Reconsidering law at the edge: how and why do place-managers balance thrill and compliance at outdoor attraction sites?

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Abstract

This article challenges legal geographers to go further in their claimed rejection of legal closure (the reduction of any situation to a purely legal dimension), by calling for greater exploration of how law's command is always acting alongside and potentially subordinated to other spatio-cultural normative influences. The insights of this advocated approach are illustrated using examples drawn from the author's fieldwork conducted across a variety of outdoor attraction settings, which have explored how place-managers frame, arrange and present their sites by reference to individual goals and communal interpretive practices deriving from multiple normative drivers. It is argued that this plurality of influences requires place-managers to act as edgeworkers, developing a finely tuned understanding of how to manage the potentially hazardous co-presence of visitors' bodies and physical edges at their sites. This requires active balancing of their interpretation of (and compliance with) broad commandments for their sites to 'reasonably safe' with the requirements of other pressing normativities, including those set by landscape aesthetics that demand that visitors must be presented with an appropriately thrilling experience. Recent trends in the development of contemporary legal geographic analysis, each of which are suggestive of an increasing attentiveness to law's limits, are considered in order to develop this critique of conventional legal geographic practice and in support of the potentiality of the recommended new focus, specifically: legal geography's 'contingency orientation' (Orzeck & Hae); emerging interest in the 'edge of law' (Jeffrey); and in the purposeful creation of normative atmospheres and law's dissimulation there (Philippopoulos-Mihalopoulos; Pavoni). Through these analytical lenses place-manager's active and skilful edgework becomes both more visible, and more understandable, as a dynamic situational balancing of compliance with safety laws and with the satisfaction of thrill and desire.

Key words: *legal geography; place-managers; pragmatism; practice theory; edgework; atmosphere*

1. INTRODUCTION

Legal geographers are concerned with the intersection of space and law. We ask how does space make law and how does law make space? We reject notions of legal closure, thereby resisting the temptation (which we attribute to mainstream legal scholarship) to reduce interpretation of any situation to purely a legal dimension. But do we go far enough in our own practice? Do we go right to the edge of law? In this short article I will draw upon my fieldwork investigation of how managers of a variety of English outdoor attraction sites appear to pragmatically interpret and balance law's safety imperative with the requirements of other normative drivers, such as the need for the provision of thrill at their sites. To situate my analysis I start by outlining the limitations of legal geography's traditional critical-based perspective, with its concern to elicit power-relations and oppression, before then drawing upon more recent developments so as to aid my attempt to explicate a more nuanced view of spatio-legal place management as practiced at outdoor attraction sites.

1.1 Legal geography's regard for its own limits

In terms of its original aims, legal geography, started out as part of the critical geography movement, seeking to delineate law's sub-division of space, and the attendant political effects of that: see for example: Blomley (1994); Delaney (1998) and Mitchell (2003). Here law was central and potent – imprinting itself upon space as a clear and directive exercise of power. However, Orzeck & Hae (2019, 1) have identified that legal geography has shifted within the last couple of decades towards a less assured, and more interpretative, "contingency orientation". This stance emphasises the situational dependency of any law/space formation (and thereby questions assumptions of law's writ over space). Therefore, contemporary legal geographic studies – and their interest in the pragmatic constitution of prosaic places – have come closer to showing how space acts back upon law, by curbing or adjusting law's remit. These studies aim to show the vagaries, complexity and plurality of power and normative impositions within place-making.

The contingency orientation echoes the social theorising of practice theorists like Schatzki (2002), who regard social life as taking place in situations continually formed and re-formed from a contingent and constantly evolving mesh of practices and material orderings. Thus, places (as spatially-located situations) are made by conscious actors seeking to achieve both (i) pursuit of individual pragmatic objectives and (ii) conformity to pre-established, collectively-held patterns, framings, practices and goals (which I hereafter generalise as 'normativities'). These normativities shape how a situation is expected to be: how things ought to be arranged and operating there.

However, despite this complex meld of intentionality and conformity these situational formations always remain somewhat unstable, and unpredictable.

The contingency orientation approach has tended to focus upon delineating the *specifics* of the local situation, detailing how law's supposed dominion over space was changed or thwarted by local socio-spatial dynamics. But, despite this legal geographers still rarely choose to study a situation that does not conventionally align to the concerns of socio-legal analysis (and in particular matters of oppression/emancipation as touched by law as an apparatus of power). As such, legal geographers remain more concerned with tracing law's spatial effects, than considering the full range of normative processes of place-making, and how (if at all) law ranks within them. A rare example, that somewhat challenges this, is Braverman's (2012) study of how zoos are ordered – because alongside detailing the ways in which a plurality of laws and law-like governing practices sets up a normative structure for these places, she also notes how expectations for a particular type of visitor experience (an immersion in nature and managed conservation) also strongly conditions how a zoo is designed, laid out and operated.

Legal geographic orthodoxy has been further challenged recently by Philippopoulos-Mihalopoulos (2015) and Pavoni (2018) – who have sought to widen the legal geographic lens to include other normativities and their spatial formations, such as those related to the constitutive influence of aesthetics upon space. However, even within this wider perspective, and it attentiveness to the multi-dimensional engineering of places through the curation of their distinctive atmospheres, Philippopoulos-Mihalopoulos' concern is not to identify areas in which law is absent – but rather to explicate how (and why) it may be seen in some situations to be invisible – because it has (for its own purposes) faded into the background. But, Pavoni (2018, 127) has pushed things a little further, asking "how can law be oriented towards the contingent fact of its taking place in a world *not for law*?" (emphasis in the original).

1.2 The aims of this article

In this short article I seek to adopt and extend that sentiment – that concern with understanding how law may be said to fade into the background, and/or found to be just one of a number of constitutive normative influences over the constitution of places – by examining how law and landscape aesthetics are reconciled by conscious, pragmatic actors at outdoor attraction sites. Legal geographers like Delaney (2010) and Blomley (2014) have promoted the use of pragmatism (the philosophically directed study of how meaning making and rule applying is an instrumentalist practice, rationally engaged by conscious, goal orientated actors) as an analytical lens, pointing to the shaping force of context, goal and habit upon how law is acted out within places. Pavoni (2018)

has sought to add to that pragmatist analysis an attentiveness to the intentionality underlying curated, situational materialities and the affective atmospheres that they engender, by examining the intentional engineering of atmospheres (and their attendant normative effects) at urban mega events, and how the normative drivers for these are a heady mix of control, desire and safety concerns. His analysis shows that this intentional engineering is conducted by place-managers, persons who would seem well suited to fitting Delaney's label of "nomospheric technicians" (2010, 87) were it not that Delaney explicitly reserves this otherwise productive role to judges and lawyers alone. In this article, I argue that place-managers are sophisticated normative engineers, and that their place-making is influenced by awareness of legal requirements, but also shaped by other normative pressures. Note here that I use the expression "place-managers" as a convenient shorthand: the relevant law adopts a variety of labels by which to attach safety obligations: e.g. 'owner', 'occupier', 'person with a material degree of control over premises'.

That legal geographical scholarship has so rarely engaged with place-managers is surprising. It perhaps reflects the 'critical' orientation of most contemporary legal geographers. Our hybrid subdiscipline has not attracted the attention of practitioner audiences or managerialists, but instead the more activist-inclined. I seek in my work to redress this imbalance, by arguing for an attentiveness to those who make and arrange space and matter into place and who do so as part of a their 'day job'. If we can come to understand how they balance the legal and other normative elements we will have better insight into a diverse range of matters such as the motivations for recreational access control, workable strategies for inter-community relations and for effective visitor safety.

My concern in what follows is to explicate the situational logics that guide place-managers of outdoor attraction sites as they seek to translate the abstract requirements of law into the socially and materially messy circumstances of their actual sites. In doing so I seek to reconcile legal spatial directives with the force of other place-shaping normative factors, such as the imperative that sites must be viable as attractions: with the right atmosphere and appeal to visitors.

To pursue this analysis I have considered a variety of outdoor attraction sites in England, drawing across a range of previous studies in order to do so (see Bennett 2019 for details of these). At these sites – ruins, quarries, country parks, cemeteries, urban woodland – the place-manager is faced with the challenge set by both criminal law (principally the Health & Safety at Work Act 1974) and civil law (the Occupiers Liability Acts of 1957 and 1984). Space here precludes an analysis of what each statute requires (see Bennett 2011 for more), however as an illustrative example of the broad,

'reasonably safe' target set by this body of law (legislation plus the case law that interprets it), see section 2(2) of the 1957 Act which provides thus:

> "The common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there."

Furthermore, judicial consideration of this duty of making places 'reasonably safe' when considered in the context of outdoor environments has emphasised the need for situation-specific transposition of law's generic goal, and appreciation that other social utilities (and normative goals) may also be at stake, as Lord Hobhouse remarked in the House of Lords (now the Supreme Court) decision in *Tomlinson – v– Congleton Borough Council* [2003] UKHL 47:

> "…Does the law require that all trees be cut down because youths may climb them and fall? Does the law require the coastline and other beauty spots to be lined with warning notices? Does the law require that attractive waterside picnic spots be destroyed because of a few foolhardy individuals who choose to ignore warning notices and indulge in activities dangerous only to themselves? The answer to all these questions is, of course, no." (Para 81)

Thus, the applicable law requires the place-manager to achieve and maintain a reasonable degree of safety for visitors, not their absolute safety. The place manager is left to determine what reasonable safety looks like at their site, as judged in terms of the material specifics of the site, and (to an extent) the value of the activities bringing visitors into proximity with its material features. But, as Ball & Ball-King (2011) show, the place-manager is aware that they are not the sole arbiters of what is sufficient – for, in the event of any accident the calculus will be re-run in court – probably with the use of expert witnesses attesting to 'best practice'. The way in which a place-manager has guided the proximity of visitors' fleshy bodies (and their possessions) to hard, potentially harmful landscape features will be forensically dissected. The question at issue in any such re-run of the calculus, adopting Philippopoulos-Mihalopoulos' theorisation of "spatial justice", will be a question of how appropriately in the circumstances leading up to an incident, the "conflict between bodies that are moved by the desire to occupy the same space at the same time" (2015, 5) was managed.

2. EXPLORING LAW AT THE EDGE

In this section I examine, and then extend, existing scholarship concerned with legal geographical analysis of the "edge of law" (Jeffrey 2020) and cultural criminologists interest in "edgework"

practices (Lyng 2005), in order to introduce place-managers' active normative balancing at their sites.

2.1 Edge of law or law at the edge?

Edges have emerged as a productive motif recently in legal geography. Jeffrey's (2020) recent monograph, entitled *The Edge of Law,* sets out to find law's edges within the reconstruction of civil society within the former Yugoslavia. In what is very much a work anchored in political geography, Jeffrey delineates the zones and places formed by international law in that territory: the reconciliation courts, the restitution processes, and the interacting local-political territories. Jeffrey adopts the metaphor of edges to denote how these imposed spatio-legal 'solutions' are troubled and complicated through their encounter with (and needing to work through) the adaptive and/or subverting practices of many stakeholders. For Jeffrey, the perimeter of law's constitutive power is revealed in these edgeland circumstances.

Jeffrey's edge of law metaphor is productive as a way of spatialising and accounting for the mess of place, but as he notes, his edge is the edge of law's reach: it is a metaphorical rather than a physical edge. Meanwhile, a number of legal geographers have been concerned to explore law's role in striating space into 'territory' (Delaney 2005), through materialising legal edges in the architecture of borders variously enacted in paper (Orzeck 2014), stone & concrete (Weizman 2007) and trees (Braverman 2009) in Israel/Palestine; the territorial affordances of hedges (Blomley 2007) or in the barely materialised (and this more symbolic) form of the *eruv* (Cooper, 1996). All of these analyses of legal boundary making are incisive and start to acknowledge the materiality of legal striation.

But I go further in that my concern is with law's interaction with actual physical (and pre-existing) edges. How is law transposed upon edges that are not of its own making? Legal geographers have started to attend to this more recently, in particular with the spatio-legal management of coastlines, in the context of balancing multiple access and uses (Hubbard 2019) and in investigating the spatio-legal effects of the subjectivities of dwelling in the face of policies of managed retreat in the face of sea level rise due to climate change (O'Donnell 2019). These studies acknowledge the shaping (and constantly shifting) force of material change, and also the plurality of legal regimes in play in littoral spaces.

I, for my contribution here, seek to enquire into the management of more static edges, and to explore the balancing of law and other drivers as practiced specifically by place-managers. How do these conscious actors decide how much relative place-shaping influence (compared to other

normative guides and material resistances and affordances) to allow to the law in any particular spatial situation?

2.2 Place-managers are edgeworkers too

In his study Jeffrey invokes the concept of the edgeworker, in order to use that term as a way of showing the playful boundary-finding and -probing of those who seek to resist or subvert the roll-out of international reconstruction in Bosnia & Herzegovina. In doing so he is drawing an analogy with the thrill-seekers and risk-takers profiled as edgeworkers within critical cultural criminology scholarship (Lyng 2015) which celebrates deviants or rebels who defy the law or wider social mores as "escape attempts" (Cohen & Taylor 1992) from the strictures of daily life under capitalism. Applied to geographic scenarios, edgeworkers are provocative spatial appropriators: risk taking mountain climbers, trespassing urban explorers or daredevil parachutists. The essence of an edgeworker is that they need to be highly attuned to the edge – the point to which they can push risk, but beyond which death (or otherwise undesired consequence) would ensue. They achieve the life-affirming thrill that they desire by developing a sophisticated edge-navigating competency that enables them to retain and repeat the thrill without ever losing control to it. This skill is a product of both individual cumulative experience ('practice makes perfect') and of learning ways of doing and ways of interpreting situations, as laid down by a "community of practice" (practice as a system of shared ways of doing) (Wenger 1998). Thus there are rules (i.e. normative codes for practice) for being an urban explorer (Mott & Roberts 2014), a climber (Bogardus 2012), or an 'edgy' artist (Grosz 2008), and these rules all set limits, and foreclose illegitimate forms of edgework, and whether in the name of safety, inauthentic experience or aesthetics.

I argue that just as an edgework analysis of recreational spatial boundary-pushers is instructive – and reveals logics of practice which otherwise might not be appreciated – so, an edgework analysis can also be productively applied to the compliance calculus enacted by place-managers. For they must attune to the reality of their sites and perceive, interpret and transpose to those sites the abstractions of the law, in doing so reconciling legal framings and imperatives with those given by aesthetics and other normative codes applicable to the relevant type of place. This edgework through is not a case of wanton law-breaking – but rather a matter of deciding what the law requires (what compliance looks like) based upon a sense of what is practicable at a site, and to a relevant degree consistent with the type of aesthetic (or atmospheric) experience required at it.

In short, the urban explorer and the place-manager are both edgeworkers because each of them must: work out where the limit-edge of their use of a space actually is; be able to articulate the experience-value that makes a certain degree of risk desirable; and describe the competent ways set

down by their practices (and the communities adhering to those practices) of seeing, knowing and navigating presence at the edge.

3. HOW PLACE-MANAGERS ASSIMILATE LAW AT THEIR SITES

In this section I focus in upon how place-managers' attentiveness to what the law requires of them is deftly reconciled with other normative drivers, and consider the emotional labour related to this edgework.

3.1 Receiving and translating legal codes into local place management

Place-managers are not passive automatons either acting out the rhythm set by law, or marching to the metronomic beat of capitalistic profit maximisation. Instead they are individual humans shaped by prior experiences and looking to their peers in order to transpose the abstract requirements of law into their local environments in conditions of imperfect information, time or money. Thus, what the law requires of any situation is left to be interpreted, contextually, by the place-manager. Schatzki (2002) follows Wittgenstein, in holding that rules themselves do not have their own power in the world, their influence comes from the ways in which they are recognised and acted upon (i.e. how they are adopted into recursive practices).

Legal geography is well placed (given its 'contingency orientation' and rejection of legal closure) to investigate the manner of law's translation into any situation, by delineating the individual and collective practices entailed in the translation of law's generalities into the specifics of any place: to see how through, and within, active world-making law "come[s] alive applied to space, and the action and things embodied within places" (Bennett & Layard 2015, 414). In this regard I have (Bennett & Gibbeson, 2010) previously examined the ways in which interpretation of 'reasonably safety' within English cemeteries evolved in the aftermath of a fatal crushing of child by an unstable headstone in 2000. Across the subsequent seven year period a variety of stakeholders sought to promulgate definitive (and workable) interpretations of how much needed to be done to separate the blunt edges of headstones from the bodies of human visitors. That study showed how individual cemetery managers (understandably) looked to sectoral guidance to justify the balance that they were striking at their site between the desirability of public access (for the bereaved) and achieving a legally defensible transposition of 'reasonable safety' to their sites. But, if safety alone were the objective then that could have been readily achieved by simply closing all cemeteries to public access or laying all headstones flat. Whilst some place-managers initially resorted to those seeming solutions, they swiftly came under fire from the bereaved, and had to adopt a more balanced

approach, in which a level of residual risk was retained in order to meet the access needs of the bereaved.

Furthermore, the collapse of the overly legalistic initial reaction by place-managers in the face of the subsequent backlash by the bereaved caused a policy vacuum. In this vacuum a variety of stakeholder bodies started to promulgate rival guidance on what (in their view) 'reasonable safety' looked like in cemeteries. Each place-manager then took comfort by aligning their individual site management decisions to the guidance promulgated by their peers.

3.2 Balancing legal and other drivers

At outdoor attraction sites, a delicate balancing act is entailed – these places must appear to be open and unencumbered – but they must also be reasonably safe. As a past senior member of the Visitor Access in the Countryside Group (a group that develops and promulgates best practice interpretation amongst public sector attraction sites in the UK) has put it, the place-manager is required to:

> "...pull off the 'con trick' of balancing the need of visitors to feel the unrestrained freedom that is essential to the countryside experience...while in reality secretly try[ing] to manage their activities within tight legal and corporate parameters" (Marsh 2006, 4)

The "con-trick" here is not a matter of deception – place-managers' safety concern is genuine, but it is also a matter of user experience. Finding the balance, is often a matter of making the safety controls appropriately integrated into the setting. Thus, a visitor to an iconic ruin site declares "I would rather have come here as a trespasser", revealing the general sentiment of the audience to an artistically augmented open day. Such visitors must be left to feel that they have roamed without constraint. But this is an impression, not a reality, to be achieved. The ruin had many perilous edges from which visitors might fall, so an event plan was made, that saw visitors led through safe areas by both human guides and a light show. Thereby, visitors' vulnerable bodies and the ruin's precipitous edges were reconciled in a way that achieved (in the place-managers' view) both safety (legal compliance) and met visitors desires (the thrill dictated by sublime aesthetics) through design of an appropriate atmosphere for the event.

At attraction sites the provision of safety (and thus the performance of legal compliance) must often be concealed lest the apparatus of safety otherwise become obstructive: literally or figuratively blocking the thrilling view, or an increasingly kinetic engagement with edges via an increasingly "accelerated sublime" (Bell & Lyall 2002). And this urge to have open communion with an unfettered edge, has been a matter of sublime aesthetics since (at least) the Enlightenment. However, whilst

conventional writing about recreational, counter-cultural, edgeworkers tends to present the thrill as that of rule-breaking, the root of the sublime in landscape aesthetics does not actually set up safety and thrill as opposites. Indeed, Jean Jacques Rousseau, doyenne of the Romantic movement and all counter-cultural access-takers that have come since, revealed in 1781, that at the heart of his formulation of the landscape sublime was a *requirement* for safety, thus:

> "Along the side of the road is a parapet to prevent accidents, which enabled me to look down and be as giddy as I pleased; for the amusing thing about my taste for steep places is, that I am very fond of the feeling of giddiness which they give rise to, provided I am in a safe position." (Rousseau 1996, 167)

Accordingly, the place-manager is faced with the practical conundrum of how to co-create both safety and sublime, edge-embracing thrill. At a clifftop heritage landscape attraction site, the place-manager deftly addressed thrill and safety simultaneously through signage that pointed out how high up the cliff was and urged reflection on that. The viewers' reflection simultaneously fed the sense of thrill and the need for maintaining a respectful distance from the perilous edge. And, in a further subtle ploy that simultaneously underpinned an achievement of both safety and the sublime, that exposed escarpment was presented on the site map as "The Awful Precipice", the doubling of thrill and safety messaging reflected in the designer's depiction of the letters of the desiccated place name as they appear to tumble over the cliff's abrupt edge.

Thus, an attraction place-manager must learn to creatively and effectively codeswitch between (at least) two normative domains – that of safety/compliance and that of thrill/entertainment. An attraction site must give what its users desire of it but must do so safely. The ability of place-managers to shuttle between these seemingly incompatible frames is quite a sight to behold. But it would be wrong to give an overly autonomous impression of place-managers, for just as the place-manager may have to code-shift within their own minds to find the workable balance of safety and thrill, this balancing also plays out within management groups within place-managing organisations. Thus, a place-manager must advocate for their local safety/thrill balancings – they must act as interlocutor between others who may either not see the force of law's safety/compliance command or may not see the value of access and thrill. The point of balance ultimately selected, may be the outcome of interpersonal negotiation within an organisation, or between a variety of stakeholder entities each with their own distinctives ways of measuring risk and benefit.

3.3 Emotional labour across time and space

To be a place-manager, striving to find a locally workable balancing of safety/compliance and access/thrill, is a demanding, emotionally draining task. But the affective weight of that pales into insignificance when set against the emotional burden of involvement in the aftermath of an accident. Experience matters, and the affective experiences of place-managers affect how their edgework calculus is subsequently performed. Judging what is 'reasonably safe' at a particular site is, at least in part, a reflection of the individual (and organisational) prior experience of those involved in making that assessment. It is always open to reconsideration and adjustment, as witnessed in the reflection by architect Kathryn Gustafson upon her experience of an unexpectedly high volume of visitors to the Princess Diana Memorial Fountain in London's Hyde Park, shortly after it opened in 2004. As "a flicker of remembered dread passes across her otherwise serene face" (Jeffries 2004, n.p.) Gustafson recalls:

> "When it first opened, 5,000 people an hour came to see it. How could you anticipate that? …there was no precedent. The turf around the oval couldn't survive those kind of numbers. The level of management has had to be increased because of the level of people. We really underestimated that. I thought we had a guardian angel over the project; I really wish she'd come back." (quoted in Jeffries 2004, n.p.).

And the continual re-assessment of a site's safety/thrill balancing is simultaneously backwards and forwards looking. The experiences of the past shape inputs to the 'reasonable safety' calculus, as do anticipations about the future. Schatzki (2002, 28) talks of this goal-facing, affectively driven desiring of the future as the "teleoaffective" order of practice. The iterative calculus of ongoing place-management acts towards a simultaneously desired and feared future, and its risk assessment protocols require the place-manager to conjure the ghostly premonitions of all of the things that *might* go wrong there, an apprehension of all of the ways in which visitors and the site's edges might come into harmful contact with each other.

4. DISCUSSION & CONCLUSION

Physical edges at outdoor attraction sites represent a challenge, for they are the point at which key normative drivers intersect. But the reaction – the decision of how to order and manage those spaces – will not always be wholly shaped by matters of law, safety and compliance. Instead the outcome will be dependent on how the place-manager reads the situation and its priorities; how she is connected into peer networks; what her prior experiences have been and the relative scope for her to be creative in her solution-finding. These will all affect her management of her sites' edges. This is not to say that the place-manager looks to avoid compliance – quite the opposite. But it is flag that within a relatively open spatio-legal commandment like 'reasonable safety', the place-

manager is likely to persuade herself that compliance has been achieved, where a workable and balanced site arrangement has been deployed. But the factors that shape that decision about what is optimum deployment are not solely considerations of law. This short article has thus been a call for legal geographers to give more attention to how place-managers transpose abstract legal requirements onto their sites, and what interpretative and emotional resources they use to do so. It has shown how, at a variety of outdoor attraction sites, the local interpretation and transposition of law's 'reasonable safety' requirement has to be done in a way which reconciles it both with local material specificities of actual sites and also with other seemingly incompatible drivers, like the need for sublime thrill there. If we observe what place-managers actually do we start to see the sophistication of their practice, and also its emotional labour and its teleoaffective reach.

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