The Rural Socio-Spatial Lawscape: Space Tames Law Tames Space

(c) Lisa R. Pruitt 2012

I. The Mutual Constitutivity of Law and Space

II. Rurality as Both Material and Socially Constructed
   A. The Material Spatiality of Rural and Remote Places
   B. The Social Consequences of Rural Spatiality
      1. Lack of Anonymity
      2. The Paradox of Rural Privacy

III. Materiality and Performativity in the Rural Lawscape

IV. Legal Constructions of Rural Socio-Spatiality: Illustrations from the Fourth Amendment

V. Conclusion

A promotional blurb for a March 2012 New York Times Magazine story read: “In the years since Katrina, New Orleans’ Lower Ninth Ward has undergone a reverse colonization: nature reclaiming civilization.”¹ The story, “Jungleland,” went on to detail the array of wildlife now making their homes in the Lower Ninth, the untamed flora and fauna overtaking the urban space. That urban space signifies—or previously did signify—civilization and that which is orderly. Law is a highly significant source of that order.

What I want to focus on from that quote is the tension it suggests between “nature” and “civilization” and how in the ordinary (or at least modern) course of events, civilization claims, tames, and/or colonizes nature. I posit that the same tension exists between law (as a civilizing force) and rural/remote spatiality, where “nature” dominates a landscape that is sparsely

populated, with limited built environment. That is, rural spatiality disables or impedes law and its functioning. I thus posit that rural places remain somewhat lawless and that this is a manifestation of the mutual constitutivity of law and rural spatiality. The state—whose agents may be both literally and culturally high up and a long way off—struggles to impose or make meaningful the rule of law in rural and remote places because of the material character of rural space and associated socio-spatial characteristics.

I refer to these collective characteristics as they relate to law and legal processes as the rural socio-spatial lawscape. I assert that the very material characteristics that define rurality (from an ecological or quantitative standpoint)—small and sparse populations removed from urban areas—beget the socio-spatial characteristics (rural culture) associated with the rural lawscape: a spatial removal from both human threats and sources of assistance, whether public (the state) or private (other citizens) and an enhanced expectation of privacy, which is sometimes in tension with the lack of anonymity associated with small-town living. In this way the legal and the spatial constitute each other in the generic nomic spaces of rural America. In a sense, each limits or tames the other. As an aspect of civilization, law seeks to tame or overcome spatial barriers even as material space—the relatively empty spaces that constitute rurality—tames law by impeding or disabling its operation and efficacy.

I conclude by using judicial constructions of fourth amendment search and seizure law to illustrate the mutual constitutivity of law and space. I show how law defers to the privacy that is

---

2 This is arguably not so different to how nature impedes civilization in other ways ... such as the mountains and valleys that are obstacles to road building and therefore to connecting places. Now, road builders just blast a path through with explosives, making tunnels, and building bridges.

3 Delaney 2010: 19 (“What would the absence of law be like? How does the bringing of law to savages promote the civilizing process?”)
associated with rurality to justify the state’s hands-off stance in rural contexts. At the same time, material spatiality creates barriers that shield rural spaces from view and thus enhance both privacy and expectations of it. This legal deference to the rural as presumptively private—or at least more private than the urban—is another way in which rural space limits law, thereby reflecting the mutual constitutivity of law and rural spatiality. Judicial decisions that ratify existing socio-spatial expectations or norms regarding privacy and rural-urban difference are moments that reveal this mutually constituting dynamic. The fourth amendment differentiation between public/urban and private/rural in this way is the state’s concession that rurality—like the home—is less within the reach of the state and thereby less entangled with it. It is also a concession that rural spaces are “less civilized” than urban ones, and less subject to the rule of law.

* * *

A fundamental tenet of legal geographies scholarship is that law and space are mutually constitutive. This paper deploys that framework to show how this feedback loop operates in rural contexts in the United States. In particular, I assert that law and rural space are at odds with one another because the presence of law as a force of the state—as a civilizing force—is in tension with the material character of rurality (as well as its socio-spatial consequences), which is marked not only by low population density and a dominance of nature over the built environment, but also by relative spatial removal from the state, its agents, and its processes.

---

4 Keith Halfacree observes: “There is little chance of reaching consensus on what is meant by ‘rural’” but “[i]t is both more straightforward and more convenient to establish definitions of urban areas [but cf. Champion and Hugo, 2004], based on population size or building density, than to attempt to identify the defining parameters of rural space. (Hoggart et al. 1995: 21)” (quoted in Halfacree, Rural Space, 2006 at 45).
Pruitt, The Rural Socio-Spatial Lawscape

DRAFT: Please Do Not Cite Or Quote Without Author's Written Permission

Unlike the more robust (but nevertheless fading) disciplines of rural sociology and rural economics, legal scholars and critical geographers have largely ignored the rural end of the rural-urban continuum.  This paper engages critical geography and legal geographies scholarship to bring “the rural” into scholarly view in order to broaden our understanding of the diffuse and localized operation of the law in the oft-overlooked spaces of rural America.  It thus theorizes the significance and force of rural spatiality in relation to law and legal processes. In doing so, the project challenges the scholarly association of both critical geography and law with that which is urban.  

The U.S. government’s definitions of “rural” and “nonmetropolitan” illustrate the point. The Census Bureau defines urban as including all territory, population, and housing units located within an "urbanized area" or "cluster."  U.S. Census Bureau, Census 2000 Urban and Rural Classification, available at http://www.census.gov/geo/www/ua/ua_2k.html (last visited Feb. 18, 2008). “Urbanized areas” and “urban clusters” encompass densely settled territory, which consists of: (1) "core census block groups or blocks that have a population density of at least 1,000 people per square mile, and (2) surrounding census blocks that have an overall density of at least 500 people per square mile."  U.S. Census Bureau, Census 2000 Urban and Rural Classification, available at http://www.census.gov/geo/www/ua/ua_2k.html (last visited Feb. 18, 2008). Metropolitan counties are urbanized areas of 50,000 or more with a total area population of at least 100,000; all other counties are nonmetropolitan. Standards for Defining Metropolitan and Micropolitan Statistical Areas, 65 Fed. Reg. 82,228 (Office of Mgmt & Budget Dec. 27, 2000) (notice) (stating that the designation of metro or nonmetro is at the county level).


Indeed, just as critical geographies tend to ignore rurality, rural sociologists and rural economists largely ignore law. These scholars rarely engage law, even though law-related topics such as welfare reform and domestic violence attract their attention. See, e.g., Greg Duncan et al., Welfare, Food Assistance and Poverty in Rural America, in RURAL DIMENSIONS OF WELFARE REFORM 455 (Bruce A. Weber et al. eds., 2002) [hereinafter RURAL WELFARE REFORM]; Carol K. Feyen, Isolated Acts: Domestic Violence in a Rural Community, in THE HIDDEN AMERICA: SOCIAL PROBLEMS IN RURAL AMERICA FOR THE TWENTY-FIRST CENTURY 108 (Robert M. Moore III ed., 2001) [hereinafter THE HIDDEN AMERICA]; T.K. Logan and Robert Walker (2010).

In particular, I refute postmodern geographer Edward Soja’s implicit assertion that only the urban is worthy of critical attention. See Gerald W. Creed & Barbara Ching, Recognizing Rusticity: Identity and the Power of Place, INTRODUCTION TO KNOWING YOUR PLACE: RURAL IDENTITY AND CULTURAL HIERARCHY 8 (Barbara Ching & Gerald W. Creed eds., 1997). Ching and Creed have also observed that while “[t]he rural/urban distinction underlies many of the power relations,” and therefore “the city remains the locus of political, economic and cultural power.”  Id. at 2, 17; Linda McDowell, The Transformation of Cultural Geography, in HUMAN GEOGRAPHY: SOCIETY, SPACE AND SOCIAL SCIENCE 146, 152 (Ron Martin et al. eds., 1994) (noting a trend among cultural geographers to study questions about the “city and cultural life” and “how people experience and respond to the ‘urban experience’”).

The urban trend in critical geography is also evident in the titles of recent significant works in the field.
I. The Mutual Constitutivity of Law and Space

That spatiality and society are mutually constitutive is a foundational tenet of critical geographies scholarship, a core idea grounded in Lefebvre’s germinal work, *The Production of Space*. (Soja, 1989: 19; Halfacree, 2006: 44). This core idea is expressed in a range of ways. Soja explains that the “process of ‘spatiality’ is the idea of space as socially produced.” (Soja, 1985: 92-93). Space both contains and actively shapes social processes, as “social phenomena are necessarily spatial phenomena.” (Kodras & Jones: 24-25). The production of space, Smith reminds us, “implies the production of the meaning, concepts and consciousness of space which are inseparably linked to its physical production.” (Smith: 77). Institutions, networks, and individuals are all spatiality’s agents, engaged in ongoing “struggle, conflict and contradiction.” (Teather: 33-34) (quoting Soja, 1985) Indeed, Smith calls “geographical space ... abstracted from society ... a philosophical amputee,” asserting that “we do not live, act and work ‘in’ space so much as by living, acting and working we produce space.” (Smith: 77, 85). Space is thus not a “practico-inert container of action” but “a socially produced set of manifolds.” (Crang & Thrift: 2).

Similarly, a core tenet of legal geographies scholarship is that the legal and the spatial are mutually constitutive. (Delaney, 2010: 8; Martin et al.: 177 (citing Clark, 1989; Blomley, 1994;...
Stramignoni, for example, calls us to “…consider not only how law is everywhere in space but also, and somewhat more radically, how space is everywhere in law…” (2004: 184). (Delaney, 2010: 7). He further expresses the inquiry as one into how “the container” that is space might “be contained by its contents.” (Stramignoni, 2004: 181-82) (quoted in Delaney, 2010: 40-42).

Yet some legal geographers have become discontent with the limits and pitfalls of “law and geography,” including the discipline’s failure to implement or practice this core idea. Among the discontent are Philippopoulos-Mihalopoulos and FitzGerald, who use the term “lawscape” to express what they hope will prove more “revealing” than the law/geography binary. They characterize the lawscape as the “interdigitation of two epistemic domains that remain inoperable unless one sees them as indistinguishable in their paradoxical (in) operationality.” (Philippopoulos-Mihalopoulos & FitzGerald: 439-440).

Similarly discontent, David Delaney observes that much legal geographies scholarship privileges either law or geography by focusing on either “law-in-space” or “space-in-law.” (Delaney, 2003: 71). His solution for transcending the law/geography dichotomy is to introduce the concepts “nomoscapes” and “nomosphericity.” (Delaney, 2010). “Nomosphericity” is a neologism that Delaney hopes will “successfully hold together the socio-spatial and socio-legal while foregrounding the dynamic interplay of forms of social meaning and materiality.” (Delaney, 2010: 8, 26-27) He anticipates that the neologism “may reposition inquiry at a point where the [spatial and the legal] are already recognized as (i) constitutive of each other, and (ii) constitutive of structures and experiences of power.” (Delaney, 2010: 8). Delaney explains that nomoscapes
are lived. ... continually enacted through engaged, situated human activity. The practical organization of nomosposes 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.

(Delaney, 2010: 103-04).

Delaney is also among the scholars who reminds us to attend to the material and the performative in thinking about law and spatiality. (Delaney, 2010: 18-19) (quoting Liggett & Perry 1995: 10, “...interrogating space as both materiality and ideology is a means of understanding how power is constituted and operates”); (Phillipopolous-Mihalopolous, 2010: 203) Indeed, the materiality and the performativity of both law and space are central to an understanding of the rural socio-spatial lawscape. That is, I attend to both “the ‘physicality’ of materiality, its ‘thingness’, and the ‘imaginary’ aspect of materiality, that which conveys its social, cultural and historical meaning.” (Dale: 656)

My project deploys these foundational tenets of legal geographies scholarship in relation to the oft-overlooked spaces that constitute rural America. I posit that law shapes socio-spatial relations and forces differently in rural places by virtue of the socio-spatial characteristics of rurality. These characteristics include the material and social spatiality associated with rural places, which enhance privacy in mutually constituting ways. Other features include the relative absence of law as embodied in or performed by legal actors and legal institutions. My starting point is how space is everywhere in law, specifically how rural spatiality influences law’s performance. But this analysis also attends to how law and legal actors negotiate rural spatiality. Specifically, I assert that rural socio-spatiality causes law to under-perform—or at least to perform differently—in rural contexts.
II. Rurality as Both Material and Socially Constructed

Just as law and spatiality are mutually constitutive, so are rural spatiality and rural culture. Just as spatiality has both material and imagined components, so does rurality. (Halfacree, 2006: 51). Paul Cloke has written of the significance of rurality’s “imaginative and material status,” calling “material, imaginative and practised ruralities ... intrinsically and dynamically intertwined and embodied with ‘flesh and blood’ culture and with real life relationships.” (Cloke: 8) Scholars increasingly acknowledge the existence of rural culture and a rural imaginary or ideation apart from places that might be historically defined as rural. (Cloke: 21; Halfacree, 1993; Halfacree, 2006: 45). Lobao refers to this phenomenon as a “spatial loosening of the elements once considered indicative of ... rural and urban” (Lobao, 1996: 89).

Geographers assume that individuals consider the enabling and disabling features of space in their decision-making, even as their own actions modify spatial structures. (Kodras & Jones: 24-25). Marc Mormont embraces this idea and links it to identity in rural contexts. He observes that “social identity exists primarily in relation to space ... because it is by the practical apprehension of a structured space that the individual first becomes aware of the world and learns to define his or her position within it.” (Mormont: 36)

A. The Material Spatiality of Rural and Remote Places

“Rural” and “urban” are inherently geographical—or more specifically, spatial—constructs. (Halfacree, 2006: 44) This is reflected in the many nations’ definitions of rural and
urban that reference population density and proximity to an urban area. Thus, the physical space of material nature—the very vastness and relative emptiness of rural spaces/places—is a defining characteristic of rurality.

My thesis assumes that rural space is, in a sense, lacking materiality; more precisely, it lacks the substance associated with the built environment and with population density. If we think of the natural world as a blank slate on which civilization imposes its will and writes its story, then rural and remote places are more literally blank slates than urban ones. Many metaphors for the rural express this spatial character—and the apartness of these “empty” spaces from more robust, more densely occupied population centers: outback, middle of nowhere, up a holler, in the boonies, back of beyond, frontier, bush, countryside, wilderness, periphery, exurbia, territory, peasant society, pastoral, garden, unincorporated territory, open space. (Halfacree, 2006: 45) Ecologically, rurality is defined by less dense concentrations of people and human-made structures in smaller clusters, when they are clustered at all. The natural world is more prominent in rural spaces.

In some senses, then, the material nature of rural spaces is that they lack a certain materiality, as marked by the relative absence of people and their stuff. Rural spaces also represent a power vacuum of sorts because they are relatively bereft of state actors and

---

7 The Crime Control Act of 1990, for example, provides special financial assistance for drug enforcement to rural states. The Act defines a “rural state” as a state with a population density of 52 or fewer persons per square mile, or a state in which the largest county has fewer than 150,000 people. Crime Control Act of 1990, S. 3266, 101st Cong. (1989-90). See also Marta Vanegas & Lisa Pruitt, CEDAW and Rural Development, 41 Balt. L. Rev. (2012) (referencing the definitions of “urban” and “rural” used by Canada, Australia, China and India); Lisa R. Pruitt, India’s Rural Remnant, U.C. Davis L. Rev. (2011) (referencing India’s definitions of “rural” and “urban”).

8 This is not to say it is a “blank slate” in the sense that power and knowledge are written on it in a way that does not implicate the space and its characteristics. Instead, rural spatiality—like any other spatiality—plays a role in producing power and knowledge. It is “something created in a whole series of forms and at a whole series of scales by social individuals.” (Halfacree, 2006: 44).
institutions. Indeed, sparsely populated space is arguably lacking in civilization because it is nearly always accompanied by an absence (at least relatively speaking) of the state, of state actors (e.g., monitors, regulators, safety inspectors, even public school educators), of state services. This deficiency extends to public safety services—that is, law enforcement. Such rural spaces are also farther from courts and ancillary institutions that could serve the interests of both victims (e.g., social services) and those accused of crimes (e.g., experts, investigators, juvenile detention, drug treatment facilities). (Pruitt & Colgan) Consider the term “frontier justice,” which connotes a certain rough justice, perhaps even vigilante justice, a taking of the law into private hands.

Material space—distance—also separates rural people from one another, as well as from the civilizing power of the state, including legal actors such as law enforcement officers, regulators, and inspectors. Inasmuch as people can be sources of assistance—and not only sources of threat/injury—this means that rural spatiality renders rural residents more vulnerable (or perhaps differently vulnerable) than their urban counterparts. That vulnerability is enhanced by the relative absence of legal actors.9

In the context of domestic violence, for example, spatial isolation from sources of assistance, including neighbors and law enforcement, may aggravate the vulnerability and

---

9 Law cannot be everywhere at once because legal actors cannot be everywhere at once. In many rural places, especially in the West, the presence of vast swaths of federal land aggravates the challenge, but probably also raises—at least marginally—the law enforcement capacity associated with these places due to the presence of park rangers and game and fish officials.

Courts have sometimes acknowledged the vulnerability of law enforcement officers when in rural settings. In State v. Klevgaard, the court gave a law enforcement officer the benefit of the doubt with regard to his decision to arrest the defendant, noting that hindsight is not always available to officers, especially when they are “alone in a rural community in the early morning hours” and confrontation with the suspects reflects “a genuine possibility of danger.” 306 N.W.2d 185, 191–92 (N.D. 1981). See also Michigan v. Long, 463 U.S. 1032, 1050–51 (1983) (upholding warrantless search of automobile pursuant to lawful traffic stop because late hour, sighted knife on floor of car, defendant’s behavior and rural area supported officer’s reasonable fear if he let defendant re-enter his vehicle); State v. Bradford, 839 P.2d 866, 869–70 (Utah Ct. App. 1992) (discussing Long, 463 U.S. 1032).
helplessness that a woman feels in the face of an abusive partner. (Pruitt 2007; Pruitt 2008b)

Such enhanced vulnerability may lead her to capitulate to his coercion under duress, or to kill him because she has no other way to protect herself. Courts sometimes recognize this reality in deciding issues such as the reasonableness of the perceived need to use self-defense or the availability of assistance when an actor is under duress. At other times, legal actors seem oblivious to the significance of spatial isolation to lived experiences. (Pruitt 2007: 442-82; Pruitt & Wallace, 2012)

B. The Social Consequences of Rural Spatiality

Rural spatiality is not only a material phenomenon; it is entangled with and mutually constitutive of social phenomena. Studies suggest that the population sparseness associated with rurality results in a high density of acquaintanceship, leading rural residents to interact personally with others in their community.10 (Willets et al.: 70) Sociologists attribute these characteristics, at least in part, to rural spatiality. Rural sociologists attribute reluctance to alter traditions and culture to the “predominance of personal, face-to-face social relationships among similar people” associated with small populations and low population densities. (Willits et al: 79; Mormont: 24) Another social consequence of rural spatiality is “greater levels of consensus on important values and morals.” (Willets et al: 72; Albrecht & Albrecht). In contrast, urban settings, being larger and more diverse, “foster[ ] the generation and acceptance of new ideas.” (Willits et al: 73-74) Norms in urban areas may evolve more quickly because a “critical mass” of organizationally and

10 See also David M. Engel, The Oven Bird’s Song: Insiders, Outsiders and Personal Injuries in an American Community, 18 LAW & SOC. REV. 551, 556-58, 569, 572-74 (1984) (reporting the familiarity with one another that rural residents said influenced their attitudes about litigation). Judges have occasionally expressed this idea. In a 1974 case, Stanley v. State, the judge vividly wrote that a defendant’s bad reputation “arguably took on more substance from the fact that it had . . . sprang . . . from rural soil rather than from the faceless anonymity of an urban swarm.” 313 A.2d 847, 856 n. 7 (Md. 1974) (citing United States v. Harris, 403 U.S. 573 (1971)).
occupationally diverse people innovate, while those in more sparsely settled places continue to embrace tradition. (Willits et al: 73-74)

1. Lack of Anonymity

Another socio-spatial consequence of the “high density of acquaintanceship” associated with rural places and small towns is a lack of anonymity, and therefore also a diminution of privacy. Such diminished privacy may, for example, deter engagement with the state, including the reporting of crimes, especially those within families, because law enforcement, prosecutorial, and judicial officials are also neighbors, acquaintances, and even friends or family. (Pruitt 2008b) This familiarity among community members may be particularly influential with regard to matters such as sexual issues and the family, which are generally considered private and were historically beyond law’s purview. (Pruitt 2007; Pruitt 2008b) Courts have recognized the significance of lack of anonymity in some contexts, such as change of venue and jury voir dire (Pruitt 2006), but reported cases rarely reveal judicial or other state sensitivity to how the socio-spatial milieu might lead a rural person or family not to accept public benefits or other forms of state assistance. (Wallace & Pruitt 2012).

2. The Paradox of Rural Privacy

The lack of anonymity that flows from spatial isolation and low population density may varyingly enhance autonomy or circumscribe it, a phenomenon I call the paradox of rural privacy (Pruitt, 2008(a)). I have already described how rural spatiality can diminish informational privacy, resulting in a lack of anonymity within one’s community, among one’s neighbors. The paradox is that rural spatiality also serves to enhance privacy. That is, the physical isolation
from others that is associated with rural and remote living fosters privacy; space is a shield from prying eyes—including those of the state.

But the link between rurality and privacy is not only a function of material spatiality; it is also a social and cultural phenomenon. Marx articulated it this way:

To be urbanized still means to adhere, to be made an adherent, a believer in a specified collective ideology rooted in extensions of polis (politics, policy, polity, police) and \textit{civitas} (civil, civic, citizen, civilian, civilization). In contrast, the population beyond the reach of the urban is comprised of \textit{idiotes}, from the Greek root \textit{idios}, meaning ‘one’s own, a private person’, unlearned in the ways of the polis. . . . Thus to speak of the ‘idiocy’ of rural life or the urbanity of its opposition is primarily a statement of relative political socialization and spatialization, of the degree of adherence/separation in the collective social order.


Mitchell is among those who have attempted to explain what Marx was thinking, offering apologetics for Marx’s apparent urban hubris:

Idiocy in this sense does not refer to the intelligence of the inhabitants, or even the nature of their customs, but to the essential privacy—and therefore isolation and homogeneity—of rural life. In contrast, cities were necessarily public—and therefore places of social interaction and exchange with people who were necessarily different.

(Mitchell 2003: 17)

Rural spatiality and the privacy it creates function to isolate people not only from one another, but also from the state. Jennifer Nedelsky writes: “The boundaries around selves form the boundaries to state power. The perverse quality of this conception is clearest when taken to its extreme: the most perfectly autonomous man is the most perfectly isolated.” (Nedelsky: 167)
The boundaries to which Nedelsky refers are often spatial, as manifest for example, by the walls of the home. But rural spatiality may similarly constitute boundaries between public and private, effectively drawing lines that insulate or isolate rurality—and those present in rural places—from each other and the state.

As for the link between autonomy and isolation, it runs both ways: the most isolated man is also the most autonomous. Certainly, the spatially isolated person is expected to be highly autonomous, highly self-sufficient, dependent on neither the state nor on others. That person cannot easily call on the state, and other citizens—neighbors—also may not be readily available to provide assistance (Pruitt 2007; Pruitt, 2008b). The most remote, rural residents are responsible for themselves, expected to cope with the vulnerability that accompanies their spatial situation, with little or no assistance from the state.

An aspect of rural spatiality as a varyingly disabling or enabling force is manifest in its relation to law enforcement as a function of the state. One way to avoid the state is to find seclusion, to find a space the state respects as private, or one the state—as a practical matter—cannot easily reach and/or surveil. Rurality’s privacy-enhancing features disable law, as illustrated by the role rural spatiality played in concealing from the state’s view—at least for a time—the likes of Ted Kaczynski, Posse Comitatus, and the Yearning for Zion Ranch. Such spatial inequality in relation to law enforcement presumably fosters an ethos of self-reliance that affects attitudes about the role of law, as well as toward the state more generally. This, too, is an aspect of the mutual constitutivity of law and space.

---

11 Could also discuss Mendocino County case from fall 2011; county supervisor murdered.
Indeed, law enforcement officers and courts have recognized that rural spatiality conceals—and they have opined that those who have broken the law know this, too. Several cases adjudicating the concept of probable cause are illustrative. The New Mexico Supreme Court held in a 1997 case that an officer’s “knowledge and experience” of “rural criminality” supported the officer’s probable cause to stop of a vehicle, based in part on the driver’s decision to use a rural road.\textsuperscript{12} The court wrote:

Officer Devine decided to follow the car, basing his decision on the lateness of the hour and on his knowledge, gained from police training and experience, that intoxicated drivers frequently take rural roads to avoid the police.\textsuperscript{13} A North Carolina court found that the late hour and rural location of a parking lot where an officer spotted a car produced sufficient probable cause for an investigatory stop of the car:

Officer Harbor then saw a vehicle driving with its lights off in the parking lot of a business which was normally closed at that hour. It was 3:00 a.m. in a rural area. We conclude that when these facts are considered as a whole and from the point of view of a reasonably cautious officer on the scene, the officer had a reasonable suspicion to detain defendant for a brief investigatory stop.\textsuperscript{14} The Kansas Court of Appeals held in 2003 that the fact that a man suspected of manufacture and sale of methamphetamine drove out into the country supported probable cause because “80 percent of the methamphetamine labs the officers were familiar with had been discovered in rural areas.”\textsuperscript{15}

\textsuperscript{12} New Mexico v. Walters, 934 P.2d 282 (1997).
\textsuperscript{13} Id.
\textsuperscript{15} State v. Maxwell, 77 P.3d 1008 (Kan. App. 2003) (unpublished disposition). \textit{See also} United States v. Maslanka, 501 F.2d 208, 213 & n.10 (5th Cir. 1974) (officers properly stopped truck near remote location where they had just found 18,000 pounds of marijuana and because last car that had appeared there had yielded three men “covered with marijuana”). \textit{See also} State v. Griffin, 459 A.2d 1086, 1089–90 (Me. 1983) (noting totality of circumstances test in determining probable cause for arrest included odd behavior that was inconsistent with rural location); State v. Heald, 314 A.2d 820, 823–25 (Me. 1973) (upholding probable cause to arrest defendant based upon officers following tire tracks in newly fallen snow in rural area from burglary site to defendant’s car); State v. Corum, 663
Collectively, such judicial interpretations are a way in which the container (rural space) is contained (defined) by its contents (Stramignoni). That is, rural spatiality is defined by both social and legal visions of rurality’s socio-spatial norms. By the same token, those socio-spatial norms give meaning to rurality’s material and social dimensions.

III. Materiality and Performativity in the Rural Lawscape

Law is supposed to “order and govern” materiality. (Delaney 2002: 81) (citing Cheah & Grosz) In the case of rural spatiality, that materiality is what might be thought of as a certain lack of materality, a blankness. But this does not mean that rurality—or even an all-natural environment—is a blank slate with no influence over meaning and allocations of power. Quite the contrary is true. The relative absence of persons and built environment is a world-making force of a different sort, one that tends to disable or disempower the force of law.

Delaney observes that law “permeates” unevenly, “differentially refracted through the social architecture of spatialities.” (Delaney 2010: 45-47). I highlight the materiality of the architecture of rural spatiality in this section, illustrating how that materiality influences law’s performance. To use Delaney’s term, I posit that law is less likely to permeate deeply into the nooks and crannies of rural space. Instead, the rural socio-spatial lawscape is less permeable, less amenable to law’s ordering force.

Rural spatiality renders law less effective at achieving its goals—at asserting to authority, flexing its muscle—because both material and social components of that spatiality undermine the
efficacy of law enforcement. Indeed, rural socio-spatial characteristics thwart the power and legitimacy often associated with the rule of law. This is largely due to the fact that legal actors and institutions are not present—at least not consistently and meaningfully so—in rural places. Take the old adage: “If a tree falls in the forest and no one hears it, does it make a noise?” An analogue for the role of law in rural places—especially remote ones—might ask: If a law is broken but no legal actors are present to monitor or enforce it, is there a “law”? Is law present? Does law matter?

Two *New York Times* stories from the winter of 2012 illustrate this phenomenon. The first, “High Crime, Fewer Charges on Indian Land” discussed the increasing failure of U.S. Attorneys to prosecute crimes—even the most serious ones—over which the federal government has jurisdiction in Indian country. Various reasons are offered for the failures, including lack of resources. But spatiality, too, seems to loom large. The story quotes a former chief judge of the Tonto Apaches in Arizona, who observes—by way of explanation of the inaction—that “federal prosecutors typically live hundreds of miles from Indian Country.” (Williams 2012a) What the judge suggests is a manifestation of the old adage “out of sign, out of mind.” This is an aspect of the rural socio-spatial lawscape.

Another story, “At Tribe’s Door, a Hub of Beer and Heartache,” reports on a lawsuit that the Oglala Sioux have filed against beer brewers and distributors and those who sell their beer in Whiteclay, Nebraska, just across the state line from the Pine Ridge Indian Reservation in South Dakota. (Williams 2012b). The reservation is an alcohol prohibition area, so members of the tribe go to Whiteclay to buy alcohol. Whiteclay has a population of just 11 persons, but 4.9
million cans of beer are sold there each year. It is a notorious fact that the alcohol is sold primarily to Indians, who consume it either on or off the reservation.

Why don’t law enforcement officers do a better job of monitoring the situation, and why don’t they do a better job of responding to the resulting crimes? The answers reflect an array of issues: jurisdictional lines, the political economy of state and locality, and spatial configurations. Whiteclay is within Sheridan County, Nebraska, but the Sheriff’s office is 19 miles away and has only five deputies to cover a county of 2,440 square miles. (U.S. Census Bureau) The department says it lacks the resources to properly patrol Whiteclay. The tribal police department, which has just 38 officers, lacks jurisdiction in Whiteclay. The Nebraska State Police occasionally send a patrol to Whiteclay, but they have essentially washed their hands of the problem. After all, if less beer were available for purchase in Whiteclay or if they cracked down on the problem there, they fear that Pine Ridge residents would travel farther into Nebraska to buy beer, thus spreading the Indian intoxication problem and creating more road hazards over a larger area. In other words, containment of the problem in Whiteclay (and across the Pine Ridge Reservation) suits Nebraska officials. Nebraska officials effect that containment primarily through inaction. Thus, the Pine Ridge alcohol prohibition is unenforced in Indian country, as Nebraska law enforcement cedes the border territory that is Whiteclay to Indian intoxication. For Nebraska officials, then, out of sight is effectively out of mind.

Delivery of indigent defense services in Apache County, Arizona, provides another illustration of how rural spatiality disables legal actor and undermines the delivery of justice. The country has insufficient funding to establish a public defender’s office that would employ one or more full-time lawyers. The county instead hires lawyers on a contract basis to represent
indigent defendants, and it requires those lawyers to appear in a different justice court (a court of first impression, where misdemeanor charges are often handled) several days each week to meet with new clients. (Pruitt & Colgan) This means the lawyers, most of whom live in the southern part of the county, must travel hundreds of miles a day, several days of each week, just to cover the vast distances associated with Apache County, which spans nearly 12,000 square miles and stretches more than 250 miles between its southern and northern borders. (U.S. Census Bureau) This leaves the lawyers relatively little time to do the work of defending their clients, most of whom are also spatially removed from them. A similar illustration of the impact of spatiality on the delivery of justice (including the all-important cost of delivering justice) is found in Nevada, where trial judges spend on average 22% of their work time traveling—essentially “riding circuit.”

Yet another manifestation of difference in efficacy between rural and urban is reflected in this title of a recent study of rural-urban differences in relation to domestic violence remedies: “Civil Protective Orders Effective at Stopping or Reducing Partner Violence: Challenges Remain in Rural Areas with Access and Enforcement.” (Logan & Walker 2011). Why are access and enforcement greater issues in the rural context? The answer lies in the character of the rural lawscape.

These examples illustrate how material space impedes and impairs law, or at least increases the difficulty and expense associated with law doing its business, the work of effecting the rule of law. Rural spatiality increases the cost of law’s performance. If a body is hidden or a person is lost or hiding in a rural area, covering the territory represented by where the contraband or victim or criminal/perpetrator might be found is complicated by the very vastness of the
territory to be covered and perhaps also by the remoteness and terrain of the region. If the state intends to regulate or monitor or surveil wide open spaces, it is going to take “manpower”; it is going to cost money. Law’s agents have to traverse territory to get to people, to crime scenes, to bodies, to “situations.” (Delaney 2010: 26, 40-42) The challenge and cost of public safety rises with population, yes, but also with the sheer volume of land area and the barriers to accessibility that often accompany it. This expense may lead law to cede the rural, the remote, the frontier to other forces, such as private order.

The law is functionally less vigilant about enforcing the rural of law in rural and remote places. In the (relative) absence of legal actors and institutions, (e.g., lawyers, law enforcement, regulators, inspectors, courts), law is anemic. That is, law matters less in everyday rural life when its presence—its performance—is occasional, or in name only.

IV. Legal Constructions of Rural Socio-Spatiality: Illustrations from the Fourth Amendment

Delaney explains that our understanding of the “legal depends upon the, usually unacknowledged, assumptions about social space that we bring to the task.” (Delaney 2010: 7). Dale reminds us of that those assumptions arise from both materiality and culture:

…materiality is not simply things, “the stuff of the world”. Materiality is imbued with culture, language, imagination, memory; it cannot be reduced to mere object or objectivity…. It is not just that materiality has taken on social [again, read “legal”] meanings, but that humans enact social [legal] agency through a materiality which simultaneously shapes the nature of that social agency. For humans are part of the material world …. (Dale, 2005: 652)

(Delaney, 2010: 20)
I have elsewhere illustrated this phenomenon, showing that judges and legislators, as well as laypersons, make assumptions about rural socio-spatiality. (Pruitt 2006) In this section, I will discuss some cases in which judges are explicit regarding their perceptions of rural socio-spatiality in relation to the fourth amendment law. These judicial interpretations, in turn, constitute the rural socio-spatial lawscape as featuring enhanced expectations of privacy.

Delaney uses the home to illustrate how law’s respect for privacy is spatialized.

[Home] participates differently in the production of subjects and in the generation and degeneration of relations of dependency or experienced autonomy. Homes can be productively seen as socio-spatial artifacts and devices through which the ins and outs of a variety of power relations are established, enacted, revised, and reproduced. (Delaney, 2010: 77-78)

Delaney quotes Mallet, who writes that the “abstract liberal home is conventionally imagined as a (highly significant) space” while “the spatiality of home is conventionally imagined as strongly dichotomous and dichotomizing vis-à-vis the metaphors of inside/outside and private/public.” (Mallett, 2004: 71). Delaney further describes the home as:

a space of (possible) solitude, intimacy, secrecy, and isolation. The home is a sanctuary. These effects are understood to be a function of how space is materialized. Again, in tandem with the body, the home is the primary locus of privacy, understood as providing immunity to unwanted intrusion and unwanted exposure. The home sustains precisely as it contains. It is an enclosure, an inside that is, for many purposes, outside the realm of public expectations and proscriptions. ... [Linda McClain] writes that “judicial opinions reveal a cluster of spatial images evocative of [castle and sanctuary; refuge and haven]: the home as sanctuary, sacred retreat, enclave or last citadel of the tired and sick .... (1995: 203-04).

(Delaney, 2010: 77-78)

Like the body and the home, rural spaces are also imagined as havens, places of retreat and privacy, beyond the realm of public expectations. (Pruitt 2006: 168-170). Further, judicial

In the United States, one of the power relations established, enacted, revised and reproduced in relation to the home is that between the state and the citizen in relation to the fourth amendment’s proscription on unreasonable searches and seizures. Just as courts in this fourth amendment context construe the home as a quintessentially private space, some similarly associate greater expectations of privacy with rural places.

These judicial constructions of the rural as private often occur in relation to the concept of “curtilage.” Fourth amendment jurisprudence recognizes that certain areas outside the home are so closely associated with the home and its intimate activities that a reasonable expectation of privacy exists in those areas, too. “Curtilage” is the term given these quasi-home spaces. In deciding whether an area is within the curtilage, courts “have defined the curtilage, as did the common law, by reference to the factors that determine whether an individual reasonably may expect that an area immediately adjacent to the home will remain private.”16 Facts relevant to this analysis are “the proximity between the area claimed to be curtilage and the home, the nature

---

of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by.”\(^{17}\)

The rural/urban distinction regarding the parameters of curtilage typically arises with respect to the last factor, the “steps taken to protect the area from observation.” In *Widgren v. Maple Grove Township*,\(^ {18}\) for example, the court noted that a small metal gate in front of a rural property (itself insufficient to block the area from view or prevent trespass) and a clear line demarcating the mowed portion of the lawn from the surrounding area was sufficient to bring the lot within the “curtilage” of the home. The court explained that “although this measure may not have been enough to avoid public view in a more urban environment, erecting a fence likely would have added little privacy in such a remote rural location.”\(^ {19}\)

In rural environments, less effort is required to reasonably deter observation or to signify privacy, presumably because passers-by are less common and neighbors are remote. Material space itself does more of the work of effectuating, creating or securing privacy. A recent Texas case invoked this rationale when holding that the defendant's back steps and backyard were curtilage in which he had reasonable expectation of privacy, even though the backyard was not enclosed by a fence and officers testified that “no trespassing” signs were not posted on the property.\(^ {20}\) The court explained that defendant's mobile home was located in a secluded, wooded area, and no neighbors were within several hundred yards. Further, the mobile home was not visible from the main road, and the defendant's backyard and back steps were not visible from

\(^{17}\) *Id.* at 221.

\(^{18}\) 429 F.3d 575 (6th Cir. 2005).

\(^{19}\) *Id.* at 582

the private driveway, from the front of the home, or from or any neighboring properties.\textsuperscript{21} Courts in other decisions have similarly implied that because rural residents already enjoy an expectation of privacy based upon remoteness and sparse population, they need not construct fences or take other steps to ensure their privacy.\textsuperscript{22} Greater effort is typically required to bring property within the curtilage of an urban home as compared to a rural one

Other courts have invoked the rural imaginary in construing the extent of curtilage. The Idaho Supreme Court wrote in a 2001 case of the “unique rural tradition and custom in Idaho that defines Idahoans’ sense of protected space, and expectation of privacy, within their property.”\textsuperscript{23} In a 1996 decision, the Idaho Court of Appeals had quoted with approval Justice Brennan’s 1987 dissent in \textit{United States v. Dunn}: “Our society is not so exclusively urban that it is unable to perceive or unwilling to preserve the expectation of farmers and ranchers that barns and their contents are protected from (literally) unwarranted government intrusion.”\textsuperscript{24} The New Mexico Court of Appeals similarly reasoned in a 1991 decision that differences in both “custom and terrain”, including large rural lot sizes and plentiful land, give rise to “particular expectations of privacy.”\textsuperscript{25}

\textsuperscript{21} \textit{Id.; see also} Pool v. State, 157 S.W.3d 36 (Tex. App. Waco 2004) (finding curtilage because an individual's house was located in a heavily wooded area on a secluded road, and it was not possible to observe the backyard area from the street).

\textsuperscript{22} \textit{See, e.g.,} United States v. Jenkins, 124 F.3d 768, 773 (6th Cir. 1997). As Judge Friendly wrote in the Second Circuit’s 1980 decision in \textit{United States v. Arboleda}: “In a modern urban multifamily apartment house, the area within the ‘curtilage’ is necessarily much more limited than in the case of a rural dwelling subject to one owner’s control.” 633 F.2d 985, 992 (2d Cir. 1980) (quoting Commonwealth v. Thomas, 267 N.E.2d 489, 491 (Mass. 1971).

\textsuperscript{23} State v. Donato, 20 P.3d 5, 8 (Idaho 2001) (finding that the defendant had no reasonable expectation of privacy in the trash left in his curbside garbage can in Blaine County).


\textsuperscript{25} State v. Sutton, 816 P.2d 518, 524 (N.M. Ct. App. 1991). \textit{But see} State v. Morris, 680 A.2d 90, 105–06 (Vt. 1996) (Dooley, J., dissenting) (discussing the lack of an expectation of privacy in garbage that is placed outside the home, particularly in a rural area such as Vermont).
Thus, as in relation to the home, we see that “the metaphors and spatial imaginings” regarding rural places “are not inert,” but instead “work to justify ‘on-the-ground’ reconfigurations. ... [T]he legal seems to name an institutional matrix that mediates the production and circulation of spatial representations and reorganization of material spatial arrangements.” (Delaney, 2003: 71). These judicial opinions illustrate how, as Delaney expresses it, “the legal and the spatial, the discursive and the material are inextricable.” (Delaney, 2003: 71). Such formal legal judgments “shap[e] and reshap[e] the spatialities of social life.” (Delaney, 2003: 68). Given the authority judges possess, these pronouncements, these “contingent meanings are then inscribed onto segments of the material world.” (Delaney 2002: 68). Just as social constructions can “operate with the full force of objective facts” (Harvey, 1996: 211), so, too, with judicial constructions. By articulating the rural as private, courts render rurality private as surely as literal spatiality performs the same work.

V. Conclusion

Law is not only everywhere in space, it is also “enmeshed in space” (Martin: 177) (citing Blomley et al., 2001: xix). When law is enmeshed in rural space, that socio-spatial milieu renders law relatively anemic, less truly or meaningfully present, and not truly everywhere. This is because of the relative absence of legal actors and legal institutions and the challenges they face in transcending material space—that is, in literally getting from point A to point B, in the practical challenges of responding to a situation or monitoring a vast area. This is also because of the social construction and legal mediation of rural spatiality including—paradoxically, a lack of anonymity and an enhanced expectation of privacy that in turn enables and disables both
Pruitt, The Rural Socio-Spatial Lawscape

DRAFT: Please Do Not Cite Or Quote Without Author's Written Permission

citizen and state. In this way, spatiality tames or limits law, just as law’s efforts to transcend
material spatiality tames space. We thus begin to get a sense of the rural nomoscape and how
people there are “differently positioned” with respect to nomic fields of power, most notably that
represented by the state.

References


Blackwell.

Handbook of Rural Studies (pp. 18-28). London: Sage.


Control. Organization, 12, 649-678.

Harrison (Eds.), Law and Geography: Current Legal Issues Volume 5 (pp. 67-84). New
York: Oxford.

Routledge.


Marsden & P. Mooney (Eds.), Handbook of Rural Studies (pp. 44-62). London: Sage
Publications.


Hogg, R. (2002). Law's Other Spaces. Law Text Culture, 6(1), Retrieved from
http://ro.uow.edu.au/ltc/vol6/iss1/4

Arnold.


Mormont, M. (1990). Who is Rural? Or, How to be Rural: Towards a Sociology of the Rural,. In T. Marsden et al. (Eds.), Rural Restructuring: Global Processes and Their Responses (pp. 21, 28-41).


