflects the imposition of a colonial lawscape. The only means through which to stop or reverse this process is through forms of resurgence and reconciliation, and the slow recalibration of not only territory, but of the ways in which the relationship to land and the more-than-human is reframed. In this sense, Temper’s notion of environmental justice is tangential with spatial justice.

The invocation of the ‘rule of law’ in this case reminds me of Philippopoulos-Mihalopoulos’ own claim for an apolitical relationship between law and spatiality, specifically stemming from the desire to understand law’s universal, even and fair application, or more accurately, the fact that law dispenses violence against all, equally.²⁴⁰ The example presented in the case of the Wet’suwet’en is a reminder that there is no such thing as fair or even application of the law, and that the co-constitutivity of law and spatiality, and its reorientation is inherently political. Or rather, that it is not particularly helpful to think of justice, indeed spatial justice, without recognizing the political extensions that rest at its core.

3.5 Conclusion

Indigenous resurgent practices demonstrate how forms of political and legal engagement can unfold through cooperation with the land and the more-than-human, demonstrating a substantial way through which the lawscape can be reoriented and spatial justice performed. These sites of engagement are legally affirmative and politically resistant. Although an engagement with the non-human or the more-than-human is central to these

²³⁹ Eugene Kung and Gavin Smith, “The Unist’ot’en Stand-off: How Canada’s ‘prove-it’ mentality undermines reconciliation,” *West Coast Environmental Law* <https://www.wcel.org/blog/unistoten-stand-how-canadas-prove-it-mentality-undermines-reconciliation> (accessed April 10, 2019).

²⁴⁰ This is in reference to Andreas Philippopoulos-Mihalopoulos, “And for Law: Why Space Cannot be Understood Without Law,” *Law, Culture, and the Humanities* (2018): 1-20.

processes, we can note the shifting lawscape as these agents are positioned at the center of legal and political engagement. Laws gain liveliness (as lifeways) and sustain the possibility of politics (contradiction) through negotiation. This chapter demonstrated what an engaged practice of spatial justice may look like, and how this form of engagement can lead the way to understanding more attuned and complex political responses to significant legal questions.

Conclusion

4 Conclusion

This project stemmed from an interest in the relationship between law and spatiality, as well as its implications with respect to legal subjectivity and nonhuman legal agency. A central question for this study is whether politics has a place in Philippopoulos-Mihalopoulos' theory of spatial justice, and how it is that we may think of politics and social justice in a posthumanist context. By drawing out the Deleuzo-Guattarian foundations of spatial justice, and by comparing the concept of withdrawal to Indigenous resurgence, I demonstrated that there is a political praxis at the core of this theory through the process of performing spatial justice. Moving forward, I suggest that we consider how it is that Philippopoulos-Mihalopoulos' concept of spatial justice fits into a discussion about posthumanist social justice. Rosi Braidotti noted that there is a pressing need to consider the implications of a posthumanist ethics and what role posthumanism can play in discussions of social justice moving forward, and I believe spatial justice can act as a starting point.

This concept also provides critical legal theorists interested in the nonhuman and legal subjectivity with a theoretical perspective that shifts beyond traditional rights discourses. Legal practice is already contending with increasing questions about novel legal subjects, like the environment or animals, and the influence of technological innovation, especially with respect to artificial intelligence (AI). Questions regarding these ethical relationships have only recently gained momentum within the ambit of legal theory. Andreas Philippopoulos-Mihalopoulos' theory of spatial justice should be considered closely in this context as well. In particular, it would be interesting to see how the concepts that form this theory of spatial justice, like the lawscape and atmosphere, can be applied in a digital/virtual context. At the early stages of writing, I considered focusing my third chapter on the use of blockchain technology as a means of providing stateless Rohingya individuals with an alternative form of citizenship through the introduction of a form of digital identity. How would this project challenge the subjective and spatial positioning of the citizen? How will AI be used in relation to these digital identities, and what spatial

and material implications might arise? Where will there be opportunities to reorient the lawscape and perform spatial justice in relation (and through) the virtual realm?

As well, as a starting point for these forays into novel legal subjects, I propose a more robust engagement with Indigenous legal philosophy as it can re-shape our understanding of a relationship with the natural environment. As well, I believe that there are opportunities for thinking about posthumanism alongside the relational philosophies that emerge from Indigenous thought, in particular with respect to the practice of spatial justice. As I noted in the thesis, and as others have argued, there is an unacknowledged debt to Indigenous knowledge in posthumanist thought, or at least there is a gap in theoretical scholarship that engages more pointedly with these two theoretical fields. Although through my research I noted an overlap in these two fields with respect to spatiality, Indigenous theoretical perspectives and the more-than-human, I believe that a deeper engagement is necessary. Furthermore, conventional forms of legal practice would benefit from the influence and input of Indigenous legal traditions, beyond questions of environmentalism or constitutionalism. Although spatial justice provides an entry point into this discussion, it would be useful to understand the deeper implications Indigenous legal traditions could have on the common law as well.

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